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# Options for Establishing a Temporary Advisory Body

## Overview

Temporary advisory bodies are formal groups established to provide independent advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty. Usually composed of policy experts chosen by Members of Congress and/or officials in the executive branch, commissions may hold hearings, conduct research, analyze data, investigate policy areas, or make field visits as they perform their duties. Most such bodies complete their work by delivering their findings, recommendations, or advice in a written report.

Advisory bodies can be broadly placed into three categories: policy, investigatory, or commemorative. Most advisory bodies are policy focused. Far fewer are investigative and established to examine past events. A small number are commemorative entities that plan, coordinate, and oversee celebrations of people or events, often in conjunction with milestone anniversaries.

In the past, confusion has arisen over whether particular entities are advisory bodies. There are two chief reasons for this confusion. First, advisory bodies are not typically named as such; instead, they are designated as boards, advisory panels, advisory committees, task forces, congressional commissions, blue-ribbon panels, or as other terms. Conversely, a number of entities within the federal government have the word “commission” in their names, such as regulatory commissions. Unlike regulatory commissions, however, congressional commissions are not typically granted administrative authority, and they usually lack the power to implement their findings or recommendations.

There are a variety of ways that temporary advisory bodies have been created. This report discusses five mechanisms for establishing an advisory body and provides examples of advisory bodies established by such mechanisms. These mechanisms are statutory, chamber resolution, committee authority, executive branch authority, and quasi-private establishment.

## Options for Establishment

### Statutory Establishment

Most *congressional* temporary advisory bodies—entities that exist to report their findings to Congress—are established by statute. During the past 25 years, more than 85 congressional advisory commissions have been enacted into law. Often, legislation creating such a commission is attached to larger “must-pass” legislation, as policymakers

perceive that it will increase the probability of passage. This may be the case even with high-profile advisory commissions such as the National Commission on Terrorist Attacks Upon the United States (the 9-11 commission, P.L. 107-306, November 27, 2002), which was attached to the Intelligence Authorization Act for Fiscal Year 2003.

### Examples of Advisory Bodies

#### Established by Statute

National Commission on Terrorist Attacks Upon the United States

#### Established by Chamber Resolution

Select Committee on Energy Independence and Global Warming

#### Established by Committee Authority

Advisory Commission to Study the Consumer Price Index

#### Established by Executive Branch Authority

National Commission on Fiscal Responsibility and Reform

#### Quasi-Private Establishment

Iraq Study Group

In addition to authorization bills, legislation establishing a commission may also be attached to appropriations bills. For example, the National Commission on Children and Disasters was part of the Fiscal Year 2008 Consolidated Appropriations Act (P.L. 110-161, December 26, 2007).

Although many congressional advisory commissions established by statute are contained in larger language, it is also not uncommon for such a commission to be established through stand-alone legislation. During the 110<sup>th</sup> Congress, the Commission on the Abolition of the Transatlantic Slave Trade (P.L. 110-183, February 5, 2008) was established through stand-alone legislation. Similarly, during the 111<sup>th</sup> Congress, the Ronald Reagan Centennial Commission (P.L. 111-25, June 2, 2009) was established through stand-alone legislation.

Not all advisory bodies established by statute are congressional temporary advisory bodies. Congress routinely establishes advisory commissions in the executive branch by statute. For example, in 2011 Congress created the Independent Review Panel on Military Medical Construction Standards (P.L. 111-383), a federal advisory committee in the Department of Defense.

## Establishment by Chamber Resolution

If policymakers desire that members of the advisory body consist of Members of Congress, one alternative to establishing an independent congressional commission through statute would be to create a temporary select or special committee within the House, Senate, or as a joint entity. Such committees are generally established by chamber resolution to conduct investigations or studies, and occasionally to consider legislation. For example, the Select Committee on Energy Independence and Global Warming was established by the House of Representatives in the 110<sup>th</sup> Congress. Section 4(c) of H.Res. 202 defined the select committee's jurisdiction:

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The select committee shall not have legislative jurisdiction and shall have no authority to take legislative action on any bill or resolution. Its sole authority shall be to investigate study, make findings, and develop recommendations on policies, strategies, technologies and other innovations, intended to reduce the dependence of the United States on foreign sources of energy and achieve substantial and permanent reductions in emissions and other activities that contribute to climate change and global warming.

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## Establishment by Committee Authority

Entities similar to congressional commissions may also be established by individual standing committees of the House and Senate. Committees in both the House and Senate are authorized, subject to the approval of the Committee on Rules and Administration in the Senate and the Committee on House Administration in the House, to hire consultants. The authority is also subject to specific funding limitations provided by the Committee on Rules and Administration and the Committee on House Administration in the biannual committee funding resolution.

In the past, committees have occasionally used this authority to establish advisory bodies. For example, during the 104<sup>th</sup> Congress, the Senate Finance Committee established an Advisory Commission to Study the Consumer Price Index. The commission was composed of national economic experts, and submitted its final report to the Finance Committee in December, 1996.

## Establishment by Executive Branch

Another option for the creation of an advisory body is the establishment of a federal advisory committee in the

executive branch. A federal advisory committee can be established by statute, executive order of the President, or on the authority of an agency head in the executive branch. Each committee is composed of policy experts drawn from government employees and private citizens, who provide analysis and advice under specific charters from their establishing authority.

Advisory entities created in the executive branch are regulated and managed under the Federal Advisory Committee Act (FACA; 5 U.S.C. Appendix), which mandates certain formal structural and operational requirements, including formal reporting and oversight procedures. Additionally, FACA requires committee meetings be open to the public, unless they meet certain requirements. There are currently over 850 federal advisory committees providing support to the executive branch.

Two prominent recent examples of advisory bodies established by the executive branch are the National Commission on Fiscal Responsibility (E.O. 13531, February 18, 2010) and the President's Commission on America's Returning Wounded Warriors (E.O. 13426, March 6, 2007).

## Quasi-Private Establishment

A final alternative is a quasi-private entity. In 2006, a bipartisan group of Members of Congress directed the creation of the Iraq Study Group without formal legislation, and asked the United States Institute of Peace (USIP) to support the group. Three private think tanks—the Center for the Study of the Presidency, the Center for Strategic and International Studies, and the James A. Baker III Institute for Public Policy at Rice University—also supported the group. Congress later appropriated \$1 million for the activities of the group. The co-chairs and other members of the group were chosen by its congressional supporters, USIP, and the other supporting organizations. The group submitted its final report to the President and Congress in December, 2006.

For more information, see CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by Matthew E. Glassman and Jacob R. Straus, and CRS Report R40520, *Federal Advisory Committees: An Overview*, by Wendy Ginsberg.

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