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Title 36 Congressional Charters

In the United States, the states have generally had the authority to create and oversee corporate entities within their boundaries. Beginning with the Bank of the United States' statutory establishment in 1791, however, Congress periodically has passed legislation to incorporate both public and private organizations. Broadly speaking, the term "congressional charter" can be understood to include any statute that establishes a new organization or gives legal recognition to an existing organization.

The congressional charters of more than 90 organizations can be found in Subtitle II of Title 36 of the *United States Code*; they are commonly referred to as "Title 36 charters." In general, these charters include those of private, nonprofit corporations that appear to be of a patriotic character or national in scope, such as various veterans' organizations and the Boys and Girls Clubs of America. Charters of some other nonprofit corporations with diverse purposes and differing relationships with federal government agencies are also included, such as the United States Olympic and Paralympic Committee and the National Film Preservation Foundation.

Legislating New Title 36 Congressional Charters

Title 36 charters are public laws, and the process for their enactment follows the process for the enactment of many other legislative initiatives. It has generally begun with the drafting, introduction, and referral of a bill in either chamber. Such charter bills are generally structured as amendments to Title 36 of the Code, included as a note to Title 36, or written as an amendment to a different title of the Code, at the discretion of the Office of Law Revision Counsel.

The Senate and House Judiciary Committees usually have been the committees of jurisdiction for Title 36 charter bills in their respective chambers, regardless of the policy area related to the organization. In the House, the Subcommittee on Immigration and Citizenship and its predecessor subcommittees have been given jurisdiction within the Judiciary Committee.

The same legislative process has been used to make changes to existing charters. As public laws, the terms of charters may be changed through enactment of other public laws. Generally, existing charters also have been repealed through this process. For example, the 1907 congressional charter of the National German-American Alliance of the United States of America was repealed in 1918.

Committee Moratorium on New Charters

From 1989 through 2018, the House Judiciary subcommittee of jurisdiction over the matter maintained a moratorium on granting additional Title 36 charters. The subcommittee's reasoning was included in the opening paragraph of the policy:

[S]uch charters are unnecessary for the operations of any charitable, non-profit organization and falsely imply to the public that a chartered organization and its activities carry a congressional "seal of approval," or that the Federal Government is in some way responsible for its operations. The Subcommittee believes that the significant resources required to properly investigate prospective chartered organizations and monitor them after their charters are granted could and should be spent instead on the subcommittee's large range of legislative and other substantive policy matters. This policy is not based on any decision that the organizations seeking Federal charters are not worthwhile, but rather on the fact that Federal charters serve no valid purpose and therefore ought to be discontinued.

Although the subcommittee does not appear to have formally readopted this policy since the 115th Congress (2017-2018), the committee did not report new Title 36 charter legislation during the 116th Congress (2019-2020) or the beginning of the 117th Congress (2021-2022).

Chartering During the Moratorium

The moratorium did not bring a complete end to bills seeking to establish these charters while it was in effect. Examples of new charters enacted and added to Title 36 during the moratorium period, although not reported by the House Judiciary Committee, include the following:

- In 1996, the charter for the Corporation for the Promotion of Rifle Practice and Firearms Safety was included in the National Defense Authorization Act for FY1996 (P.L. 104-106, Title XVI; 110 Stat. 515).
- Also in 1996, the Fleet Reserve Association was chartered through legislation that was included in the National Defense Authorization Act for FY1997 (P.L. 104-201, Title XVIII; 110 Stat. 2760).
- In 1997, the Air Force Sergeants Association was chartered as part of the National Defense Authorization Act for FY1998 (P.L. 105-85, Title XV; 111 Stat. 1963).

- In 1998, the American GI Forum of the United States was chartered in an act with that sole purpose (P.L. 105-231; 112 Stat. 1530).
- In 2000, the National Recording Preservation Foundation was chartered as part of the National Recording Preservation Act (P.L. 106-474, Title II; 114 Stat. 2091).
- In 2008, the Korean War Veterans Association, Incorporated, was given a federal charter by an act with that sole purpose (P.L. 110-254; 122 Stat. 2419).
- In 2009, the Military Officers Association of America was chartered by an act with that sole purpose (P.L. 111-95; 123 Stat. 3001).
- In 2010, the National Foundation on Fitness, Sports, and Nutrition was chartered by an act with that sole purpose (P.L. 111-332; 124 Stat. 3576).

No new Title 36 charters were enacted from 2010-2020.

Appropriations

A Title 36 charter does not inherently establish an organization as a federal agency, confer upon it any governmental authority, or assign it any governmental benefits. Organizations with such charters do not typically, by virtue of their chartered status, receive appropriated funds. Nor are they prevented from receiving such funds, unless such a prohibition is provided for in the charter.

A few Title 36 charters include authorizations to receive appropriated funds, either directly or through a federal agency. For example, the National Film Preservation Foundation's charter includes an authorization of appropriations not to exceed \$1 million for each fiscal year through 2026 (36 U.S.C. § 151711). The National Academy of Public Administration's charter provides that upon request of the federal government, it "shall investigate, examine, experiment, and report on any subject of government." The related costs are to be paid "from appropriations available for that purpose" (36 U.S.C. § 150104).

Oversight

Congress has periodically grappled with the oversight and accountability of Title 36 chartered corporations, as reflected in the subcommittee moratorium excerpt above. During the post-World War II period, as numerous groups of veterans, their supporters, and others requested charters, Congress sought to establish both standards by which such requests could be evaluated and an audit process for chartered groups. P.L. 88-504 (78 Stat. 635; 36 U.S.C. § 10101), enacted in 1964, required Title 36 chartered corporations to obtain an annual audit of their financial statements. It also required that an audit report be submitted to Congress. However, a subsequent statute terminated specified statutorily required reporting requirements for federal agencies, and it also terminated the audit report requirement for most Title 36 chartered corporations. (36 U.S.C. § 10101note.)

Some Title 36 charters facilitate organizations' accountability to voting members by requiring maintenance and circumscribed availability of accurate corporate records. For example, the Air Force Sergeants Association's charter requires that the corporation keep records of account; minutes of Association proceedings; and record of the names and addresses of its members entitled to vote (36 U.S.C. § 20209). Voting members or their agents or attorneys "may inspect the records of the corporation at any reasonable time."

Some Title 36 charters include restrictions related to issuance of stock or dividends; participation in, or funding of, political activities; and distribution of corporate income, assets, or loans to leaders or members. For example, AMVETS' (American Veterans') charter provides that the "corporation may not issue stock or declare or pay a dividend" (36 U.S.C. § 22707). In addition, the corporation and its leaders "may not contribute to, support, or assist a political party or candidate for elective public office." The corporation's income and assets may not be used for "the benefit of, or be distributed to, a director, officer, or member ... except on dissolution ... of the corporation."

Additional oversight tools beyond the requirements of a Title 36 corporation's charter might include those associated with the organization's tax and state incorporation status. A tax-exempt Title 36 chartered corporation might be required to file an annual Form 990 with the Internal Revenue Service, which then would generally be publicly available. In many cases, Title 36 chartered corporations are also incorporated at the state level and may be subject to additional state-level accountability and transparency laws and regulations.

As the committees of jurisdiction, the House and Senate Judiciary Committees have sometimes exercised oversight over the charters or activities of Title 36 chartered corporations. A Title 36 charter does not, per se, require a corporation to be more responsive than other organizations to congressional oversight. Should the committees find such a group to be unresponsive, however, they might elect to review its charter for potential amendment or repeal.

Other congressional committees also have sometimes conducted oversight concerning the activities and organization of Title 36 chartered corporations. For example, a House Energy and Commerce Committee subcommittee and the Senate on Commerce, Science, and Transportation Committee each held multiple hearings in 2003 to review the operations and management of the United States Olympic Committee (USOC, now the United States Olympic and Paralympic Committee), following reports of perceived leadership dysfunction. Subsequently, several USOC reform bills were introduced, including one that was passed by the Senate.

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