Congressional or Federal Charters: Overview and Current Issues

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Summary

A congressional or federal charter is a federal statute that establishes a corporation. Congress has issued charters since 1791, although most charters were issued after the start of the 20th century. Congress has used charters to create a variety of corporate entities, such as banks, government-sponsored enterprises, commercial corporations, venture capital funds, and more. Recently, Congress has faced two issues involving its use of charters — confusion over who is responsible for the activities of chartered corporations and the challenges of managing them. This report will be updated if relevant legislative action occurs.

What Is a Congressional or Federal Charter?

In the Anglo-American linguistic tradition, the word “charter” has been used to refer to many legal writs, including “articles of agreement,” “founding legislation,” “contracts,” “articles of incorporation,” and more. The varied uses of this term to refer to so many different legal writs may reflect the term’s etymology. “Charter” is derived from the Latin

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“charta” or, perhaps, the ancient Greek “chartês,” both of which mean “paper.” As used in federal statutory law, the term “charter” usually has carried a much more specific meaning. A congressional or federal charter is a federal statute that establishes a corporation. Such charters typically provide the following characteristics for the corporation:

(1) Name;
(2) Purpose(s);
(3) Duration of existence;
(4) Governance structure (e.g., executives, board members, etc.);
(5) Powers of the corporation;
(6) Federal oversight powers.

Beyond conferring the powers needed to achieve its statutorily assigned goal, a charter usually provides a corporation with a set of standard operational powers: the power to sue and be sued; to contract and be contracted with; to acquire, hold, and convey property; and so forth.

**Congress’s Use of Charters**

Many of the original 13 colonies were established by royal charters, and both colonies and states incorporated governmental and private entities before the United States was established. Yet, at the Constitutional Convention in Philadelphia in 1787, the Founders disagreed over the wisdom of giving the proposed federal government the power to charter corporations. Nevertheless, Congress chartered its first corporation — the Bank of the United States — in February of 1791 (1 Stat. 192 §3). Any dispute over Congress’s power to charter corporations was effectively put to an end by the Supreme Court’s decision in *McCulloch v. Maryland* in 1819 (17 U.S. (4 Wheat.) 315). The Court

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4 The specific objections to federal incorporation are unclear. However, one author suggests that some Founders may have feared that the power to grant charters might be used to establish or convey exclusive privileges and monopolies to private businesses. Simeon E. Baldwin, “American Business Corporations Before 1789,” *The American Historical Review*, vol. 8, no. 3, Apr. 1903, pp. 464-465.

5 This was not the first congressionally chartered national bank in the United States. One of the earliest acts of Congress (May 26, 1781) under the Articles of Confederation (which were ratified March 1, 1781) was to charter a bank.
ruled that incorporation could be a “necessary and proper” means for the federal
government to achieve the ends assigned to it by the U.S. Constitution.6

After chartering the national bank, though, for the next century, Congress issued
charters almost solely in its role as manager of the affairs of the District of Columbia
(Article I, §8, cl. 17). The District of Columbia, which became the seat of the federal
government in 1790, had neither a general incorporation law nor a legislature that could
grant charters. So it fell to Congress incorporate the District’s corporations. Thus,
Congress issued charters to establish the office of the mayor and the “Council of the City
of Washington” in 1802 (2 Stat. 195-197) and to found the Washington City Orphan
Asylum in 1828 (6 Stat. 381).7

In the 20th century, Congress began chartering a large number of corporations for
diverse purposes. In part, Congress’s resort to the corporate device was a response to a
host of national crises, such as the two World Wars (which required the production of an
eormous number of goods) and the Great Depression (which revealed the limited power
the federal government had over the national economy). Corporations, it was thought,
were by nature better suited than typical government agencies to handle policy areas that
required commercial-type activities (for example, selling electrical power, as the
Tennessee Valley Authority does).8

While each congressionally chartered corporation is unique in that it is fashioned for
a very particular purpose, these entities still may be sorted into rough types. An
elementary division is between those chartered as nonprofit corporations versus those that
are not.9 Table 1 provides a further — but not exhaustive — typology of congressionally
chartered corporations.

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6 Thus, the power to incorporate, the Court ruled, lies with both of the sovereigns in the U.S.
federal system — states and the federal government.

7 For more information on early congressional charters, see Margaret Fennell, Corporations

8 U.S. Senate, Committee on Governmental Affairs, Managing the Public’s Business: Federal
Government Corporations, by Ronald C. Moe, S.Prt. 104-18, 104th Cong., 1st sess. (Washington:
GPO, 1995).

9 While the term “not-for-profit corporation” may be more accurate than “nonprofit corporation”
— the former is defined in tax law, the latter is a colloquialism that, strictly read, denotes that
an entity is not bringing in more revenues than its expenditures — the latter is used because it is
the preferred term of the U.S. Code.
Table 1: Types of Congressionally Chartered Corporations

<table>
<thead>
<tr>
<th>Type</th>
<th>Purpose(s)</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nonprofit Corporations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title 36 Corporations&lt;sup&gt;10&lt;/sup&gt;</td>
<td>Fraternal and patriotic organizations.</td>
<td>Daughters of the American Revolution</td>
</tr>
<tr>
<td>Foundations, Trusts, and Miscellaneous Corporations Supporting Nonprofit Uses</td>
<td>Accept and expend government and private funds on goods and services that may be under-provided by the private market.</td>
<td>National Park Foundation, National Trust for Historic Preservation in the United States, Legal Services Corporation</td>
</tr>
<tr>
<td><strong>Corporations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banks</td>
<td>Provide financial services and promote the health of the economy.</td>
<td>Export-Import Bank, Federal Reserve Banks</td>
</tr>
<tr>
<td>Commercial Corporations (also called “government corporations”)&lt;sup&gt;11&lt;/sup&gt;</td>
<td>Sell products and services.</td>
<td>Tennessee Valley Authority</td>
</tr>
<tr>
<td>Government-Sponsored Enterprises&lt;sup&gt;12&lt;/sup&gt;</td>
<td>Add liquidity to secondary loan markets</td>
<td>Fannie Mae and Freddie Mac</td>
</tr>
<tr>
<td>Public Authorities and Commissions&lt;sup&gt;13&lt;/sup&gt;</td>
<td>Interstate bond-issuing entities that build and operate transportation systems.</td>
<td>Washington Metropolitan Area Transit Authority, Owensboro Bridge Commission</td>
</tr>
<tr>
<td>Venture Capital Funds&lt;sup&gt;14&lt;/sup&gt;</td>
<td>Invest in small firms to develop technologies and private firms.</td>
<td>Telecommunications Development Fund&lt;sup&gt;15&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<sup>10</sup> These entities are referred to as “Title 36 corporations” because they are found in Title 36 of the U.S. Code. CRS Report RL30340, Congressionally Chartered Nonprofit Organizations (“Title 36 Corporations”): What They Are and How Congress Treats Them, by Ronald C. Moe and Kevin R. Kosar.


<sup>15</sup> In some instances, federal venture capital funds have been established without a charter. For more information, see CRS Report RL30533, The Quasi Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics.
Current Issues

In recent years, Congress has faced issues regarding congressionally chartered corporations. Primarily, these issues have centered on the questions of who is responsible for the activities of these entities and the federal government’s power to manage the corporations.

Responsibility for the Actions of Congressionally Chartered Corporations. The awarding of a charter to an already existent fraternal or patriotic organization is purely honorific. Unlike other congressional charters, a Title 36 corporation charter does not create a body corporate where one did not previously exist. Yet, when a charter is awarded to such an entity, many members of the public perceive this action as an expression of congressional support for all of the group’s activities. Thus, for example, when the congressionally chartered American Gold Star Mothers refused to admit to membership a non-U.S. citizen, some individuals and members of the media called upon Congress to intervene and rectify this situation.16 Approximately 100 Title 36 corporations exist, which raises the potential for more requests for congressional intervention in these groups’ activities.17

This issue is not limited to federally chartered fraternal groups. Many non-Title 36 corporations have been chartered which are neither clearly governmental nor private. The lines of accountability for such an entity’s actions may be unclear. For example, the nonprofit National Endowment for Democracy (NED), which was chartered to support democratic movements and governments abroad, advertises itself as private.18 Yet, NED regularly receives appropriations — $60 million for FY2005 alone (P.L. 108-447, Title IV). Its board of directors includes many current and former members of the legislative and executive branches. These features have prompted some to speak of NED as an instrumentality of the federal government.19 The chartering of corporations that are not

16 Shawn Cohen, “Gold Star Denial of GI’s Mom Blasted,” May 27, 2005, p.1; and Peter Applebome, “Some Mothers Are More Equal Than Others,” New York Times, June 1, 2005, p. B1. Under its charter (36 U.S.C. 21104), American Gold Star Mothers, like many Title 36 corporations, was given considerable latitude to define its criteria for membership eligibility. Rectifying this situation, then, would have required Congress to pass a law that rewrote this organization’s charter so that it would expand its membership eligibility criteria. As it happened, American Gold Star Mothers amended its constitution to permit non-U.S. citizen mothers to join.

17 Some of the more well-known ones include the American Legion, Big Brothers-Big Sisters of America, Boy Scouts of America, Girl Scouts of the United States of America, National Academy of Sciences, United Service Organizations, Inc. (commonly referred to as the U.S.O.), and Veterans of Foreign Wars of the United States. In recent years, Congress has avoided chartering new Title 36 corporations. On Title 36 corporations generally and for a list of all Title 36 corporations, see CRS Report RL30340, Congressionally Chartered Nonprofit Organizations (“Title 36 Corporations”), pp. 15-17.

18 See website of NED [http://www.ned.org/about/about.html].

clearly governmental or private has caused sufficient confusion that in some instances the Supreme Court has been asked to intervene and make a determination of their status.\(^\text{20}\)

**Federal Management of Corporations.** In centuries past, states and municipalities often limited the duration of a charter; a corporation would expire unless the sovereign renewed its charter. This “sunset and review” practice has fallen by the wayside; usually, Congress charters entities to exist without temporal limits. Critics argue that a cost of this practice is that it permits a corporation to continue to operate whether or not it well serves the public. A corporation chartered to have “perpetual succession” can be abolished only through enactment of a new law — which seldom occurs. Long-living chartered entities have been accused of taking business from the private sector, moving into areas of business or activities outside the bounds of their charters, and developing networks of influence to protect themselves from abolition.\(^\text{21}\)

The management of government corporations has been made difficult by a few factors. First, no single federal department or office is charged with overseeing the activities of federally chartered corporations. Second, some of these entities are established within departments, whose secretaries oversee them (e.g., the St. Lawrence Seaway Development Corporation in the Department of Transportation and the Federal Financing Bank in the U.S. Department of the Treasury). Many, though, are established independently of any department and have few, if any, federal appointees on their boards or in their executive ranks. (This is especially the case with nonprofit corporations chartered as “private” entities.) This separation of corporations from departments has made the federal management of corporations more difficult.\(^\text{22}\) Finally, the Government Corporation Control Act (31 U.S.C. 9101-10) provides many tools for managing chartered corporations’ activities. Congress has excepted many corporations from some or all of the act’s provisions.

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\(^\text{22}\) This is due to the exacerbation of the principal-agent problem. In public administration theory, the principal-agent problem refers to the difficulty that the principal (in this case, the government) has in knowing and, therefore, directing the activities of the agent (here, the corporation). The more closely that a corporation is tethered to a department, the higher the probability is that the department heads will have adequate information to direct the corporation’s activities.