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# Information Access for Congressional Advisory Commissions

July 7, 2022

**Congressional Research Service**

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R47173



## Information Access for Congressional Advisory Commissions

Advisory commissions assist Congress with the development of public policy. Congressional advisory commissions are formal groups, usually composed of policy experts, that provide independent advice, recommend potential changes in public policy, and study or investigate a particular problem or event. Congressional advisory commissions can also commemorate an individual, group, or event. An advisory commission often completes its work by delivering written findings and recommendations to Congress.

Advisory commissions can help develop policy recommendations on a myriad of policy areas, especially those that cut across the jurisdictions of multiple congressional committees. To accomplish its mission, a congressional advisory commission must have access to information to help it evaluate the policy sphere, develop potential recommendations, and report to Congress.

To aid advisory commissions' work, laws creating congressional advisory commissions have traditionally provided several tools to help commissions gain access to necessary information. This report examines the most commonly provided information-gathering tools. These tools fall into three categories. First, commissions are provided certain statutory authorities. These commonly include the ability to hold hearings, contracting authority, and the ability to obtain information from government agencies. Occasionally, commissions are provided subpoena authority. Second, commissions often include subject-matter experts as commissioners and are provided the authority to hire staff to help meet their statutory mandate. Third, commissions use publicly available documents and the cooperation of interested individuals and parties to help gather information.

**R47173**

July 7, 2022

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Congressional advisory commissions are formal groups established by Congress to provide independent advice; recommend changes in public policy; study or investigate a particular problem or event; or commemorate an individual, group, or event. Usually composed of policy experts, commissions often complete their work by delivering written findings, recommendations, or advice to Congress.<sup>1</sup>

Historically, Congress has used advisory commissions to assist in the development of public policy. Often, commissions can examine complex policy issues over a longer period and in greater depth than may be practical for individual legislators or a congressional committee.<sup>2</sup> Advisory commissions can also provide Congress with a potentially high-visibility forum to assemble expertise that might not exist within the legislative environment for policy areas that cut across committee jurisdictional lines.<sup>3</sup> The nonpartisan or bipartisan character of most congressional advisory commissions may make their findings and recommendations more politically acceptable, both to Congress and the public. Conversely, some observers have noted that commissions may be viewed as undemocratic, since they do not generally contain elected officials;<sup>4</sup> may be financially inefficient;<sup>5</sup> and may be created to distance decisionmakers from controversial issues.<sup>6</sup>

Although no legal definition exists for what constitutes a “congressional advisory commission,” this report defines a congressional commission 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. These five characteristics effectively serve to differentiate a congressional advisory commission from a presidential commission, an executive branch commission, or other multimember bodies designated as “commissions.”<sup>7</sup>

Two broad types of congressional commissions exist: policy commissions and commemorative commissions. Policy commissions generally study a particular public policy problem (e.g., Commission on Combatting Synthetic Opioid Trafficking),<sup>8</sup> or investigate a particular event (e.g., the National Commission on Terrorist Attacks Upon the United States).<sup>9</sup> Policy commissions typically report their findings to Congress along with recommendations for legislative or executive action. Commemorative commissions, such as the Route 66 Centennial Commission,<sup>10</sup>

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<sup>1</sup> For more information on congressional advisory commissions, see CRS Report R40076, *Congressional Commissions: Overview and Considerations for Congress*, by Jacob R. Straus; and CRS Report R45328, *Designing Congressional Commissions: Background and Considerations for Congress*, by Jacob R. Straus.

<sup>2</sup> Cassia Spohn, “The Role of Advisory Boards in the Policy Process: An Analysis of the Attitudes of HEW Board Members,” *American Review of Public Administration*, vol. 16, no. 2/3 (Summer/Fall 1983), pp. 185-194.

<sup>3</sup> Carol H. Weiss, “Congressional Committees as Users of Analysis,” *Journal of Policy Analysis and Management*, vol. 8, no. 3 (Summer 1989), pp. 411-431.

<sup>4</sup> R. Kent Weaver, “Is Congress Abdicating Power to Commissions?” *Roll Call*, February 12, 1989, pp. 5, 25.

<sup>5</sup> James Q. Wilson, “A Reader’s Guide to the Crime Commission’s Report,” *Public Interest*, no. 9 (Fall 1967), pp. 64, 82.

<sup>6</sup> R. Kent Weaver, “The Politics of Blame Avoidance,” *Journal of Public Policy*, vol. 6, no. 4 (October-December 1986), pp. 373-374.

<sup>7</sup> For other examples of commissions, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy; CRS Report R46109, *Agency-Related Nonprofit Research Foundations and Corporations*, by Marcy E. Gallo, Henry B. Hogue, and John F. Sargent Jr.; and CRS In Focus IF11972, *Title 36 Congressional Charters*, by Henry B. Hogue.

<sup>8</sup> P.L. 116-92, §7221, 133 Stat. 2270 (2019).

<sup>9</sup> P.L. 107-306, §601, 116 Stat. 2408 (2002).

<sup>10</sup> P.L. 116-256, 134 Stat. 1142 (2020).

are often tasked with planning, coordinating, and overseeing celebrations of people or events, often in conjunction with milestone anniversaries.<sup>11</sup>

This report focuses on the ability of commissions to access the information necessary to make informed reports to Congress. To inform their findings and recommendations to Congress (and the President), policy commissions need access to information, often drawing on sources including historical records and agency decisionmaking documents. To ensure that congressional advisory commissions can access information, legislation often provides statutory tools, most commonly through provisions requiring agency cooperation with commissions, by allowing commissions to hold hearings, by providing commissions with contracting authority (e.g., authority to contract with outside research organizations), and by granting commissions subpoena authority. In addition to these statutory tools, commission members and expert staff can bring knowledge and relevant background experience and can also undertake research to support the commission's mission.

## Importance of Information Access

Both individually and collectively, Members of Congress have significant demands on their time.<sup>12</sup> In part to help alleviate that pressure, Congress creates advisory commissions to assist in the policymaking process. Commissions can help create policy recommendations on a myriad of policy areas, especially those that cut across the jurisdiction of multiple congressional committees.<sup>13</sup> As one academic law blog summarized some possible benefits of a commission,

the commission model of fact-development and policy inquiry offers as one of its chief design concepts a degree of insulation from immediate partisan interests of legislators who will stand for reelection during the course of an investigation. It also offers an ability to select a panel of commissioners from an array of fields with gravitas and appeal that transcends its individual members' political orientation.<sup>14</sup>

Congress traditionally outlines a commission's duties and goals in its authorizing statute, which also generally includes specific powers to help the commission accomplish its goals.<sup>15</sup> To assist a commission's information-gathering requirements, Congress often includes specific tools that can aid information access. These can include specific powers (e.g., holding hearings, requesting information from agencies, contracting authority, subpoena), as well as the appointment of commission members with specific expertise, and the ability to hire capable staff. The inclusion of specialists, both as commission members and as commission staff, can help a commission

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<sup>11</sup> For more information on commemorative commissions, see CRS Report R41425, *Commemorative Commissions: Overview, Structure, and Funding*, by Jacob R. Straus.

<sup>12</sup> Christopher Z. Mooney, "Information Sources in State Legislative Decision Making," *Legislative Studies Quarterly*, vol. 16, no. 3 (August 1991), pp. 446-448.

<sup>13</sup> Jordan Tama, *Terrorism and National Security Reforms: How Commissions Can Drive Change During Crisis* (New York: Cambridge University Press, 2011). For a discussion of the potential value and criticisms of congressional advisory commissions, see CRS Report R40076, *Congressional Commissions: Overview and Considerations for Congress*, by Jacob R. Straus.

<sup>14</sup> Andy Wright, "Investigating a Crisis: A Comparison of Six U.S. Congressional Investigatory Commissions," *Just Security*, April 6, 2021, at <https://www.justsecurity.org/75671/investigating-a-crisis-a-comparison-of-six-u-s-congressional-investigatory-commissions>.

<sup>15</sup> For a discussion of the features most commonly found in a congressional advisory commission statute, see CRS Report R45328, *Designing Congressional Commissions: Background and Considerations for Congress*, by Jacob R. Straus.

access and evaluate information,<sup>16</sup> and can allow it to evaluate the policy landscape and make regulatory and legislative recommendations.<sup>17</sup>

Information plays a key role in all decisionmaking processes,<sup>18</sup> but especially in groups where individuals are brought together because of their expertise and are charged with evaluating public policy.<sup>19</sup> Information used in a group decisionmaking process, like in an advisory commission, can come from a variety of sources.<sup>20</sup> Some consider information to be a scarce and valuable good,<sup>21</sup> while others counter that information is widely available and the process of synthesizing information is of central importance.<sup>22</sup>

No matter their focus, congressional advisory commissions require access to information. Depending on a commission's scope, information can come from any number of sources, including government agencies and officials, academic studies, private-sector organizations, and private citizens.

Once a commission has gathered information, it is generally required to turn its findings into a report for Congress, often with recommendations. A commission's analysis can take many forms, often framed by the group's ability to synthesize its own expertise with information gathered over

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<sup>16</sup> Kenneth Entin, "Information Exchange in Congress: The Case of the House Armed Services Committee," *Western Political Quarterly*, vol. 26, no. 3 (September 1973), pp. 427-439; Robert Zwier, "The Search for Information: Specialists and Nonspecialists in the U.S. House of Representatives," *Legislative Studies Quarterly*, vol. 4, no 1 (February 1979), pp. 31-42; and Paul Sabatier and David Whiteman, "Legislative Decision Making and Substantive Policy Information: Models of Information," *Legislative Studies Quarterly*, vol. 10, no 3 (August 1985), pp. 395-421.

<sup>17</sup> Steven J. Balla and John R. Wright, "Interest Groups, Advisory Committees, and Congressional Control of the Bureaucracy," *American Journal of Political Science*, vol. 45, no. 4 (October 2001), p. 800.

<sup>18</sup> For a discussion of information's importance in government decisionmaking, see Bryan D. Jones, *Reconceiving Decision-Making in Democratic Politics: Attention, Choice, and Public Policy* (Chicago: University of Chicago Press, 1994); and Karl E. Weick, *Sensemaking in Organizations* (Thousand Oaks, CA: Foundations for Organizational Science, 1995).

<sup>19</sup> For example, the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) noted the volume of information it sought and used to make its recommendations. The commission wrote:

Our mandate was sweeping. The law directed us to investigate "facts and circumstances relating to the terrorist attacks of September 11, 2001," including those relating to intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, commercial aviation, the role of congressional oversight and resource allocation, and other areas determined relevant by the Commission.

In pursuing our mandate, we have reviewed more than 2.5 million pages of documents and interviewed more than 1,200 individuals in ten countries. This included nearly every senior official from the current and previous administrations who had responsibility for topics covered in our mandate.

We have sought to be independent, impartial, thorough, and nonpartisan. From the outset, we have been committed to share as much of our investigation as we can with the American people. To that end, we held 19 days of hearings and took public testimony from 160 witnesses.

National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, 2002, p. xv, at <https://govinfo.library.unt.edu/911/report/911Report.pdf#page=12>.

<sup>20</sup> Christopher Z. Mooney, "Information Sources in State Legislative Decision Making," pp. 445-455.

<sup>21</sup> Bryan D. Jones and Frank R. Baumgartner, *The Politics of Attention: How Government Prioritizes Problems* (Chicago: University of Chicago Press, 2005), pp. 9-10. (Cited hereinafter as Jones and Baumgartner, *The Politics of Attention*.)

<sup>22</sup> Jones and Baumgartner, *The Politics of Attention*, pp. 10-11; and Herbert A. Simon, "Managing in an Information-Rich World," In Herbert A. Simon, ed., *Models of Bounded Rationality Volume 3: Empirically Grounded Economic Reason* (Cambridge, MA: MIT Press, 1997), pp. 173-175.

the course of the commission's work.<sup>23</sup> One study found that groups analyze information for a variety of purposes, including to look for support of existing conventional wisdom, to raise awareness of a policy problem that needs attention, to create guidance on practical policy solutions, and to generate insight on new ways to think about the policy problem and solution.<sup>24</sup> Congressional advisory commissions tend to conduct each of these functions simultaneously.

## Information Access Tools

Congress has traditionally provided advisory commissions with tools to help them gain access to the information necessary for them to complete their duties. These tools can include specifically authorized powers to hold hearings and receive information upon request from executive branch agencies, contracting authority (e.g., authority to contract with outside research organizations), and the authority to issue subpoenas, among others. Additionally, Congress sometimes specifies certain requirements for the appointment of subject matter experts as commission members and gives commissions the authority to hire staff, who can bring their own set of expertise.

## Hearings

Commission statutes commonly provide the authority to hold hearings and take testimony. For example, the Commission on Care's statute stated

(c) POWERS OF THE COMMISSION.—

(1) 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 this section.<sup>25</sup>

The authority for a commission to hold hearings, as in the example above, is generally considered distinct from a specific instruction to hold hearings. Nearly all commissions are given the authority to hold hearings as needed.<sup>26</sup> A smaller number receive additional instruction to hold hearings in specific locations, or solicit testimony from particular witnesses.

In some cases, Congress may require public hearings.<sup>27</sup> For example, the National Prison Rape Reduction Commission's statute stated

(g) HEARINGS.

<sup>23</sup> For example, the Commission on Evidence-Based Policy Making (P.L. 114-140, 130 Stat. 317 (2016)) describes its fact-finding and deliberative process in its final report. See, Commission on Evidence-Based Policymaking, "Appendix C: Commission's Fact-Finding and Deliberative Process," *The Promise of Evidence-Based Policymaking*, September 2017, pp. 119-123, at <https://www2.census.gov/adrm/fesac/2017-12-15/Abraham-CEP-final-report.pdf#page=126>.

<sup>24</sup> Carol H. Weiss, "Congressional Committees as Users of Analysis," *Journal of Policy Analysis and Management*, vol. 8, no. 3 (Summer 1989), p. 424.

<sup>25</sup> P.L. 113-146, §202(c)(1), 128 Stat. 1775 (2014).

<sup>26</sup> In most cases, a commission may "hold such hearings and sit and act at such times and places as the Commission may find advisable." P.L. 101-235, 103 Stat. 2054 (1989).

<sup>27</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.

(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>28</sup>

Hearings can serve multiple purposes. They can serve as venues to gather information directly from interested individuals in an oftentimes public form. Public hearings “are among the most traditional methods for citizen participation in America,” because they involve citizens and are often held in ways that allow interested parties to observe or participate.<sup>29</sup>

Not all parties agree that public hearings are effective. As one study noted, “despite their popularity, public hearings often fail to achieve their intended goals, frustrating both agencies and communities.”<sup>30</sup> Consequently, the value of the information a commission might receive from hearings likely depends on the hearing topics, which witnesses might testify, and when the hearings occur within the information-gathering process.<sup>31</sup>

The choice to gather information through public hearings, as compared to other means, may depend on the commissioners, how much time the commission is allowed to complete its report, and whether Congress mandates that the commission holds hearings. Public hearings might not be effective if they are held at inconvenient times and in inconvenient locations, or because they happen at the wrong time in the information-gathering process—some hearings might be held too early to build usefully on other information obtained by the commission, whereas others might be held too late to extensively influence the commission’s report.<sup>32</sup> Public scrutiny might also limit commissioners’ questions or witness’ answers.<sup>33</sup>

## Information from Federal Agencies

Congress tasks many commissions with studying public policy issues that involve federal agencies. To assist commissions, Congress usually authorizes them to obtain information from

<sup>28</sup> P.L. 108-79, §7(g)(1), 117 Stat. 984 (2003).

<sup>29</sup> Barry Checkoway, “The Politics of Public Hearings,” *The Journal of Applied Behavioral Science*, vol. 17, no. 4 (1981), p. 566.

<sup>30</sup> William H. Baker, H. Lon Addams, and Brian Davis, “Critical Factors for Enhancing Municipal Public Hearings,” *Public Administration Review*, vol. 65, no. 4 (July-August 2005), p. 491.

<sup>31</sup> For example, see Daniel Diermeier and Timothy J. Feddersen, “Information and Congressional Hearings,” *American Journal of Political Science*, vol. 44, no. 1 (January 2000), pp. 51-65.

<sup>32</sup> For example, members of the Financial Crisis Inquiry Commission believed that their hearings “should have been shaped by what was turned up in the investigation, not function as drivers of what the Commission would study.” Michael Perino, “The Financial Crisis Inquiry Commission and the Politics of Governmental Investigations,” *UMKC Law Review*, vol. 80, no. 4. (Summer 2012), p. 1078. The 9/11 Commission, meanwhile, chose to pursue information from interviews and other sources starting at the bottom of the policymaking “pyramid,” to inform the questions subsequently asked of top policymakers. Thomas H. Kean, Lee H. Hamilton, and Benjamin Rhodes, *Without Precedent: The Inside Story of the 9/11 Commission* (New York: Alfred A. Knopf, 2006), p. 72. (Cited hereinafter as Kean, Hamilton, and Rhodes, *Without Precedent: The Inside Story of the 9/11 Commission*.)

<sup>33</sup> For example, members of the Secretary’s Commission on Opportunity in Athletics cited an inability to “talk openly” in hearings and concern about how a question would be perceived, as certain questions could lead to being labeled “for” or “against” the subject at hand as the media and the public were “keeping score.” One study also found that publicity “restricted the type and depth of questions posed” at hearings and affected deliberations similarly. Lisa A. Kihl and Mathew Soroka, “The Legitimacy of a Federal Commission as a Deliberative Democratic Process: The Case of the Secretary’s Commission on Opportunity in Athletics,” *Administration & Society*, vol. 45, no. 1 (2013), p. 56.



relevant federal agencies. For instance, the National Education Commission on Time and Learning’s statute stated

(3) INFORMATION.—The Commission may secure directly from any Federal agency such information, relevant to its functions, as may be necessary to enable the Commission to carry out this subsection. Upon request of the Chairman of the Commission, the head of the agency shall, to the extent permitted by law, furnish such information to the Commission.<sup>34</sup>

Although this authority may require government entities to cooperate with a commission, statutory language does not typically include a specific enforcement mechanism. Absent an enforcement mechanism, such as subpoena authority (see discussion below under “Subpoena Authority”), a commission might not have recourse if a government entity does not comply with its request. This structure—giving a commission authority to secure information but not a mechanism to legally enforce that authority—is commonplace among past congressional commissions.<sup>35</sup>

One potential way to pressure agencies into complying with a commission’s request for information is to require that the commission notify Congress on the status of such requests. For example, in at least one instance, statutory language required a commission to notify a House or Senate standing committee of jurisdiction of any difficulty in obtaining information from government agencies. The Commission on Wartime Contracting in Iraq and Afghanistan’s statute included the following instruction:

(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>36</sup>

## Subpoena Authority

On occasion, Congress has granted a commission the authority to issue subpoenas. Commission subpoena authority, however, is relatively rare. Since the 101<sup>st</sup> Congress (1989-1990), 12 congressional advisory commissions have been identified as having subpoena authority. **Table 1** lists the congressional advisory commissions that were granted subpoena authority since the 101<sup>st</sup> Congress, including the authorizing law and legislative language on how subpoenas can be issued.

**Table 1. Congressional Advisory Commissions with Subpoena Authority**

Public Law	Commission	Subpoena Issuance Requirements
P.L. 101-647	National Commission on Financial Institution Reform, Recovery, and Enforcement	“Upon an affirmative vote of ... not fewer than 6 members of the Commission in the case of a witness or evidence to be subpoenaed” [§2554(b)]

<sup>34</sup> P.L. 102-62, §102(g)(3), 105 Stat. 308 (1991).

<sup>35</sup> Despite these statutory access provisions, some agency information may remain protected by certain privileges. For more information, see CRS Report RL30240, *Congressional Oversight Manual*, coordinated by Christopher M. Davis, Todd Garvey, and Ben Wilhelm, pp. 56-67.

<sup>36</sup> P.L. 110-181, §841(e)(2), 122 Stat. 233 (2008).

Public Law	Commission	Subpoena Issuance Requirements
P.L. 103-236	Commission on Protecting and Reducing Government Secrecy	“may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member” [§906(a)(2)]
P.L. 104-52	National Commission on Restructuring the Internal Revenue Service	“may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member” [§637(d)(1)(B)]
P.L. 104-169	National Gambling Impact Study Commission	“the Commission may by majority vote require by subpoena the production of any written or recorded information, document, report, answer, record, account, paper, computer file, or other data or documentary evidence necessary to carry out its duties under section 4” [§5(b)]
P.L. 106-120	National Commission for the Review of the National Reconnaissance Office	“Subpoenas may be issued ... under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs” [§704(a)(2)]
P.L. 107-306	National Commission on Terrorist Attacks Upon the United States	“may be issued under this subsection only (I) by the agreement of the chairman and the vice chairman; or (II) by the affirmative vote of 6 members of the Commission. (ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission” [§605(a)(2)(A)]
P.L. 107-306	National Commission for the Review of Research and Development Programs of the United States Intelligence Community	“Subpoenas may be issued under ... the signature of the co-chairs of the commission, and may be served by any person designated by such co-chairs” [§1003(a)(2)]
P.L. 108-79	National Prison Rape Reduction Commission	“The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.... Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of 2/3 of the Commission” [§7(k)]
P.L. 109-155	Human Space Flight Independent Investigation Commission <sup>a</sup>	“require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable” [§825(a)(2)]
P.L. 111-21	Financial Crisis Inquiry Commission	“subpoena may be issued under this subsection only—(I) by the agreement of the Chairperson and the Vice Chairperson; or (II) by the affirmative vote of a majority of the Commission, including an affirmative vote of at least one member appointed under subparagraph (C) or (D) of subsection (b)(1), a majority being present” [§5(d)(2)(B)(iii)]

Public Law	Commission	Subpoena Issuance Requirements
P.L. 115-232	Cyberspace Solarium Commission	“Subpoenas may be issued under subparagraph (A)(ii) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs” [§1652(g)(1)(B)]
P.L. 116-189	Commission on the State of the U.S. Olympics and Paralympics	“The Commission may subpoena an individual the testimony of whom may be relevant to the purpose of the Commission” [§11(j)(1)]

**Source:** CRS analysis of congressional advisory commissions found on Congress.gov.

**Notes:**

- a. The Human Space Flight Independent Investigation Commission has not yet been established. The commission would be established by the President “within 7 days” of “any incident that results in the loss of—(1) a Space Shuttle; (2) the International Space Station or its operational viability; (3) any other United States space vehicle carrying humans that is owned by the Federal Government or that is being used pursuant to a contract with the Federal Government; or (4) a crew member or passenger of any space vehicle described in this subsection” [§822]. Since the law was passed in 2005 following the Shuttle Columbia accident, no incidents have occurred to trigger the President’s appointment of commissioners.

Statutory subpoena language can vary. Some statutes have brief statements authorizing subpoena authority.<sup>37</sup> Other statutes have detailed requirements for the issuance and enforcement of subpoenas.<sup>38</sup> Not all statutory subpoena language includes an enforcement mechanism. When a commission is provided a statutory enforcement mechanism, the language usually authorizes the commission to seek a court order directing compliance with the subpoena.<sup>39</sup>

In recent years, statutory subpoena language has tended to either provide general authority, referencing existing congressional subpoena authority, or provide specific details for subpoena usage. For example, the Cyberspace Solarium Commission’s statute included a general subpoena authority linked to existing congressional authority (2 U.S.C. §§192-194). It stated

(g) POWERS OF COMMISSION.—

(1) IN GENERAL.—(A) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section—

...

(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(B) Subpoenas may be issued under subparagraph (A)(ii) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs. (C) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.<sup>40</sup>

<sup>37</sup> The Commission on the State of the U.S. Olympics and Paralympics’ statute (P.L. 116-189, §11, 134 Stat. 970 (2020)) contains a single sentence authorizing the commission’s subpoena authority. It states “The Commission may subpoena an individual the testimony of whom may be relevant to the purpose of the Commission” [§11(j)(1)].

<sup>38</sup> The National Commission on Financial Institutional Reform, Recovery, and Enforcement’s statute (P.L. 101-647, §2551, 104 Stat. 4889 (1990)) provides details on the administration, failure to obey, and service of subpoenas.

<sup>39</sup> For example, the National Commission on Financial Institution Reform, Recovery, and Enforcement (P.L. 101-647, 104 Stat. 4891 (1990)) was authorized to “apply to a district court of the United States for an order requiring that person to appear before the Commission to give testimony or produce evidence, as the case may be, relating to the matter under investigation.”

<sup>40</sup> P.L. 115-232, §1652, 132 Stat. 2143 (2018).

By contrast, the Financial Crisis Inquiry Commission’s statute provided more specific instructions for the commission’s subpoena authority. It stated

(d) POWERS OF THE COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission may, for purposes of carrying out this section—

...

(B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(2) SUBPOENAS.—

(A) SERVICE.—Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section.

(iii) ISSUANCE.—A subpoena may be issued under this subsection only—

(I) by the agreement of the Chairperson and the Vice Chairperson; or

(II) by the affirmative vote of a majority of the Commission, including an affirmative vote of at least one member appointed under subparagraph (C) or (D) of subsection (b)(1), a majority being present.<sup>41</sup>

The apparent infrequency with which policymakers have given subpoena authority to congressional commissions may stem from concerns about potential misuse of the authority—private citizens, unlike Members of Congress, are not subject to the check of periodic elections, and thus may arguably have fewer incentives to use subpoena authority in a responsible manner. For example, the National Gambling Impact Study Commission’s statute authorized the use of subpoenas for documents, but not to compel witness testimony.<sup>42</sup> Supporters of the legislation noted that providing for limited subpoena authority “should satisfy those who are concerned that the commission might misuse its subpoena authority to create some sort of public spectacle,”<sup>43</sup> and “will allow the Commission to conduct its study while, at the same time, it allays the fears of those who thought the subpoena power would be overly intrusive.”<sup>44</sup>

Alternatively, legislators may be concerned that commissions 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

<sup>41</sup> P.L. 111-21, §5(d), 123 Stat. 1628 (2009).

<sup>42</sup> P.L. 104-69, §5(b), 110 Stat. 1485 (1996).

<sup>43</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.

<sup>44</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.

the examination undertaken by the commission, and in its exercise of subpoena authority, will not be politicized.”<sup>45</sup>

On the other hand, if Congress judges that 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.<sup>46</sup>

Past commissions have documented use of their subpoena authority. Of the 12 commissions listed in **Table 1**, two included information about the use of subpoenas in their final report or on their website. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) reported that it issued three subpoenas to government entities.<sup>47</sup> In its website FAQ, the 9/11 Commission noted:

The Commission has issued three subpoenas of government agencies: the Federal Aviation Administration (FAA), the Department of Defense, and the City of New York. In all three instances, the issues were resolved amicably, without litigation. The Commission received the access that was necessary to fulfill its mandate.<sup>48</sup>

The Financial Crisis Inquiry Commission reported that it used its subpoena authority “to compel testimony and the production of documents, but in the vast majority of instances, companies and individuals voluntarily cooperated with this inquiry.”<sup>49</sup>

## Contracting Authority

Most advisory commissions are statutorily authorized to enter into contracts for various services. The authority to enter into contracts can help supplement internal commission knowledge,

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<sup>45</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>46</sup> Use of subpoena authority may not provide access to information requested. Historically, Congress has struggled to get information from the executive branch, even through the use of subpoenas. For more information, see CRS Report R45653, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, by Todd Garvey.

<sup>47</sup> P.L. 107-306. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) webpage, including its final report, is archived at <https://govinfo.library.unt.edu/911/>.

<sup>48</sup> National Commission on Terrorist Attacks Upon the United States, “Has the Commission used its power of subpoena?” Frequently Asked Questions, at <https://govinfo.library.unt.edu/911/about/faq.htm#q10>. In October and November 2003, the 9/11 Commission voted to issue subpoenas to the Federal Aviation Administration (October 15), the Department of Defense (November 7), and the City of New York (November 20). See 9/11 Commission, “Statement by the 9-11 Commission,” October 15, 2003, at [https://govinfo.library.unt.edu/911/press/pr\\_2003-10-15.pdf](https://govinfo.library.unt.edu/911/press/pr_2003-10-15.pdf); “Statement by the 9-11 Commission,” November 7, 2003, at [https://govinfo.library.unt.edu/911/press/pr\\_2003-11-07.pdf](https://govinfo.library.unt.edu/911/press/pr_2003-11-07.pdf); and “Statement by the 9-11 Commission,” November 20, 2003, at [https://govinfo.library.unt.edu/911/press/pr\\_2003-11-20.pdf](https://govinfo.library.unt.edu/911/press/pr_2003-11-20.pdf). On December 3, 2003, the commission announced it had reached an agreement with the City of New York on subpoenaed documents. See 9/11 Commission, “Statement by Thomas H. Kean, Chair, and Lee H. Hamilton, Vice Chair of the 9-11 Commission,” December 3, 2003, at [https://govinfo.library.unt.edu/911/press/pr\\_2003-12-03.pdf](https://govinfo.library.unt.edu/911/press/pr_2003-12-03.pdf).

<sup>49</sup> Financial Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, January 2011, p. xi. The commission’s website is archived at the Rock Center for Corporate Governance at Stanford University, at <https://fcic.law.stanford.edu>. One study noted that the Financial Crisis Inquiry Commission intended to mimic the 9/11 Commission’s use of subpoenas as a last resort and threat. Unlike the 9/11 Commission’s use of its subpoena authority to get information from government agencies, the Financial Crisis Inquiry Commission used its subpoena authority to get information from financial firms. The commission’s decision to issue several subpoenas after requests and public pressure were ignored was found by one study to have allowed firms to simply run out the clock. Michael Perino, “The Financial Crisis Inquiry Commission and the Politics of Governmental Investigations,” *UMKC Law Review*, vol. 80, no. 4 (Summer 2012), p. 1096.

expertise, or technical skills.<sup>50</sup> Contracting authority language tends to be similar across advisory commissions, but the law generally requires that contracted consulting services must be used for advisory purposes.<sup>51</sup>

Commission contracting language typically takes one of two forms. First, nearly all commissions are given general contracting authority. For example, the Commission on Evidence-Based Policymaking’s statute stated

(e) CONTRACTS.—The Commission may contract with and compensate government and private agencies or persons for any purpose necessary to enable it to carry out this Act.<sup>52</sup>

In some limited statutes, Congress has directed an advisory commission to use its contract authority for a specific purpose. For example, the National Prison Rape Reduction Commission statute specified

(j) CONTRACTS FOR RESEARCH.—

(1) NATIONAL INSTITUTE OF JUSTICE.—With a 2/3 affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) OTHER ORGANIZATIONS.—Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.<sup>53</sup>

A commission’s contracting authority can be used for a variety of functions. For example, the National Commission for the Protection of Human Subjects of Biomedical and Behavior Research reportedly used its contracting authority to collect and collate technical information that framed the commission’s public hearings,<sup>54</sup> and to contract “for two empirical studies of persons who had undergone psychosurgery.”<sup>55</sup> Further, past commissions have used contracting authority to

- assist in gathering and assessing information to meet statutory deadlines;<sup>56</sup>

<sup>50</sup> Patrica S. Florestano and Stephen B. Gordon, “Private Provision of Public Service: Contracting by Large Local Governments,” *International Journal of Public Administration*, vol. 1, no. 3 (1979), pp. 307-327.

<sup>51</sup> 5 U.S.C. §3109. Office of Management and Budget, *Circular No. A-76: Performance of Commercial Activities*, June 1999, at <https://www.whitehouse.gov/wp-content/uploads/2017/11/1997-Supplemental-Handbook-to-OMB-Circular-A-76.pdf>. See also Jeffrey Lovitky, “The Problems of Government Contracting for Consulting Services,” *Public Contract Law Journal*, vol. 14, no. 2 (February 1984), pp. 332-351.

<sup>52</sup> P.L. 114-140, §5(e), 130 Stat. 320 (2016).

<sup>53</sup> P.L. 108-79, §7(j), 117 Stat. 984 (2003).

<sup>54</sup> Michael S. Yesley, “The Use of an Advisory Commission,” *Southern California Law Review*, vol. 51, no. 6 (September 1978), p. 1460. (Cited hereinafter as Yesley, “The Use of an Advisory Commission.”)

<sup>55</sup> Yesley, “The Use of an Advisory Commission,” p. 1463. The National Commission for the Protection of Human Subjects of Biomedical and Behavior Research—established by P.L. 93-348, 88 Stat. 348 (1974)—is not a congressional advisory commission because its membership was appointed by the then-Secretary of Health, Education, and Welfare (today the Secretary of Health and Human Services). The commission was statutorily provided contracting authority (§202(a)(3)) and the authority to procure temporary and intermittent services (§201(d)(2)). For more information on the commission, see U.S. Department of Health and Human Services, *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*, at <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/index.html>.

<sup>56</sup> Yesley, “The Use of an Advisory Commission,” p. 1460.

- obtain legal counsel;<sup>57</sup>
- conduct research;<sup>58</sup> and
- supplement staff needs.<sup>59</sup>

## Commissioner Experience

In some cases, Congress creates an advisory commission when legislators and their staffs do not have sufficient knowledge or expertise in a complex policy area,<sup>60</sup> or when an issue area is sufficiently complex that engaging noncongressional experts could aid in policy development.<sup>61</sup> To encourage the appointment of policy experts, statutory language sometimes includes specified qualifications to guide the appointment authority in choosing potential commissioners. For example, the Creating Options for Veterans' Expedited Recovery (COVER) Commission's statute stated

(2) QUALIFICATIONS.—Members of the Commission shall be individuals who—

- (A) are of recognized standing and distinction within the medical community with a background in treating mental health;
- (B) have experience working with the military and veteran population; and
- (C) do not have a financial interest in any of the complementary and integrative health treatments reviewed by the Commission.<sup>62</sup>

Other commission statutes provide additional guidance on the appointment of a prescribed number of commissioners that meet specified qualifications. For example, the statutory appointment language of the National Commission to Ensure Consumer Information and Choice in the Airline Industry noted that commission members should represent certain aspects of the airline industry. It stated

(2) QUALIFICATIONS.—Of the members appointed by the Secretary under paragraph (1)(A)—

- (A) one member shall be a representative of the travel agent industry;
- (B) one member shall be a representative of the airline industry; and
- (C) one member shall be an individual who is not a representative of either of the industries referred to in subparagraphs (A) and (B).<sup>63</sup>

In some commissions, Congress also includes specific executive branch agency officials as commission members, appointing authorities, or ex officio (nonvoting) participants. Including executive branch officials as commission members could be perceived as a way to obtain agency

<sup>57</sup> U.S. General Accounting Office (GAO), *National Gambling Impact Study Commission: Selected Operational Practices*, GGD-99-46, April 1999, p. 1, <https://www.gao.gov/products/ggd-99-46>.

<sup>58</sup> P.L. 104-169, §7(b)(1), 110 Stat. 1487 (1996). See also GAO, *National Gambling Impact Study Commission: Selected Operational Practices*, GGD-99-46, April 1999, p. 4.

<sup>59</sup> National Commission on Terrorist Attacks Upon the United States, "How is the Commission Staff Organized?" *Frequently Asked Questions about the 9-11 Commission*, at <https://govinfo.library.unt.edu/911/about/faq.htm#q3>.

<sup>60</sup> Colton Campbell, "Creating an Angel: Congressional Delegation to Ad Hoc Commissions," *Congress and the Presidency*, vol. 25, no. 2 (Autumn 1998), p. 174.

<sup>61</sup> Colton Campbell, *Discharging Congress: Government by Commission* (Westport, CT: Praeger, 2002), pp. 55-59.

<sup>62</sup> P.L. 114-198, §931(c)(2), 130 Stat. 771 (2016).

<sup>63</sup> P.L. 106-181, §228(d)(2), 114 Stat. 105 (2000).

buy-in and allow a commission to more easily access information from the member's home agency. Examples of statutory language to include executive branch officials and expertise include the following:

**Executive Branch Officials As Commission Members**

*National Commission for the Review of the Research and Development Programs of the United States Intelligence Community*

(b) COMPOSITION.—The Commission shall be composed of 12 members, as follows:

- (1) The Deputy Director of Central Intelligence for Community Management.
- (2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.<sup>64</sup>

**Executive Branch Officials Appointing Commission Members**

*Commission on the National Guard and Reserves*

(E) Three members appointed by the Secretary of Defense.<sup>65</sup>

**Executive Branch Officials as Ex Officio Commission Members**

*Helping to Enhance the Livelihood of People (HELP) Around the Globe Commission*

(D) The Administrator of the United States Agency for International Development shall serve as a member of the Commission, ex officio.<sup>66</sup>

Commissioners are often appointed because of their expertise in a field relevant to the topic at hand; they are sometimes senior figures in their field, providing the commission with legitimacy and with political capital that may be deployed for information gathering.<sup>67</sup> Depending on the size of a commission and the volume of information that it expects to process, commission members sometimes divide into working teams to tackle different aspects of the topic during research, deliberation, and drafting.<sup>68</sup>

Diversity of background and opinion among advisory commission members has been found by one study to increase effectiveness by improving information-gathering and signaling abilities and allowing networking that facilitates the exchange of a broader range of ideas during the deliberation process.<sup>69</sup> One study has noted a rise in the appointment of academics and “general” experts over interest groups and stakeholder participation.<sup>70</sup>

<sup>64</sup> P.L. 107-306, §1002(b), 116 Stat. 2438 (2002).

<sup>65</sup> P.L. 108-375, §513(b), 118 Stat. 1880 (2004).

<sup>66</sup> P.L. 109-199, §637(d)(1)(D), 118 Stat. 103 (2004).

<sup>67</sup> For example, the 9/11 Commission was helped by its roster of “Washington insiders,” as federal policymakers viewed it as a good-faith project, not an inquisition looking to place blame. Mark Fenster, “Designing Transparency: The 9/11 Commission and Institutional Form,” *Washington & Lee Law Review*, vol. 65, no. 4 (2008), pp. 1281-1284. The 9/11 Commission also used social capital to “name and shame” agencies or organizations recalcitrant in producing requested information. Kean, Hamilton, and Rhodes, *Without Precedent: The Inside Story of the 9/11 Commission*, pp. 75-77.

<sup>68</sup> Kean, Hamilton, and Rhodes, *Without Precedent: The Inside Story of the 9/11 Commission*, pp. 61-62; and Richard Feynman, “*What Do You Care What Other People Think?*” *Further Adventures of a Curious Character* (New York: W.W. Norton & Company, 1988), p. 179.

<sup>69</sup> Kevin D. Karty, “Membership Balance, Open Meetings, and Effectiveness in Federal Advisory Committees,” *American Review of Public Administration*, vol. 35, no. 4 (December 2005), pp. 414-435.

<sup>70</sup> Johan Christensen and Stine Hesstvedt, “Expertisation or Greater Representation? Evidence from Norwegian Advisory Commissions,” *European Politics and Society*, vol. 20, no. 1 (2019), p. 84, at <https://www.tandfonline.com/doi/full/10.1080/23745118.2018.1515861>. The Obama Administration sought to remove lobbyist influence from federal advisory committees governed by the Federal Advisory Committee Act (FACA; 5 U.S.C. appendix).



## Staff Member Experience

In addition to the commissioners themselves, expertise and experience can also come from commission staff. Most congressional advisory commissions are authorized to hire an executive director and other staff to assist in gathering information, holding meetings, and writing required reports. In some cases a commission's statutory language includes specific guidance on hiring, with general provisions on staff qualifications. In other cases, the statutory language does not provide many specifics, but instead focuses on the required hiring practices. For example, the Foreign Intelligence and Information Commission's statute included general hiring authority, requirements for hiring an executive director, authority to contract with experts and consultants, and authorization to receive detailees from other agencies and departments. The statute stated

(b) STAFF.—

(1) IN GENERAL.—The chair of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of that title relating to classification of positions and General Schedule pay rates, appoint and terminate an executive director and, in consultation with the executive director, appoint and terminate such other additional personnel as may be necessary to enable the Commission to perform its duties. In addition to the executive director and one full-time support staff for the executive director, there shall be additional staff with relevant intelligence and foreign policy experience to support the work of the Commission.

(2) SELECTION OF THE EXECUTIVE DIRECTOR.—The executive director shall be selected with the approval of a majority of the voting members of the Commission.

(3) COMPENSATION.—

(A) EXECUTIVE DIRECTOR.—The executive director shall be compensated at the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61-1(e)), as adjusted by any order of the President pro tempore of the Senate.

(B) STAFF.—The chair of the Commission may fix the compensation of other personnel of the Commission without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61-1(e)), as adjusted by any order of the President pro tempore of the Senate.

(c) EXPERTS AND CONSULTANTS.—The Commission is authorized to procure temporary or intermittent services of experts and consultants as necessary to the extent authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of such title.

(d) STAFF AND SERVICES OF OTHER AGENCIES OR DEPARTMENTS OF THE UNITED STATES.—Upon the request of the Commission, the head of a department or agency of the United States may detail, on a reimbursable or nonreimbursable basis, any of the personnel of that department or agency to the Commission to assist the Commission in carrying out this title. The detail of any such personnel shall be without interruption or loss of civil service or Foreign Service status or privilege.<sup>71</sup>

In many cases, commission staff actively participate in gathering and analyzing information. Staffers not only help prepare the commission's final report, but also may prepare interim reports or internal memoranda intended to apprise commissioners about the information they have acquired or processed.<sup>72</sup> Commission staff are often subject-matter experts working in legal practice or for the federal government, universities, research companies, or industry.<sup>73</sup>

<sup>71</sup> P.L. 111-259, §604, 124 Stat. 2742 (2010).

<sup>72</sup> Kean, Hamilton, and Rhodes, *Without Precedent: The Inside Story of the 9/11 Commission*, pp. 270-275.

<sup>73</sup> See, for example Thomas R. Wolanin, *Presidential Advisory Commissions: Truman to Nixon* (Madison: University

If commissioners lack specific knowledge, they might delegate fact finding and recommendation development to staff.<sup>74</sup> This is especially true when an issue is technically complex.<sup>75</sup> Using their experience and expertise, staff can bring knowledge to a commission.<sup>76</sup> At the same time, some have suggested that staff can wield significant power over decisionmakers and have considerable influence on potential recommendations, even though they are not appointed commission members.<sup>77</sup>

## Other Tools

While congressional advisory commissions are often given specific statutory authorities to gather information, including the tools discussed above, they can also access information from other sources.<sup>78</sup> These other tools to gather information can include a wide range of existing and new sources, such as

- government documents;<sup>79</sup>
- travel and interaction with foreign governments;<sup>80</sup>
- individual meetings and interviews with stakeholders;<sup>81</sup> and
- other nongovernment resources (e.g., media reports, academic research, think tank studies).<sup>82</sup>

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of Wisconsin Press, 1975), p. 107.

<sup>74</sup> Arthur Lupia and Mathew D. McCubbins, “Who Controls? Information and Structure of Legislative Decision Making,” *Legislative Studies Quarterly*, vol. 19, no. 3 (August 1994), p. 363.

<sup>75</sup> Christine DeGregorio, “Professional Committee Staff as Policymaking Partners in the U.S. Congress,” *Congress & the Presidency*, vol. 21, no. 1 (Spring 1994), pp. 49-65.

<sup>76</sup> Susan Webb Hammond, “Legislative Staffs,” *Legislative Studies Quarterly*, vol. 9, no. 2 (May 1984), p. 288.

<sup>77</sup> Alexander Hertel-Fernandez, Matto Mildenerger, and Leah C. Stokes, “Legislative Staff and Representation in Congress,” *American Political Science Review*, vol. 113, no. 1 (2019), pp. 1-18.

<sup>78</sup> For a broader discussion of the public’s right to access government information, including key statutes that provide potential access, see CRS Report R47058, *Access to Government Information: An Overview*, by Meghan M. Stuessy.

<sup>79</sup> For example, the Commission on Care (P.L. 113-146, 128 Stat. 1773 (2014)) reported that it conducted an “[a]nalysis of the [Department of Veterans Affairs’] *Independent Assessment Report* [which] confirmed issues with the responsiveness of contracting.” Commission on Care, *Final Report of the Commission on Care*, June 30, 2016, p. 89, at [https://permanent.fdlp.gov/gpo69908/Commission-on-Care\\_Final-Report\\_063016\\_FOR-WEB.pdf#page=103](https://permanent.fdlp.gov/gpo69908/Commission-on-Care_Final-Report_063016_FOR-WEB.pdf#page=103).

<sup>80</sup> For example, the Commission on Wartime Contracting in Iraq and Afghanistan made multiple trips to Iraq, Afghanistan, Kuwait, and various NATO and coalition-partner countries to discuss organizational structure and alignment, interagency coordination, and lessons learned. Commission on Wartime Contracting in Iraq and Afghanistan, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks*, August 2011, pp. 194-196, at [https://cybercemetery.unt.edu/archive/cwc/20110929213820/http://www.wartimecontracting.gov/docs/CWC\\_FinalReport-lowres.pdf#page=200](https://cybercemetery.unt.edu/archive/cwc/20110929213820/http://www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf#page=200).

<sup>81</sup> For example, the Indian Law and Order Commission (P.L. 111-211, 124 Stat. 2282 (2010)) cites several interviews conducted by the commission in its final report endnotes. See Indian Law & Order Commission, *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States*, November 2013, notes 19, 26, and 58, at [https://www.aisc.ucla.edu/iloc/report/files/a\\_roadmap\\_for\\_making\\_native\\_america\\_safer-full.pdf](https://www.aisc.ucla.edu/iloc/report/files/a_roadmap_for_making_native_america_safer-full.pdf).

<sup>82</sup> For example, the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism’s (P.L. 110-53, 121 Stat. 501 (2007)) final report included an appendix with a required review of the previously published *A Report Card on the Department of Energy’s Nonproliferation Programs with Russia* (Baker-Cutler report). For a discussion of that review, see “Appendices: Review of Implementation of the Baker-Cutler Report,” in *World at Risk: The Report of the Commission on the Prevention of WMD Proliferation and Terrorism* (New York: Vintage Books, 2008), pp. 113-121, at <https://digital.library.unt.edu/ark:/67531/metadc123525>.

## Concluding Observations

Congressional commissions are established to review and evaluate public policy; study or investigate a particular problem; commemorate an individual, group, or event; and make recommendations, as necessary, to Congress. All of these purposes require a commission to acquire information. Even with constraints on funding and power, commissions are expected to acquire, review, and synthesize a considerable volume of information from primary and secondary sources.<sup>83</sup>

To aid a commission's work, Congress provides tools to help access information. These tools fall into three categories. First, commissions are provided certain statutory authorities. These commonly include the ability to hold hearings, contracting authority, and the ability to obtain information from government agencies. Occasionally, commissions are provided subpoena authority. Second, commissions often include subject-matter experts as commissioners and are provided the authority to hire staff to help meet their statutory mandate. Third, commissions use publicly available documents and the cooperation of interested individuals and parties to help gather information.

Congress creates advisory commissions with a nonpartisan or bipartisan character (often achieved by allowing leaders from the congressional majority and minority to appoint commission members) to examine public policy questions.<sup>84</sup> Though commissions are not foolproof hedges against bias or incomplete information-gathering, Congress gives them tools to help them acquire accurate and comprehensive information. Commissions may then use that information to provide useful advice, analysis, and recommendations to Members as they develop public policy.

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<sup>83</sup> When discussing presidential commissions, Thomas Wolanin cites limits on time, funding, expertise, and power, as well as the complexity of issues addressed, as reasons that commissions use preexisting sources of information rather than engaging in original research. Thomas R. Wolanin, *Presidential Advisory Commissions: Truman to Nixon* (Madison: University of Wisconsin Press, 1975), pp. 100-103.

<sup>84</sup> For more information on the structure of advisory commissions and appointments by congressional leaders, see CRS Report RL33313, *Congressional Membership and Appointment Authority to Advisory Commissions, Boards, and Groups*, by Jacob R. Straus.

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