



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. Congressionally chartered corporations have raised diverse issues for Congress, including (1) Title 36 corporations' membership practices; (2) confusion over which corporations are governmental and which are private; and (3) federal management of these corporations. 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.¹ 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 “charta” or, perhaps, the ancient Greek “chartês,” both of which mean “paper.”² 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 a charter typically provides 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; and
- (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.³ However, 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.⁴ Nevertheless, Congress chartered its first corporation—the Bank of the United States—in

¹ Examples follow. The articles of agreement among nation-states that set forth the objectives and fundamental structures of the United Nations are referred to as a charter; see *Charter of the United Nations* at <http://www.un.org/aboutun/charter/>. A *New York Times* editorial noted, “The C.I.A. charter, a federal statute, prohibits...”; editorial, “The Domestic Spying Trap,” *New York Times*, May 13, 2003, p. A30. “A charter is a contract between an organized group and a state-authorized body...”; Jeanne Allen, “Chartering Success; The Schools for Students Who Need It Most,” *Washington Times*, September 16, 2002, p. A21. “The resolution call[ed] for the board to consider changing the way that members are elected If the board were to follow shareholders’ recommendation, ... shareholders would have to vote to approve a change to the company’s charter”; Christine Frey, “Costco Shareholders Split on 2 Proposals,” *Seattle Post-Intelligencer*, Jan. 30, 2004, p. C1. The U.S. National Archives refers to the U.S. Constitution, the Declaration of Independence, and the Bill of Rights as “the Charters of Freedom”; see <http://www.archives.gov/national-archives-experience/charters/charters.html>.

² On the etymology, see *Oxford English Dictionary Online* (Oxford, U.K.: Oxford University Press, 2005) and Charlton T. Lewis and Charles Short, *A Latin Dictionary* (Oxford, U.K.: Oxford University Press, 1879).

³ Ben Perley Poore, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (Washington: GPO, 1878); and Joseph S. Davis, *Essays in the Earlier History of American Corporations* (Cambridge: Harvard University Press, 1917).

⁴ The specific objections to federal incorporation are not certain. One author has suggested that some Founders might 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, April 1903, pp. 464-465.

February of 1791 (1 Stat. 192 Section 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 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.⁵

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, Section 8, clause 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).⁶

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 enormous 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).⁷

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.⁸ **Table 1** provides a further—but not exhaustive—typology of congressionally chartered corporations.

Table 1. Types of Congressionally Chartered Corporations

Type	Purpose(s)	Examples
Nonprofit Corporations		
Title 36 Corporations ^a	Fraternal and patriotic organizations.	Daughters of the American Revolution
Foundations, Trusts, and Miscellaneous Corporations Supporting Nonprofit Uses	Accept and expend government and private funds on goods and services that the private market may underprovide.	National Park Foundation, National Trust for Historic Preservation in the United States, Legal Services Corporation

⁵ 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.

⁶ For more information on early congressional charters, see Margaret Fennell, *Corporations Chartered by Special Act of Congress, 1791-1943* (Washington: Library of Congress, 1944).

⁷ 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).

⁸ While the term “not-for-profit corporation” may be more accurate than “nonprofit corporation”—the former refers to entities established for purposes other than making profits; 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*.

Type	Purpose(s)	Examples
Corporations		
Banks	Provide financial services and promote the health of the economy.	Export-Import Bank, Federal Reserve Banks
Commercial Corporations (also called “government corporations”) ^b	Sell products and services.	Tennessee Valley Authority, U.S. Postal Service
Government-Sponsored Enterprises ^c	Add liquidity to secondary loan markets.	Fannie Mae and Freddie Mac
Public Authorities and Commissions ^d	Interstate bond-issuing entities that build and operate transportation systems.	Washington Metropolitan Area Transit Authority, Owensboro Bridge Commission
Venture Capital Funds ^e	Invest in small firms to develop technologies.	Telecommunications Development Fund ^f

- a. 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 Kevin R. Kosar.
- b. CRS Report RL30365, *Federal Government Corporations: An Overview*, by Kevin R. Kosar.
- c. CRS Report RS21663, *Government-Sponsored Enterprises (GSEs): An Institutional Overview*, by Kevin R. Kosar.
- d. Jameson Doig, *Empire on the Hudson: Entrepreneurial Vision and Political Power at the Port of New York Authority* (New York: Columbia University Press, 2002).
- e. CRS Report RL30533, *The Quasi Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics*, by Kevin R. Kosar.
- f. In some instances, federal venture capital funds have been established without a charter. For more information, see *ibid.*, pp. 24-28.

Current Issues

Congressionally chartered corporations have raised diverse issues for Congress, including (1) Title 36 corporations’ membership practices; (2) confusion over which corporations are governmental and which are private; and (3) federal management of these corporations.

Title 36 Corporations’ Membership Practices

The membership practices of some Title 36 corporations have become the subject of concern in recent years. In 2005, the congressionally chartered American Gold Star Mothers (AGSM) 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.⁹ In 2007, Congress amended the charter of the Military Order of the Purple Heart of the United States of America, Incorporated, to permit the organization to admit more persons (P.L. 110-207). Some individuals had complained

⁹ 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), the AGSM, like many other Title 36 corporations, has considerable latitude to define its criteria for membership eligibility. Ultimately, the AGSM amended its constitution to admit mothers without U.S. citizenship, and Congress did not enact legislation.

that the organization's criteria for membership were too narrow. Approximately 100 Title 36 corporations exist, which raises the potential for more requests for congressional intervention in these groups' activities.¹⁰

Confusion Over Which Corporations Are Governmental and Which Are Private

Congress is free to draft corporate charters to include whatever elements it deems appropriate. So, for example, the charter of the Securities Investor Protection Corporation (15 U.S.C. 78(ccc) et seq.) looks very different from that of the American National Red Cross (36 U.S.C. 3001 et seq.). The power to craft corporations ad hoc, however, has produced confusion when corporations are established that have both governmental and private sector attributes. This distinction is not without consequence; governmental entities operate under different legal authorities and restrictions than do private sector corporations.¹¹ For example, confusion arose over the National Veterans' Business Development Corporation (NVBDC; 15 U.S.C. 657(c)). The Department of Justice declared it to be a government corporation in March 2004.¹² Some Members of Congress disagreed. The 2004 Omnibus Appropriations Act (P.L. 108-447, Division K, Section 146) attempted to dispel the confusion by stating that the NVBDC was "a private entity" that "is not an agency, instrumentality, authority, entity, or establishment of the United States Government." In some instances, federal courts have been asked to intervene and make a determination of a corporation's status.¹³

The Federal Management of Corporations

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 all congressionally chartered corporations. Second, many of these corporations were established independently of any department and have few, if any, federal appointees on their boards or in their executive ranks. This separation of corporations from departments may make the federal management of corporations more difficult.¹⁴ Third, the Government Corporation Control Act (31 U.S.C. 9101-9110) provides many tools for managing chartered corporations' activities. However, Congress has excepted many corporations from some or all of the act's provisions.

¹⁰ Some of the more well-known ones include the American Legion, Big Brothers-Big Sisters of America, Boy Scouts of America, 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"): What They Are and How Congress Treats Them*, by Kevin R. Kosar.

¹¹ Ronald C. Moe, "The Importance of Public Law: New and Old Paradigms of Government Management," in Phillip J. Cooper and Chester A. Newland, eds., *Handbook of Public Law and Administration* (San Francisco: Jossey-Bass Publishers, 1997), pp. 41-57.

¹² Office of the Legal Counsel, United States Department of Justice, *Memorandum for Jennifer Newstead, General Counsel, Office of Management and Budget*, March 19, 2004.

¹³ For example, see *Cherry Cotton Mills v. United States* (327 U.S. 536 (1946)) and *Michael A. Lebron v. National Railroad Passenger Corporation* (513 U.S. 374 (1995)).

¹⁴ This is due to the exacerbation of the principal-agent problem. In public administration theory, this problem refers to the difficulty that the principal (in this case, the government) has in directing the activities of the agent (here, the corporation). Arguably, the more closely 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.

Finally, there is the matter of perpetual succession. In centuries past, states and municipalities often limited the duration of a charter; a corporation would expire unless the sovereign renewed its charter. This practice has fallen by the wayside; usually, Congress charters entities to have “perpetual succession.” This means that a corporation may continue to operate, whether it is effective or not, until a law is enacted to abolish it. This seldom occurs.¹⁵ Long-lived 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.¹⁶

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¹⁵ Alex J. Pollock, “Revoke All Perpetual GSE Charters,” *International Union for Housing Finance Newsletter*, December 2005, pp. 7-8.

¹⁶ Richard Geddes, ed., *Competing with the Government: Anticompetitive Behavior and Public Enterprises* (Stanford, CA: Hoover Institution Press, 2004), pp. 1-58, 85-112. Reportedly, GSEs have used their government privileges to raise funds for nonmortgage investments. See U.S. General Accounting Office, *Federal Oversight Need in Nonmortgage Investments*, GAO/GGD-98-48 (Washington: GAO, 1998). On political influence, see Jonathan Koppell, *The Politics of the Quasi-Government* (Cambridge, UK: Cambridge University Press, 2003), pp. 103-118.