

MEPPA's Advisory Board

What the Law Requires and How to Build the Board

Introduction

The Nita M. Lowey Middle East Partnership for Peace Act of 2020, [Pub. L. No. 116-260, Title VII](#) (MEPPA) requires that the USAID “Administrator shall establish an advisory board” of outside advisors (the “Board”). MEPPA § 8004(d)(1). What should this Board look like, and how will it function? Based on the language, structure, and purpose of MEPPA, below are some key questions and answers, as USAID and other agencies consider implementation.

Highlights

- The People-to-People Partnership for Peace Fund (PPF) Advisory Board is required by law and has 13-15 seats.
- The USAID Administrator appoints one to three seats. Specified congressional leaders in both parties appoint the remainder.
- Foreign nationals could occupy any seat, but two seats are reserved for foreign representatives.
- Many Board functions remain to be determined. They include at least: (1) advising on types of projects to fund, and (2) consulting with State/USAID to inform reports to Congress.
- Qualifications include regional, conflict mitigation, and people-to-people expertise/experience.
- International participation on the Board furthers MEPPA's preferences for international partnership and leverage. The Board is thus an ideal forum to explore creating a larger, centralized international fund and can advise on U.S. involvement in such a fund.

Who sits on the Advisory Board, and who appoints them?

The Act defines Board members more by how they are appointed than by who they are. Under the Act, the Board “shall” have at least 13 members. *Id.* § 8004(e)(2)(A).

However, the Board is not limited to 13 members. It *may* have a total of 15 members since “the Administrator may appoint up to two additional members to the advisory board who are representatives of foreign governments or international organizations.” *Id.* § 8004(e)(2)(B). Allowing foreign governments to be represented enables and/or incentivizes them to contribute their own funds, grow the overall resources, and extend the funding’s credibility in partnership with countries close to both Israelis and Palestinians. This multinational involvement is an important element of MEPPA’s stated goals.¹

¹ By facilitating foreign participation, such international Board seats help USAID to realize the directives included by Congress in Section 8004(d) of MEPPA, which states that USAID “is encouraged to work with foreign governments and international organizations to leverage the impact of United States resources and achieve the objectives of” MEPPA. That section also authorizes the Administrator to “accept contributions” from external sources, such as foreign governments, to achieve these goals. In addition, the Foreign Assistance Act of 1961 provides additional authorities and flexibility to give and receive funds in working with foreign partners.

All Board members serve for renewable terms of three years. *Id.* § 8004(e)(2)(A) - (B). The 15 designated Board seats are appointed, respectively, by the:

1. USAID Administrator, in consultation with the Secretary of State (this seat is the Board chair).
2. Speaker of the House.
3. Minority Leader of the House.
4. Senate Majority Leader.
5. Senate Minority Leader.
6. Chair of the Senate Appropriations Committee.
7. Ranking Member of the Senate Appropriations Committee.
8. Chair of the House Appropriations Committee.
9. Ranking Member of the House Appropriations Committee.
10. Chair of the Senate Foreign Relations Committee.
11. Ranking Member of the Senate Foreign Relations Committee.
12. Chair of the House Foreign Affairs Committee.
13. Ranking Member of the House Foreign Affairs Committee.
14. USAID Administrator (seat for foreign government or international organization representative).
15. USAID Administrator (seat for foreign government or international organization representative).

Why did Congress create the Advisory Board, and what will it do?

Congress does not specifically explain in the text of MEPPA the reason for establishing the Board, nor does it describe in detail how the Board should work. However, the Act does define at least two functions as it relates to the PFP:

1. Advising on “types” of projects to fund. The Board is to “make recommendations to the Administrator regarding the types of projects that should be considered for funding.” *Id.*
2. Informing reports to Congress. The USAID Administrator, “in consultation with the Secretary of State, shall consult with the advisory board . . . to inform the reports [to Congress].” *Id.* § 8006(d).

These functions—and the expertise the Board is required to bring—suggest that the Board should provide high-level guidance and background to those managing PFP funds but not direct operations or management. As a group, Board members will bring expertise in the Middle East, in conflict mitigation, and in people-to-people programs. But they will not necessarily have experience in government procurement, USAID grant procedures and regulations, related legal issues, or the technical means of selecting and managing individual grants.

The Board should be well-positioned to help USAID determine the “types” of projects, even if not the *particular* projects, to be funded, to inform reports to Congress, and to be a forum for seeking international collaboration and coordination. For example, the Board can provide and support:

- **Background and program expertise/advice.** Provide background knowledge and expertise on which programs may succeed, in what sequence, and under what conditions. Advise continually about ever-changing regional conditions, politics, and trends, particularly those relating to peacebuilding programs, that may impact program success.
- **Strategy.** Help develop, and periodically revisit, key goals and strategy for the overall program based on Board knowledge of the conflict and people-to-people programming.²
- **Evaluation and reporting.** Assist USAID in evaluating and understanding program performance, especially as USAID prepares reports for Congress.
- **International coordination and growth.** MEPPA's inclusion of international representatives can help fulfill its call for multilateral cooperation and leverage. The United Kingdom, the European Union, and others have expressed interest. Board members—especially those with international profiles—can help secure additional donor participation. With at least two international government representatives, the Board can also be a forum for coordinating multinational funding and exploring how donors can best join forces. This can include exploring the creation of a central international fund to achieve MEPPA's mission through a sustainable, long-term, institutionalized effort.

What are the qualifications for serving on the Board?

While many of the Board members will be appointed by U.S. political leaders, MEPPA makes clear that none of the Board appointees may themselves be current members of Congress. *Id.* § 8004(e)(2)(A) Rather, the Act describes the Board broadly as a group of people with relevant knowledge, expertise, and experience for meaningfully advising on an Israeli-Palestinian peacebuilding program: “Members of the advisory board shall have demonstrated regional expertise and experience and expertise in conflict mitigation and people-to-people programs” *Id.* § 8004(e)(2)(C). This language describing Board member experience and qualifications appears at the end of the section delineating all 15 Board seats, suggesting that it applies to all members of the Board. *See id.*

The Act is not explicit, however, about whether each individual Board member must have all of these qualifications (e.g., regional, conflict mitigation, *and* people-to-people expertise and experience), or whether these criteria apply to the Board as a whole. Given the interest in having a range of experience and expertise, most likely these qualifications apply collectively to the Board. Each member can contribute different, but complementary, knowledge, skills, and experience.

Does MEPPA impose citizenship requirements for Board members?

No. The text of the law does not specify that any of the Board seats must be occupied by a citizen of any particular country. In the case of the first 13 seats, the Act merely specifies who appoints each Board member. Theoretically, a qualified foreign national could be appointed by the Administrator or a congressional leader. For the two additional seats, MEPPA adds that the Board members are “representatives” of foreign governments or international organizations.

² One of the benefits of significant, multi-year funding is the opportunity—for the first time—to invest thoughtfully and strategically over time, and sequencing can matter. For instance, some projects may be more valuable in earlier years because they are logical building blocks for later efforts as they create physical or human infrastructure useful by other programs. A shared community center built in year one or two could provide physical facilities for a range of programs and activities in later years. A leadership training program in early years could create a cadre of professionals to lead many other programs in the future.

While this structure provides some flexibility, especially if more than two foreign governments are interested in participating, the appeal of creating a separate international fund becomes even stronger. That approach would enable greater international involvement and help achieve expanded opportunities in line with MEPPA's purposes (including multiplied funding, a sustainable institution with a long-term mandate, and central coordination and expertise). This is the model successfully followed by the U.S. as a lead supporter of the IFI; the Global Fund to Fight AIDS, Tuberculosis, and Malaria; and other multinational bodies.

Is the Board an honorary body or a “working” advisory group?

Some may wonder whether the Board is intended to be more of an honorary body since most members will be politically-appointed and no members can receive compensation for their service (MEPPA -§ 8004(e)(2)(C)). Notwithstanding these elements, the Act seems to aim for more of a working board that can roll up its sleeves and offer real expertise. The Board's required expertise, background, and functions suggest a panel of experts that plays a meaningful advisory and/or informational function.

Is there precedent for a USAID advisory committee?

Yes. USAID has at least two current (and several former) advisory groups, including the [Advisory Committee on Voluntary Foreign Aid](#) (ACVFA) and the [Board for International Food and Agricultural Development](#) (BIFAD). These are among over 1,000 advisory committees that support agencies across the U.S. federal government.³ ACVFA and BIFAD advise USAID; provide forums for dialogue and coordination among agencies, non-profits, academia, and industry; and convene discussions and publish reports in support of agency and board goals.

Another key precedent for the PFP Board is the board of directors that oversees and guides the International Fund for Ireland (IFI). Indeed, MEPPA grew out of over a decade of different congressional bills and advocacy inspired by the IFI. As it evolved, the legislation often included boards of directors/advisors to oversee and/or guide implementation of funding in the field. Should the U.S. and its allies decide to establish a broader international fund for Israeli-Palestinian peacebuilding along the IFI model, the MEPPA Board could play an important role in coordinating and/or advising that international body, and guiding U.S. participation in it.

When and how should the Board meet?

MEPPA does not specify particular meeting schedules or mechanisms. In broad brush strokes, at a minimum the Board likely needs to weigh in at the start and setup of PFP funding streams so it can advise about the “types of projects” that should be funded. The Board would also need to provide input prior to USAID issuing annual reports to Congress, according to the law.

More practically, in order to play a meaningful role, the Board should convene at least three to six times per year. Given that members of the Board may be spread around the world, most meetings are likely to occur by video conference, perhaps with one annual meeting in person. While MEPPA states that Board members cannot be “compensated,” it does not say anything to prevent using agency funds,

³ See Ginsburg, Wendy and Casey Burgat, Congressional Research Service, *Federal Advisory Committees: An Introduction and Overview* (Oct. 2016), available at <https://fas.org/sqp/crs/secretary/R44253.pdf> (last accessed Feb. 5, 2021).

including those allocated by MEPPA for administration, to facilitate meetings or even reasonable Board travel.

When it first convenes, the Board itself—in consultation with USAID— would be an ideal group to develop more detail of how it will function, how often it will meet, and exactly what role its members can best play. In advance of such a meeting, the Board chair will already be determined because that position is appointed directly by the Administrator, providing a built-in leader to work with USAID on planning an agenda and organizing an initial meeting.

Does the Federal Advisory Committee Act apply to the Board?

One major factor in the Board's form and function will be whether the Board must comply with the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA), as USAID's ACVFA and BIFAD committees do. If FACA applies, it could impose a number of significant requirements on the Board, including ensuring a set of "fairly balanced" viewpoints represented, filing a charter before convening, publishing meeting notices and minutes, and making meetings open to the public. See *id.* §§ 5(b), 9(c), and 10. The General Services Administration (GSA) and USAID have additional FACA regulations, as well. See 41 C.F.R. § 102-3, *et seq.*; 22 CFR § 214.1, *et seq.*

It is unclear whether FACA would apply to the PFP Board. There appear to be reasonable legal arguments for and against, requiring further analysis.⁴ Ultimately, the question likely falls to USAID to decide in consultation with Congress. Strictly applying FACA may not be legally necessary or practically a good fit for the PFP Board. However, even if FACA does not apply, the Board may wish to review and consider some of the FACA guidance and procedures in order to borrow and adapt elements that may be helpful on matters like committee procedure, charter, transparency, and conflicts of interest.

What types of individuals would be appropriate Board members?

⁴ In general, FACA could apply because its scope is broad, covering "any committee, board, commission, council, conference, panel, task force, or other similar group . . . which is . . . established by statute or . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government . . ." *Id.* § 3(2). It is presumed to "apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise." *Id.* § 4(a).

However, the MEPPA Board was created by Congress, not USAID, and Congress did not explicitly indicate in MEPPA whether FACA would apply or not. In addition, there are a number of ways in which MEPPA and its Board do not seem to fit well with FACA's expectations. MEPPA does not say anything about FACA and does not appear structured to comply with FACA as it does include any of the elements that FACA expects when Congress creates an advisory committee. FACA expects legislation creating such a committee to spell out the committee's purpose, balanced membership, independent judgment, duration, funding, and staff. *Id.* § 5(b).

In describing the Board, MEPPA also does not reference, much less require, any of the kinds of procedures that FACA would likely impose (including charter, public meetings and minutes, and having an agency liaison officer). MEPPA does not mention an expiration date for the Board even though FACA sets a default expiration of two years unless authorizing legislation provides otherwise. See *id.* § 14. In addition, some aspects of FACA would be hard to follow here, such as FACA's requirement to ensure a committee of "balanced" views. It is unclear how this could be achieved when no one person or agency controls the composition of the Board. In fact, USAID only appoints between one and three members of the Board. The remaining members are appointed by twelve different leaders in Congress.

GSA regulations suggest that it is up to the host agency to determine whether a given committee is primarily advisory, and thus subject to FACA, or primarily operational (and exempt). See 41 C.F.R. §102-3.40(k). A Congressional Research Service report states that, according to GSA, "it is generally up to the agency that hosts the advisory committee to determine whether FACA statutes are applicable." Ginsberg, at 5. Of course, since Congress created MEPPA, the primary legislative sponsors or committees may also have views on the question.

For the 12 Board member positions other than the chairperson and reserved international representative seats, appointees ideally will bring a mix of backgrounds:

- **High-profile figures.** Two to four Board members could be high-profile figures with international connections and relevant political experience that would help elevate the profile of the programs and enable the Board to serve as a forum for multinational coordination and growth, including exploring and engaging additional donors for an international fund. These might be former members of Congress, ambassadors, or other current or former senior officials.
- **Peacebuilding experts.** Five to six appointees could be experts in conflict resolution, people-to-people efforts, and peacebuilding activities. Most, if not all, of these should be familiar with such activities in the Middle East, in particular.
- **Regional experts.** Three to four Board members could be experts in Israeli-Palestinian or Arab-Israeli affairs, with or without peacebuilding expertise. These could include academics, former diplomats, and former Israeli and Palestinian leaders.

The Board chair should be someone with the profile, time, and leadership skills to meaningfully lead a group that includes both experts and VIPs. Former Congresswoman Nita Lowey, should she be interested, would be a natural and ideal chair.

The two international seats may be quickly filled by foreign governments wishing to partner with the U.S. on these programs. Likeliest early participants include the E.U., the U.K., Denmark, France, Germany, or Arab governments.

What might a charter for the Board look like?

Whether or not FACA applies, that law's guidelines for committee charters may be helpful in establishing the Board's governing documents. The charter could contain the following provisions:⁵

Committee's Official Designation

Advisory Board on People-to-People Partnership Fund for Peace (ABPFP).

Authority

Congress established ABPFP through the Nita M. Lowey Middle East Partnership for Peace Act of 2020, Pub. L. No. 116-260, Title VII (MEPPA). MEPPA authorizes program funding for at least five years and expects an ABPFP role throughout the period of the program's operations. Board renewal beyond the initial five years should occur in accordance with renewal or continuation of MEPPA funding programs.

Objectives and Scope of Activities

To serve as an advisory body of experts with demonstrated regional expertise and experience and expertise in conflict mitigation and people-to-people programs.

Description of Duties

The ABPFP aims to be an advisor, consultant, and source of information for the Administrator and, in turn, the Secretary of State and Congress. The Board shall, at a minimum, make recommendations to the Administrator on the types of projects that should be considered for

⁵ In case of FACA applicability, additional specific provisions may be required by statute and regulation.

funding and consult with the Administrator and Secretary of State to inform reports to Congress about program performance.

In addition, the ABPFP can provide critical advice regarding program strategy, relevant regional and local conditions, experience and best practices in conflict resolution and people-to-people programs, and evaluation of program success. Finally, the ABPFP can serve as a coordinating forum with participating foreign governments, including to explore other joint funding mechanisms.

Agency or Official to Whom the Committee Reports

The Administrator of USAID.

Support

Staff in the Office of [the USAID Administrator] provide support to ABPFP.

Estimated Annual Operating Costs and Staff Years

The annual operating costs in dollars and person-years for the Advisory Board and Subcommittees thereof are estimated to be approximately \$_____ and 1 person-year, respectively.

Designated Federal Officer

The Designated Federal Officer (DFO) for ABPFP is _____ or his/her designee. This DFO will provide assistance and support to the ABPFP chair in organizing and conducting meetings, communicating among Board members, and conducting the business of the Board.

Estimated Number and Frequency of Meetings

ABPFP will hold at least one inaugural meeting prior to the launch of MEPPA funding programs and at least one meeting annually thereafter so as to inform USAID Administrator reports to Congress. In addition, ABPFP may meet at such frequency, timing, and location(s) as determined by the ABPFP in consultation with the Administrator. It is encouraged to meet at least three to six times per year. Any subcommittees will meet as deemed appropriate.

Duration

The ABPFP will serve indefinitely, on a continuing basis, subject to renewal in accordance with renewal of MEPPA program funding.

Termination

Upon termination of final reports to Congress regarding MEPPA program funding, following the end of the initial five-year authorization period or as such period may be extended.

Membership and Designation

ABPFP shall have no fewer than 13 members. The USAID Administrator shall appoint the chair. Each of the following officials shall appoint one Board member: Chair of the Senate Foreign Relations Committee; Ranking Member of the Senate Foreign Relations Committee; Chair of the House Foreign Affairs Committee; Ranking Member of the House Foreign Affairs Committee; Chair of the Senate Appropriations Committee; Ranking Member of the Senate Appropriations Committee; Chair of the House Appropriations Committee; Ranking Member of the House Appropriations Committee; Senate Majority Leader; Senate Minority Leader; Speaker of the House; and Minority Leader of the House.

In addition, the USAID Administrator may appoint two additional Board members (for a total of 15), each of whom is a representative of a foreign government or international organization. All members shall serve renewable, three-year terms. Other than the two international representatives, members serve in their individual capacities.

Subcommittees

ABPFP or the USAID Administrator may appoint one or more subcommittees as deemed appropriate.

Recordkeeping

ABPFP will handle records of the Board.