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Financial Crisis Inquiry Commission Agenda for Telephonic Meeting on 8-19-2009

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Financial Crisis Inquiry Commission
Agenda for Telephonic Meeting of August 19, 2009
12:00pm to 2:00pm EDT
 Conference Dial-in Number: (218) 862-1000
 Participant Access Code: 409363#

<u>Agenda Item</u>	<u>Presentation</u>
1) Call to Order and Introductions	Chair Angelides & Vice Chair Thomas
2) Roll Call	Chair Angelides
3) Consideration of Commission Rules <i>(Proposed Rules Attached)</i>	Chair Angelides & Vice Chair Thomas/Irv Nathan, General Counsel to the House of the Representatives
4) Update on Administrative/Personnel Matters	Chair Angelides & Vice Chair Thomas/Tim Blodgett, Chief Administrative Counsel, & Walt Edwards, Deputy Chief Administrative Officer, Office of the House Chief Administrative Officer
5) Consideration of Delegation Authority <i>(Proposed Delegation Attached)</i>	Chair Angelides & Vice Chair Thomas/Tim Blodgett
6) Briefing on Legal Matters, including Record Retention and Donations of Goods and Services	Irv Nathan/Tim Blodgett
7) Briefing on Financial Disclosure, Statutory Ethics Requirements, and Commission Ethics Code	Chair Angelides & Vice Chair Thomas/Blake Chisam, Staff Director and Chief Counsel, House Committee on Standards of Official Conduct
8) Briefing on Travel Reimbursement, Per Diem, and Compensation <i>(Overview Attached)</i>	Tim Blodgett/Tom Hodnett, GSA
9) Commission Meeting of September 16 & 17	Chair Angelides & Vice Chair Thomas
10) Future Commission Meetings for 2009	Chair Angelides & Vice Chair Thomas
11) Other Items of Discussion or Business	All Commissioners
12) Adjournment	Chair Angelides

Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Meeting of August 19, 2009

Privileged and Confidential

MEMORANDUM

To: Phil Angelides, Chairman
Financial Crisis Inquiry Commission
William Thomas, Vice Chairman
Financial Crisis Inquiry Commission

From: Irvin B. Nathan, General Counsel
Katherine E. McCarron, Assistant Counsel
Ariel B. Waldman, Assistant Counsel
Office of General Counsel,
U.S. House of Representatives

CC: Timothy Blodgett, Administrative Counsel, CAO

Date: August 12, 2009

Re: FCIC Rules of Procedure

Overview

As requested, below is a proposed initial set of rules to govern the Financial Crisis Inquiry Commission ("FCIC" or "Commission").

I. Authority Governing the Commission's Operations

The FCIC was established by the Fraud Enforcement and Recovery Act of 2009 ("FERA"), P.L. 111-21, 123 Stat. 1617. The FCIC's operations shall comply with the FERA, as amended, and with these FCIC Rules of Procedure (FCIC Rules), as adopted and amended. To the extent the FCIC Rules conflict with the FERA or any provision of federal law, federal law controls. When the FCIC encounters in an official meeting or hearing a situation for which specific rules are not provided for in the FERA or in these FCIC Rules, the FCIC shall adhere to the provisions of Robert's Rules of Order, as applicable.

II. Conducting Commission Business

At meetings or hearings of the Commission, there shall be a presiding Commissioner. The Chairman shall be the presiding Commissioner when he is present. In the Chairman's absence, the Vice-Chairman shall be the presiding Commissioner. If neither is present, then a member of the Commission designated by the Chair will serve as the presiding Commissioner.

The presiding Commissioner has the authority to ensure the orderly conduct of the Commission's business. This power includes, without limitation, recognizing members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold the floor, determining the order in which members of the Commission may speak or question witnesses, conducting votes of members of

the Commission, and designating Commissioners to conduct specified functions in connection with meetings or hearings.

III. Meetings

A. Generally

The Commission may conduct either open or closed meetings, as the Chairman and Vice Chairman, acting jointly, may determine at their discretion. For meetings designated as open, the Commission may, in its discretion, elect to have all or a portion of the meeting be closed.

Under the FERA, the Commission is not subject to the Federal Advisory Committee Act. The Commission is also not subject to the Freedom of Information Act or the Government in Sunshine Act.

B. Notice to Commissioners

All meetings shall be noticed by email and fax to each Commissioner by the Chairman or his designee. Meetings held in the regular course must be noticed at least seven (7) days in advance. Meetings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance. Whether exigent circumstances exist will be determined jointly by the Chairman and Vice Chairman. Meeting notices shall provide the time and place of the meeting and an agenda. Meetings may include sessions with selected individuals or groups, in addition to Commissioners.

C. Revised Agenda

Commissioners wishing to add or delete items from a meeting agenda shall notify the Chairman and Vice Chairman of the proposed change or changes to the agenda not less than forty-eight (48) hours before the scheduled meeting (or for a meeting held pursuant to exigent circumstances not less than twenty-four (24) hours before the scheduled meeting), and in any event should take good-faith steps to provide such notice as soon as possible. The Chairman and Vice Chairman, acting jointly, shall make an agreed-upon determination as to any additions or deletions to the agenda.

D. Public Notice

If all or part of a regularly-scheduled meeting is to be open to the public, notice will be provided at least seven (7) days in advance by publication in the Congressional Record and any other publications selected by the Commission, and shall include notice of agenda items open to the public. Meetings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance.

E. Minutes

Minutes of each meeting shall be prepared by the FCIC Director or the Director's designee, distributed to each Commissioner, and maintained with official records of the Commission. The minutes will include a record of the persons present (including the names of Commission members, staff and witnesses), and a description of the matters discussed and conclusions reached, and all copies of reports received, issued or approved by the FCIC.

IV. Hearings

A. Generally

Hearings shall be open to the public except such portions as the Commission or the Chairman and the Vice Chairman acting jointly determine to be closed.

B. Notice of Hearing

If all or part of a regularly-scheduled hearing is to be open to the public, notice shall be provided at least seven (7) days in advance in the Congressional Record and other publications selected by the Commission, and shall include a listing of the agenda items open to the public. Hearings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance.

C. Witness Statements

Witnesses who are to appear before the FCIC who wish to provide an opening statement shall file with the Commission, at least three business days in advance of their appearance, twenty copies of a written statement of their testimony and proposed exhibits for the benefit of the members of the Commission and staff. Witnesses' oral testimony may be limited to a brief summary of their submission. Testimony at hearings before the FCIC may be conducted under oath, at the direction of the Presiding Commissioner. The FCIC may question witnesses, who may be represented by counsel at FCIC hearings.

D. Public Participation

Members of the public may attend any portion of a hearing that is not closed to the public. The Chairman may decide to exclude oral comment periods during a hearing. Members of the public may, at the discretion and direction of the Chairman or presiding Commissioner, offer oral comment. Members of the public may submit written statements to the FCIC at any time.

E. Transcripts

A transcript of each FCIC hearing shall be made and retained by the FCIC in the official Commission records. The Director shall review and correct the transcript before distribution. Copies of transcripts of open and closed meetings shall be provided to each Commissioner upon request. Copies of transcripts of all open hearings or open portions of hearings shall be made available to the public upon request.

V. Commissioner Voting at Meetings and Hearings

To transact business at a meeting or hearing, as required by the FERA, § 5(b)(4)(B), a quorum of the FCIC shall consist of six (6) Commissioners. Once a quorum is present, any motion at a meeting shall require a majority of those present and voting, so long as the quorum remains; at a hearing, procedural motions shall not require a quorum and may be carried by a majority of the Commissioners present.

There shall be no proxy voting.

VI. Eligibility to Vote

At a meeting or hearing of the Commission, when a decision or recommendation of the Commission is required, the presiding Commissioner will request a motion for a vote. Any member, including the

presiding Commissioner, may make a motion for a vote. So long as a quorum is present, Commission business shall be transacted by a majority vote of the members present, except for the issuance of subpoenas under Section 5(d)(2)(B)(iii). Each Commissioner shall have a single vote and, for votes requiring a majority vote as referenced above, his or her vote shall be entered by roll call during meetings or by written document outside of ongoing meetings.

VII. Staff

All staff shall be appointed and terminated by the Chairman and Vice Chairman, acting jointly.

VIII. Subcommittees and Agents of the Commission

The FERA requires the Commission to address twenty-two (22) specific causes of the current financial and economic crisis, § 5(c)(1)(A)-(V), and to address the causes of the collapse of each major financial institution that failed or was likely to have failed if not for the receipt of government assistance, *id.* § 5(c)(2). The statute further provides that any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under § 5(d)(8) of the FERA. To address this complex set of assignments, at the direction of the Chairman, any subcommittee on any topic may be formed by the FCIC.

The subcommittee chairs and members of the subcommittees shall be appointed by the Chairman of the Commission in consultation with the Vice Chairman. Each subcommittee must have two or more Commissioners, with staff as may be appropriate. At meetings or hearings of a subcommittee, the Chair of the given subcommittee shall preside. In the absence of the Chair of the subcommittee, a designee of the subcommittee Chair shall preside.

FCIC subcommittees shall be subject to the FCIC Rules to the same extent as the full Commission, except that subcommittees may pass any motion by a majority of the Commissioners present regardless of whether a quorum of the Commission is present.

A subcommittee may not issue a subpoena. If a subcommittee wishes to have a subpoena issued, the subcommittee shall request that the full Commission issue the subpoena and the Commission may in its discretion issue the requested subpoena pursuant to Section 5(d)(2)(B)(iii) of the FERA.

IX. Reporting to Congress

A. Submission of Report and Testimony to Congress

The report of the Commission and appearance before and consultations with Congress are governed by FERA § 5(h), which provides that the FCIC's report is due to the President and Congress on December 15, 2010, and that the Chairperson shall, within 120 days after the date of the report's submission, appear before the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee.

B. Vote on Report

The full Commission shall vote on approval and submission to Congress of the report. The Chairman shall set the time and date for a meeting of the Commission for the purpose of voting on approval and submission of the report, which date shall be no later than 30 days before its due date. Notice of this meeting must be provided to all Commissioners no less than one week prior to the date of the meeting.

Commissioners who are unable to attend the meeting at which the vote on approval and submission is scheduled may vote telephonically or by email by transmitting their vote in either manner to a staff member designated by the Chairman. Approval and submission requires a majority of the votes of those Commissioners physically present and voting and those who vote telephonically or by email.

C. Additional or Dissenting Views

Commissioners may submit additional or dissenting views for publication in the report submitted to Congress. They may be submitted by one or more Commissioners. They are to be provided to the staff member designated by the Chairman by a time designated by the Chairman (that shall be prior to the final deadline for completion of all report material), and the staff member shall promptly circulate to all Commissioners all additional and dissenting views that are received. Additional or dissenting views not provided by the time specified by the Chairman will not be included in the report submitted to Congress.

X. Budget

Under the FERA, § 5(j): “There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission.” The Commission’s fiscal year spending plan approved by the Commission shall govern the Commission’s activities and expenditures. Spending deviations exceeding \$50,000, or reprogramming of more than \$50,000 from one of the plan's spending categories to another, shall be approved by the Chairman and Vice Chairman and noticed to all Commissioners.

XI. Non-staff Expenditures and Contracting

No consultants or other outside personnel, whether their services are obtained by contract, detail, volunteering, or a remunerative agreement, may be hired without the approval of the Commission or approval of a person delegated by the Commission to exercise such authority, and all such proposed arrangements shall be noticed to all Commissioners.

XII. Record Keeping

A. Governing Law

The FCIC is a “federal agency” for purposes of the federal records management provisions at 44 U.S.C. § 2901, *et seq.*, and therefore is subject to certain record-keeping requirements. *See* 44 U.S.C. § 2901(14) (defining federal agency to include, among other things, “any establishment in the legislative . . . branch” except the Senate or House of Representatives); FERA, § 5(a) (providing that the FCIC is “established in the legislative branch”).

B. Scope of Record-Keeping Obligations

The FCIC does not need to preserve every document; rather, the FCIC “shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and [its] essential transactions.” 44 U.S.C. § 3101.

C. Record-Keeping Program Requirements

The FCIC will “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” *Id.* § 3102. The program must provide for “effective

controls over the creation and over the maintenance and use of records in the conduct of current business,” *id.* at § 3102(1); must establish safeguards against the removal or loss of records, including making it known to FCIC officials and employees “that records in the custody of the agency are not to be” destroyed except in accordance with 44 U.S.C. §§ 3301-3314 (and therefore should only be destroyed after consultation with counsel), *see id.* § 3105(1); and must inform employees of penalties provided by law for the unlawful removal or destruction of records, *see id.* § 3105(2).

D. Cooperation with National Archivist

The National Archivist has certain oversight authority over the FCIC’s record-keeping, including but not limited to, that the FCIC is required to notify the Archivist of “any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in [the FCIC’s] custody,” *id.* § 3106, and the Archivist may inspect the FCIC’s “records management programs and practices,” *id.* §§ 2904(c)(7) & 2906, and may report to congressional committees and OMB on its evaluations of the FCIC’s compliance in this regard, *id.* § 2904(c)(8). The FCIC will comply with federal law in its record-keeping practices and interactions with the Archivist.

XIII. Modification of Existing Rules

These FCIC Rules may be amended by a majority vote of the Commissioners serving at the time. Any changes proposed to these FCIC Rules shall be reviewed by counsel and staff as directed by the Commission, for their legality, soundness, sufficiency, and appropriateness prior to their adoption or approval unless a majority of Commissioners determines that such a review is not necessary.

Financial Crisis Inquiry Commission
Agenda Item 5 for Telephonic Meeting of August 19, 2009

**Delegation to execute agreements
on behalf of the Financial Crisis Inquiry Commission**

Pursuant to the authority set forth in Public Law 110-21(d)(3) that allows the Financial Crisis Inquiry Commission to enter into contracts to enable the Commission to conduct its business; and,

Now after a quorum of the Financial Crisis Inquiry Commission has been established; and,

After a vote of the Commissioners present and voting; it is

Hereby delegated to the Chairman of the Commission the authority to enter into agreements on behalf of the Financial Crisis Inquiry Commission in order to facilitate the work of the Commission. This delegation is effective until September 30, 2009, unless revoked earlier.

The Chairman may delegate this authority to the Vice-Chairman in order to expedite the business of the Commission. If the Chairman does delegate to the Vice-Chairman, the delegation shall remain in effect until September 30, 2009, unless revoked earlier.

In addition, any actions taken by the Chairman and the Vice-Chairman in order to establish the Commission, and agreements signed by the Chairman or the Vice-Chairman, are hereby ratified by the Commission.

Dated:

Phil Angelides, Chairman

William Thomas, Vice-Chairman

Brooksley Born

Byron Georgiou

Robert Graham

Keith Hennessey

Doug Holtz-Eakin

Heather Murren

John Thompson

Peter Wallison

Financial Crisis Inquiry Commission
Agenda Item 7 for Telephonic Meeting of August 19, 2009
Proposed Motion

Whereas, the Commission estimates that no appointed Commissioners of this Commission are expected to perform temporary duties for no more than 130 days during the next 365 calendar days; and

Whereas, the Commission expects to hire additional employees to serve as full-time staff handling the daily duties and responsibilities of the Commission;

I move that all appointed Commissioners of this Commission are hereby designated “special government employees” under 18 U.S.C. § 202(a) for the period of August 19, 2009 to August 18, 2010, and to authorize the Chair and Vice-Chair to notify the Committee on Standards of Official Conduct of such designation in writing.

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515

MEMORANDUM

To: Blake Chisam, Staff Director and Chief Counsel

From: Peg Perl, Counsel

Donald Sherman, Counsel

Date: August 18, 2009

Re: Ethics Provisions Applicable to Members of the Financial Crisis Inquiry Commission

SUMMARY

The purpose of this memo is to clarify questions members of the Financial Crisis Inquiry Commission (Commission) raised regarding whether they are special government employees (SGEs) and subject to the financial disclosure requirement, earned outside income limits and other ethical rules that apply to regular government employees. Members of the Commission who are estimated to perform the duties of the Commission on 130 days or fewer in a period of 365 consecutive days will be considered SGEs. SGEs are not restricted by the statutory limits on earned outside income and outside employment.

Members of the Commission are not subject to the financial disclosure requirement under the Ethics in Government Act (EIGA) regardless of their income or status as SGEs. However, given the nature of the Commission's mandate and the practices of other commissions created in the legislative branch, we recommend that members of the Commission and senior staff file public financial disclosure statements.

LEGAL BACKGROUND

I. Members of the Commission May Qualify as SGEs.

Members of the Financial Crisis Inquiry Commission (Commission) are considered government employees because they are appointed in the civil service, perform a Federal function, and are

supervised by a Federal official.¹ However, certain government employees are subject to different ethical provisions if they are designated as SGEs.²

The relevant statute defines an SGE as one of the following:

1. an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 days, either on a full-time or intermittent basis;
2. a part-time United States Commissioner³;
3. a part-time United States magistrate judge; or
4. an independent counsel appointed under certain federal statutes.⁴

Members of the Commission must meet the more detailed requirements (noted in item 1 above) of the SGE definition. Therefore, a member of the Commission will be considered an SGE if he or she is estimated to perform the duties of the Commission on 130 or fewer days during the ensuing 365 day period. The Fraud Enforcement and Recovery Act of 2009 (FARA) anticipates that members of the Commission will be treated as part-time temporary employees. Members of the Commission are to be paid on a per diem basis and the statute states that the Commission shall terminate 60 days after the date on which the final report is submitted, listed in the statute as December 15, 2010.

When an agency designates an employee as an SGE, the agency must make a good faith estimate that the employee will work no more than 130 days during the ensuing 365 day period.⁵ Similarly, in order for members of the Commission to qualify as SGEs, the Commission must make a good faith estimate that the members will fall under the 130 day threshold. If, for example, the Commission estimates that members of the Commission will work for 124 days, between August 19, 2009 and August 18, 2010, then each member would be considered an SGE. If a member of the Commission “unexpectedly serves more than 130 days during the ensuing 365-day period, [he or she] still will be deemed an SGE for the remainder of that period.”⁶ However, at the beginning of the next 365-day period, the Commission should reevaluate whether the member or members of the Commission who exceeded the 130 day threshold are correctly designated as SGEs.⁷ This reevaluation and estimation process should occur at the end of each 365 day period through the duration of the Commission’s

¹ 5 U.S.C. §§ 2104, 2105 (2006).

² 18 U.S.C. § 202(a) (2006).

³ The statute does not define the term “United States Commissioner.” However, members of the Commission do not fit into this category. The statute defines the “legislative branch” to include Congress and “any ... commission established in the legislative branch.” The Fraud and Recovery Act of 2009 (FARA) explicitly states that the Financial Crisis Inquiry Commission “is established in the legislative branch,” thus setting members of this Commission apart from “United States Commissioner[s].”

⁴ 18 U.S.C. § 202(a) (2006).

⁵ OGE Informal Advisory Memorandum 00 X 1, 2000 WL 33407342 *2-3 (O.G.E., Feb. 15, 2000).

⁶ *Id.* at *3.

⁷ *Id.*

existence.⁸ We have consulted with attorneys at the Congressional Research Service, the Senate Ethics Committee and the TARP Commission. Our understanding is that the above approach has been used in the past by other commissions created in the legislative branch.

Any portion of any day that a member of the Commission performs the duties of the Commission constitutes a “day” of work. The FARA does not explicitly define how many hours are included in a “day” of work, but explains that each member “may be compensated ... for each day during which that member is engaged in the actual performance of the duties of the Commission.” Based on this language, if a member of the Commission performs the duties of the Commission for any portion of any calendar day, then he or she has “worked” a day for purposes of determining SGE status.

The Office of Government Ethics (OGE) has reviewed the appropriate method of counting the days of service for SGEs, and has likewise concluded “[a]ny day on which an SGE performs any work for which he or she is compensated by the Government should be counted as a day, regardless of the amount of time worked that day or the nature of the services.”⁹ Weekends and holidays are not exempted from this rule.¹⁰ However, the OGE has identified a category of *de minimis* uncompensated activities that need not be counted as a day of service. These activities include:

1. Uncompensated activities limited to strictly administrative matters, such as filling out personnel paperwork or scheduling meetings. For example, if an SGE spends an hour one day at her law office filling out an application for a security clearance to receive certain Government information, this day need not be counted toward the statutory limits.
2. Uncompensated brief communications, even if they touch on substantive matters. For example, if a member of the Commission spends five minutes composing and sending an e-mail message to another member, and the message is simply one or two sentences indicating the former’s view that a certain issue should be taken up by the committee, this activity does not warrant counting a day of service.
3. Uncompensated brief periods of reading or other preparation performed at the SGE’s home, regular place of business, or other setting away from a Government workplace, need not be counted. OGE is aware that many SGEs do occasional reading at home or at their private offices, in preparation for official meetings. Thus, for example, a member of the Commission who finds 15 minutes, amidst the press of other business, to read an article distributed by the Chair of the Commission need not count a day of service.¹¹

II. What are the Ethical Statutory Provisions that Apply to SGEs?

There are several conflict of interest and ethics statutory provisions that may apply differently to members of the Commission depending on whether they are classified as SGEs.

⁸ *See id.* We note that this is unlikely to be a serious issue for the Commission, given its statutory end date.

⁹ OGE Advisory Opinion 07 X 1 (O.G.E., Jan. 19, 2007).

¹⁰ *Id.*

¹¹ *See id.*

A. Financial Disclosure.

The Ethics in Government Act of 1978 (EIGA) requires some senior federal officials to make detailed, public financial disclosure requirements. Since members of the Commission are neither SGEs in the executive branch nor employees of the Congress whose compensation is disbursed by the Secretary of the Senate or the CAO of the House, they are not required by statute or by House Rules to file public financial disclosure statements.

Any government employee paid at a rate of more than \$117,787 per year, who is employed for more than 60 days in any given calendar year and whose compensation is disbursed by the Secretary of the Senate or the CAO of the House must file a public financial disclosure statement.¹² An SGE in the executive branch paid at a rate of more than \$117,787 per year and employed for more than 60 days in any given calendar year must file a public financial disclosure statement.¹³ We believe members of the Commission do not fall into either of these categories, and that, as a result, they are not statutorily required to file public financial disclosure statements.¹⁴

The financial disclosure requirement was created to assist in identifying potential conflicts of interest for government employees. Since members of other commissions created in the legislative branch have filed public financial disclosure statements, we recommend that members of the Commission also file public disclosure statements.¹⁵ Since the Commission was created in 2009, an odd numbered year, members of the Commission should file these documents with the House of Representatives.¹⁶ Members of the Commission should file their financial disclosure reports within 30 days of their assumption of the position. However, they would not face penalties for filing a late disclosure statement, since they are not required to file.

B. Earned Outside Income and Employment Restrictions.

The EIGA also sets limitations on outside income earned by any officer or employee of the Government except any special government employee. The limit on outside income earned by government employees paid at a rate of \$117,787 or more is \$26,550.¹⁷ In addition, regular government employees paid at a rate of \$117,787 or more may not receive any compensation for affiliating with a firm that provides professional services involving a fiduciary relationship; may not allow their name to

¹² 5 U.S.C. App. 4 § 101(f)(10) (2006); 5 U.S.C. App. 4 § 109(13) (2006).

¹³ 5 U.S.C. App. 4 § 101(f)(3) (2006).

¹⁴ The Senate Select Committee on Ethics, as well as the Congressional Research Service have concluded that members of similar commissions were required to file public financial disclosure statements. This conclusion is inconsistent with our reading of the relevant statutes, as well as prior advisory opinions drafted by the House Committee on Standards of Official Conduct.

¹⁵ For example, members of the 9/11 Commission (2002) and the Judicial Review Commission on Foreign Asset Control (1999) filed public financial disclosure statements despite the fact that both Commissions were legislative branch commissions and their members' compensation was not disbursed by the Secretary of the Senate or the CAO of the House.

¹⁶ 5 U.S.C. App. 4 § 103(h)(1)(A)(ii). Such filings are made with the Clerk of the House. Members of Commissions that have elected to file public disclosure statements have used the form generally used by the House of Representatives.

¹⁷ 5 U.S.C. App. 4 § 501(a)(1) (2006). The FARA notes that members of the Commission may be compensated at a rate no more than the daily equivalent for a position at level IV of the Executive Schedule under 5 U.S.C. § 5315. Level IV of the Executive Schedule is currently set at \$153,200 annually (effective January 2009). We understand that members of the Commission will be paid at this rate.

be used in such a firm; and may not receive any compensation for practicing a profession on the outside which involves a fiduciary relationship (law, e.g.).¹⁸

SGEs do not have to comply with these income and employment limitations regardless of their income.¹⁹ However, the United States Constitution generally prohibits persons “holding any Office of Profit or Trust under [the United States]” from accepting compensation from a foreign government.²⁰ Memoranda drafted by the Department of Justice’s Office of Legal Counsel in 2005 and 2007 identified several factors that make it difficult to determine conclusively whether members of the Commission hold an Office of Profit or Trust under the United States.²¹ The Department of Justice may decide that the Commission falls within this category because members receive compensation for their work on the Commission and have been given subpoena authority by the Congress.²² Based on our understanding of the emoluments clause of the Constitution and our interpretation of the relevant Department of Justice memoranda, we recommend that members of the Commission abide by the Constitutional prohibition on receiving compensation from a foreign government.

C. Bribery.

The statutory provision prohibiting bribery of “public officials” applies to “an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof,” including SGEs.²³

D. Gifts.

Government employees are generally prohibited from accepting personal gifts from parties doing business or having contracts with the employee’s agency or office, or those parties who may be substantially affected by the employee’s duties.²⁴ The United States Constitution also prohibits government employees from accepting personal gifts from foreign governments unless consented to by Congress.²⁵ However, under the Foreign Gifts & Decorations Act, government employees may accept gifts of “minimal value” offered as souvenirs, and in certain other cases, such as travel taking place entirely abroad.²⁶ These statutory limitations apply to SGEs, but members of the Commission are not subject to the restrictions of the House or Senate Gift Rules. In addition, the FARA explicitly states that

¹⁸ 5 U.S.C. App. 4 § 502(a)(1)-(5) (2006). Although the statute does not explicitly define the term “fiduciary relationship” we believe this term to include “the receipt of legal fees and other compensation for professional services [such as broker fees or an agency commission], and directors’ fees from serving on boards of corporations, associations, non-profit organizations and other entities.” See House Bipartisan Task Force on Ethics, *Report of H.R. 3660*, 101st Cong., 1st Sess. 16 (Comm. Print, Comm. on Rules 1989), reprinted in *135 Cong. Rec.* H9253, H9256 (daily ed. Nov. 21, 1989).

¹⁹ 5 U.S.C. App. 4 § 505(2) (2006) (SGEs are excluded from the definition of “officer or employee” under the statute.).

²⁰ U.S. Constitution, Art. I, Sec. 9, cl. 8.

²¹ See *Application of the Emoluments Clause to a Member of the President’s Council on Bioethics*, Dept. of Justice at 1 (Mar. 9, 2005) (available at http://www.usdoj.gov/olc/2005/050309_emoluments_clause.pdf); see also *Application of the Emoluments Clause to a Member of the FBI Director’s Advisory Board*, Dept. of Justice at 1 (Jun. 15, 2007) (available at http://www.usdoj.gov/olc/2007/fbi_advisory_board_opinion_061507.pdf).

²² *Id.* at 7-8, 11, 15.

²³ 18 U.S.C. §201(2006).

²⁴ 5 U.S.C. § 7353 (2006).

²⁵ U.S. Constitution, Art. I, Sec. 9, cl. 8.

²⁶ 5 U.S.C. §7342 (2006).

“[t]he Commission may accept, use, and dispose of gifts or donations of services or property.” It is our opinion that this provision does not authorize individual members of the Commission to accept personal gifts unrelated to their service on the Commission, but rather allows the Commission as a body to accept donations of services or property in furtherance of its work.

E. Compensation to members of the Commission in matters affecting the Government.

Generally, federal employees are prohibited from receiving or sharing in compensation for representational activities on behalf of private parties before the Federal Government. Violators may be subject to criminal and/or civil penalties. SGEs are subject to this provision as well, but only to the extent that the SGE represents someone or shares in fees for representing someone before the Government on a “particular matter involving a specific party or parties” on which the employee had worked “personally and substantially,” or on a matter before the agency or department employing the special Government employee if he or she worked more than 60 days in the previous 365 days in that agency.²⁷

F. Activities of members of the Commission in claims against the Government.

Generally, federal employees are prohibited from acting as an “agent or attorney,” with or without compensation, for private parties before the Federal Government on any matter. Violators may be subject to criminal and/or civil penalties. SGEs are subject to this provision as well, but only to the extent that the SGE acts as an “agent or attorney” for a private party before the Federal Government on a “particular matter involving a specific party or parties” on which the employee had worked “personally and substantially,” or on a matter before the agency or department employing the special Government employee if he or she worked more than 60 days in the previous 365 days in that agency.²⁸

G. Restrictions on Former Employees.²⁹

Former legislative branch employees³⁰ may not “lobby” or try to influence the particular office, bureau, or agency that the employee leaves for one year after leaving Government employment.³¹ This one-year “cooling-off” or “no contact” provision applies to members of the Commission if they are compensated at a rate of \$153,200 per year, regardless of their status as SGEs.³² The statute’s one year restriction would prohibit former members of the Commission from lobbying the Commission after leaving the Commission, but would not prevent them from lobbying the Congress as a whole.³³ Persons

²⁷ 18 U.S.C. §203(c)(1) and (2) (2006).

²⁸ 18 U.S.C. §205(c)(1) and (2) (2006).

²⁹ 18 U.S.C. § 207 (2006).

³⁰ The lobbying prohibition relevant to members of the Commission applies to those employees who work 60 or more days, during the 1-year period before the termination of such employment, and are paid at a rate equal to or greater than the basic rate of pay payable for level IV of the Executive Schedule. The FARA notes that members of the Commission may be compensated at a rate no more than the daily equivalent for a position at level IV of the Executive Schedule under 5 U.S.C. § 5315. Level IV of the Executive Schedule is currently set at \$153,200 annually (effective January 2009). We understand that members of the Commission will be paid at this rate.

³¹ See 18 U.S.C. § 207(e)(6)(2006).

³² See 18 U.S.C. §§ 207(e)(6) & 207(e)(7)(B)(2006).

³³ *Id.*

who are covered by this one-year “cooling off” period are also barred for one year from representing any official foreign interests before the United States.³⁴

H. Financial Conflicts of Interest.³⁵

Members of the Commission are exempt from the statute prohibiting government employees from working on any governmental matter in which the employee, the employee’s family, or the employee’s outside business, has any financial interest. This rule does not apply, as a general matter, to the legislative branch (unless the agency could be considered an “independent” agency).³⁶ The members of the Commission would not be covered by this provision because the Commission was established in the legislative branch and is not an independent agency. However, because avoiding conflicts of interest are critical, we assume the Commission will create a conflicts rule.

I. Prohibition on Supplemental Salary.³⁷

Members of the Commission are exempt from the statute prohibiting government employees from receiving any supplemental income for performing their official governmental duties. The statute includes an exception that applies to uncompensated SGEs, but not SGEs that, like members of the Commission, are compensated by the government for their work. Violators may be subject to criminal and/or civil penalties. However, this rule does not apply to the legislative branch. The Members of the Commission would not be covered by this provision because the Commission was established in the legislative branch and is not an independent agency.

³⁴ 18 U.S.C. § 207(f) (2006).

³⁵ 18 U.S.C. § 208 (2006).

³⁶ See DOJ opinion on Gambling Impact Study Commission.

³⁷ 18 U.S.C. § 209 (2006).

Financial Crisis Inquiry Commission
Agenda Item 8 for Telephonic Meeting of August 19, 2009

**Overview of Travel, Per Diem and
Commissioner Compensation**

Below is a brief overview for Commissioners on how to arrange travel for Commission business, information surrounding per diem rates while on travel and information on keeping time records for purposes of receiving your compensation for serving as a Commissioner. Contact information for GSA subject matter experts are listed below if you choose to reach out to them with questions. Also, if you would like to review the federal travel regulations, they can be found at www.gsa.gov/fttr.

The forms that are referenced below will be sent to you separately the week of August 17, 2009.

I. Travel

1. Contact your travel provider and have your trip arranged. Commissioners may choose to go through his or her own travel agent or use GSA's ADTRAV program. Go to <http://www.adtrav.com> for further information on ADTRAV.
2. Fill out the Travel Authorization form, GSA87, and have it approved by the Executive Director (or the Chairman until the Commission's Executive Director is hired). Authorization will have costs of travel, i.e. air fare, plus estimate of expenses, i.e. estimated cab charges.
3. Submit the Travel Authorization form to the Executive Director (or the Chairman until the Commission's Executive Director is hired), if you would like to have the money obligated prior to travel.
4. Upon return, fill out the Travel Voucher, Standard Form 1012, and have it approved by the Executive Director (or the Chairman until the Commission's Executive Director is hired). The Voucher will include all reimbursable travel expenses, including per diem. The per diem rates for the Washington, D.C. metropolitan area are below. To find per diem rates for other cities, check [GSA's per diem rates page](#) .
5. Submit Travel Voucher to the Executive Director (or the Chairman until the Commission's Executive Director is hired).
6. Commissioners should be aware that federal travelers are required to use U.S. flag air carrier service for all travel funded by the U.S. Government. However, an exception to this requirement is transportation provided under a bilateral or multilateral air transportation agreement to which the U.S. Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.
7. Commissioners who fly business class, first class or other than coach will be personally responsible for the difference between the actual cost of the ticket and the cost of a coach ticket. However, it will be up to the individual Commissioner to determine which class of air travel that they want to fly.

8. If a Commissioner needs to fly other than coach due to medical reasons or the lack of available coach seats, the Commission will reimburse the full amount of the ticket if such travel is previously approved by the Executive Director (or the Chairman until the Commission's Executive Director is hired).
9. When on local travel, i.e. cab rides, approved expenses, etc., fill out a Standard Form 1164. This would also be submitted in the same fashion as the Travel Voucher.
10. Commissioners will obtain government travel cards (personal credit cards can be used until the government travel cards are issued). GSA will provide the travel card application forms for Commissioners. Commissioners should use the travel card when booking travel and hotels or paying for any travel related expenses when on Commission travel. Commissioners should not use the travel card for personal travel and expenses.
11. Commissioners and staff should be aware that they will be personally liable for any charges that are not authorized or approved by the Executive Director (or the Chairman until the Commission's Executive Director is hired).
12. Questions regarding travel may be directed to Doug Tripken at doug.tripken@gsa.gov (202-708-5702) or Kirk Martinelli at kirk.martinelli@gsa.gov (202-501-8913).

II. Per Diem

1. What is per diem?

Per Diem is the allowance for lodging, meals and incidental expenses. The General Services Administration (GSA) establishes per diem rates for destinations within the Continental United States (CONUS).

2. What is the per diem rate for Washington, D.C.?

The per diem rate for the Washington, D.C. metropolitan area is as follows:

September 1 to October 31: \$233 for lodging excluding taxes
\$ 64 for meals and incidental expenses(\$48 on first/last travel day)

November 1 to June 30: \$209 for lodging excluding taxes
\$ 64 for meals and incidental expenses(\$48 on first/last travel day)

July 1 to August 31: \$165 for lodging excluding taxes
\$ 64 for meals and incidental expenses(\$48 on first/last travel day)

Rates are subject to change.

3. What constitutes the Washington, D.C. metropolitan area?

The Washington, D.C. metropolitan area covers the District of Columbia; the cities of Alexandria, Falls Church and Fairfax, and the counties of Arlington and Fairfax in Virginia; and the counties of Montgomery and Prince George's in Maryland.

4. Are lodging taxes included in the per diem rate?

Lodging taxes paid by the federal traveler are reimbursable as a miscellaneous travel expense limited to the taxes on reimbursable lodging costs. However, some states and local governments may exempt federal travelers from the payment of taxes.

For more information regarding tax exempt status, travelers should visit the GSA website at www.gsa.gov/perdiem and click in the "State Tax Exemption" link. This site contains the proper forms travelers may use to claim tax exempt status and other information. If a state is not listed on this site, travelers are to assume that they are not exempt from taxes.

5. How much per diem are you allowed without receipts?

You must provide a receipt to substantiate your claimed travel expenses for lodging and a receipt for any authorized expenses incurred costing over \$75.

6. What is the meal reimbursement rate during the first and last travel day?

Federal employees are only eligible for 75 percent of the total Meals and Incidental Expense rate for the location to which they are traveling on the first and last day of travel. The amount for first and last travel day in the Washington, D.C. metropolitan area is \$48.00.

7. What is included in incidental expenses?

Incidental Expenses are: A. Fees and tips given to porters, baggage carriers, bellhops, and hotel maids. B. Transportation between places of lodging or business and places where meals are taken, if suitable meals cannot be obtained at a location that does not require transportation. C. Mailing cost associated with filing travel vouchers and payment of Government charge card billings.

8. What do I do if there are no hotels available at per diem?

If lodging is not available on travel, the Executive Director (or the Chairman until the Commission's Executive Director is hired) may authorize or approve the maximum per diem rate of up to 300% of per diem for the location where lodging is obtained.

9. Do I receive a meal reimbursement for day travel away from my regular duty station?

Commissioners are entitled to 75% of the prescribed meals and incidental expenses for one day travel away from your location if it is longer than 12 hours.

10. Can hotels refuse to honor the per diem rate to federal government employees?

Hotels are not required to honor the government's per diem rates. It is a business decision.

11. Is the GOV rate the same as per diem?

Instead of offering the per diem rate, hotels sometimes offer a "GOV" rate. This may be higher than the per diem rate in your location and would therefore require approval by the Executive Director (or

the Chairman until the Commission's Executive Director is hired) for actual expense prior to travel.

III. Submitting Time for Purposes of Compensation

Commissioners should keep his or her time for any day, or portion of the day, spent on Commission business. A copy of the GSA payroll calendar is attached. A Commissioner's time should be submitted to the Executive Director (or the Chairman until the Commission's Executive Director is hired), on a bi-weekly basis on the dates indicated by a square on the GSA payroll calendar. Commissioners will then be paid on the following Friday.

The Chairman or his designee will initially e-mail all time records to Linda Sims at Linda.Sims@gsa.gov. Once the computer interfaces are established, and the Commission has access to the GSA payroll site, Commissioners and staff time will be entered directly into the GSA payroll system by the Commission.

For payroll questions, the Commission's contact is Linda Sims and her number is 816-926-1168.

January

PP#	S	M	T	W	T	F	S
					1	2	3
2	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
3	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

February

PP#	S	M	T	W	T	F	S
4	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
5	15	16	17	18	19	20	21
	22	23	24	25	26	27	28

March

PP#	S	M	T	W	T	F	S
6	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
7	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
8	29	30	31				

April

PP#	S	M	T	W	T	F	S
8				1	2	3	4
	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
10	26	27	28	29	30		

May

PP#	S	M	T	W	T	F	S
10						1	2
	3	4	5	6	7	8	9
11	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
12	24	25	26	27	28	29	30
	31						

June

PP#	S	M	T	W	T	F	S
				1	2	3	4
	5	6	7	8	9	10	11
13	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
14	26	27	28	29	30		

July

PP#	S	M	T	W	T	F	S
					1	2	3
	4	5	6	7	8	9	10
15	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
16	25	26	27	28	29	30	31

August

PP#	S	M	T	W	T	F	S
						1	
	2	3	4	5	6	7	8
17	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
18	23	24	25	26	27	28	29
	30	31					

September

PP#	S	M	T	W	T	F	S
19				1	2	3	4
	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
20	19	20	21	22	23	24	25
	26	27	28	29	30		

October

PP#	S	M	T	W	T	F	S
21					1	2	3
	4	5	6	7	8	9	10
22	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
23	25	26	27	28	29	30	31

November

PP#	S	M	T	W	T	F	S
	1	2	3	4	5	6	7
24	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
25	22	23	24	25	26	27	28
	29	30	31				

December

PP#	S	M	T	W	T	F	S
				1	2	3	4
	5	6	7	8	9	10	11
26	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
1	26	27	28	29	30	31	

Gretchen Newsom

To: Phil Angelides

From: Phil Angelides
Sent: Monday, August 17, 2009 10:28 AM

Below are the details for our meeting of September 16 and 17. We will follow up with the location of the reception and dinner as soon as we have the a site selected.

Also, please note that we have scheduled a voluntary ethics workshop for all members of the Commission who choose to participate. The workshop will be conducted by the staff of the House Committee on Standards of Official Conduct. The workshop will commence after the conclusion of the public meeting of the Commission.

If you have any questions or comments, please feel free to call me at 310-272-1610. Thanks.

Wednesday, September 16, 2009

4:00-6:00 FCIC Closed Session Meeting
Location: [Cannon House Office Building](#), Room 441
Washington, D.C.

7:00pm FCIC Reception
Location: TBA
Washington, D.C.

8:00pm FCIC Dinner
Location: TBA
Washington, D.C.

Thursday, September 17, 2009

9:00-1:30 FCIC Public Hearing/Meeting
Location: [Longworth House Office Building](#), Hearing Room 1310
(Committee on House Administration)
Washington DC

1:30-2:30 Voluntary FCIC Ethics Briefing for Commissioners
Location: [Longworth House Office Building](#), Room B-249B

Phil Angelides

2000 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
tel 310-272-1610 | fax 916 446 0966
phil@riverviewci.com

Gretchen Newsom

From: Phil Angelides
Sent: Monday, August 17, 2009 9:41 AM
To: 'bill.thomas@bipc.com'; 'Born, Brooksley'; 'Byron Georgiou'; 'Bob.graham@grahamcos.com'; 'Keith Hennessey'; 'Douglas Holtz-Eakin'; 'Murren, Heather'; 'John Thompson'; 'pwallison@aei.org'
Cc: 'Le, Will'; 'John.Chrislip@aporter.com'; 'Kelly Lee'; 'Chip Burpee'; 'kwarrick@nvcancer.org'; 'Gina Danker'; 'karen.dubas@aei.org'; 'Imadar@nvcancer.org'; Gretchen K. Newsom
Subject: Financial Crisis inquiry Commission - Future Meetings for 2009

The following are the proposed dates for future meetings of the Commission through the end of this year.

Tuesday, October 20th

Tuesday, November 17th

Tuesday, December 15th

We will discuss these future meeting dates on our telephonic meeting of August 19th.

Best,

Phil

Phil Angelides

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