



Yale SCHOOL OF MANAGEMENT  
*Program on Financial Stability*

## EliScholar – A Digital Platform for Scholarly Publishing at Yale

---

YPFS Resource Library

---

8-1-2009

### FCIC Agenda and Attachments - Telecon on 8-19-09

United States: Financial Crisis Inquiry Commission (FCIC)

<https://elischolar.library.yale.edu/ypfs-documents/7151>

---

This resource is brought to you for free and open access by the Yale Program on Financial Stability and [EliScholar](#), a digital platform for scholarly publishing provided by Yale University Library. For more information, please contact [ypfs@yale.edu](mailto:ypfs@yale.edu).

**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 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](http://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](mailto:doug.tripken@gsa.gov) (202-708-5702) or Kirk Martinelli at [kirk.martinelli@gsa.gov](mailto: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](http://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](mailto: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.