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### Agenda for Financial Crisis Inquiry Commission Closed Session Meeting on Wednesday, September 16, 2009

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Bob Graham

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**Author/Creator**

Phillip Angelides, Bill Thomas, Brooksley Born, Byron Stephen Georgiou, Bob Graham, Keith Hennessey, Douglas Holtz-Eakin, Heather Murren, John W. Thompson, Peter J. Wallison, Irv Nathan, Tim Blodgett, Tom Hodnett, Blake Chisam, Walt Edwards, and Ariel Waldman

**Agenda for Financial Crisis Inquiry Commission Closed Session Meeting of  
Wednesday, September 16, 2009  
4:00pm to 6:00pm EDT  
441 Cannon House Office Building, Washington, D.C.  
Dinner  
7:00-9:30pm EDT  
Location: TBA**

<u><b>Agenda Item</b></u>	<u><b>Presentation</b></u>
1) <b>Roll Call</b>	<b>Chairman Angelides</b>
2) <b>Approval of Minutes of Meeting of August 19, 2009</b> <i>(Attached)</i>	<b>Chairman Angelides</b>
3) <b>Ratification of Commission Rules and Procedures</b> <i>(Attached)</i>	<b>Irv Nathan, General Counsel to the House of Representatives and Ariel Waldman/ Tim Blodgett, Chief Administrative Counsel</b>
4) <b>Proposed Whistleblower Protections</b> <i>(Attached)</i>	<b>Irv Nathan and Ariel Waldman/ Tim Blodgett</b>
5) <b>Administrative and Personnel Update</b>	<b>Chairman Angelides and Vice-Chair Thomas</b>
6) <b>Extension of Delegation of Authority</b> <i>(Attached)</i>	<b>Chairman Angelides &amp; Vice Chair Thomas/ Tim Blodgett</b>
7) <b>Donation of Goods and Services – Legal Opinion and Delegation of Authority</b> <i>(Materials forthcoming)</i>	<b>Chairman Angelides &amp; Vice Chair Thomas/ Blake Chisam, Staff Director and Chief Counsel, House Committee on Standards of Official Conduct/ Tim Blodgett</b>
8) <b>Initial Discussion of Ethics Rules – No Action Proposed at this Meeting</b> <i>(Materials forthcoming)</i>	<b>Chairman Angelides &amp; Vice Chair Thomas/ Blake Chisam/ Tim Blodgett</b>
9) <b>Other Items of Business</b>	<b>All Commissioners</b>
10) <b>Recess until dinner at 7:00pm</b>	<b>Chairman Angelides</b>
11) <b>Dinner</b>	<b>All Commissioners</b>
12) <b>Discussion of Commission Scope of Work, Work Plan, and Timeline</b>	<b>All Commissioners</b>
13) <b>Adjournment</b>	<b>Chairman Angelides</b>

**Financial Crisis Inquiry Commission**  
**Agenda Item 2 for Closed Meeting of September 16, 2009**

**DRAFT Minutes of Closed Meeting of Wednesday, August 19, 2009**

**Agenda Item 1: Call to Order**

Chairman Angelides called the closed session meeting to order at 12:02pm EDT.

**Agenda Item 2: Roll Call**

Chairman Angelides called the roll of Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Keith Hennessey, Doug Holtz-Eakin, Heather Murren, John W. Thompson, and Peter Wallison. Bob Graham joined the call at the top of discussion of Agenda Item 3.

Also participating on the call were: Irv Nathan, General Counsel to the House of Representatives, Ariel Waldman, and other staff; Tim Blodgett, Chief Administrative Counsel, and Walt Edwards, Deputy Chief Administrative Officer, of the House Chief Administrative Officer; Blake Chisam, Staff Director and Chief Counsel of the House Committee on Standards of Official Conduct and his staff; Gretchen Newsom, assistant to Chairman Angelides; and, Alex Brill and Scott Ganz, assistants to Vice Chairman Thomas.

Chairman Angelides and Bill Thomas, Vice Chairman, made welcoming remarks, brief introductions, and opening remarks about the work of the Commission.

**Agenda Item 3: Consideration of Commission Rules**

Chairman Angelides introduced draft Rules of Procedures for the Commission and Mr. Nathan provided an overview and answered questions from Commissioners. The draft rules were reviewed section by section and amendments were proposed.

MOTION:               Born moved and Wallison seconded a motion to adopt the proposed rules, as amended (see attached); to have the rules be brought back at the September meeting for purposes of confirming agreed upon language; and to request that Mr. Nathan draft an amendment pertaining to whistle blowers and related protections.

APPROVED:           Motion passed 10-0.

**Agenda Item 4: Update on Administrative/Personnel Matters**

Chairman Angelides and Vice Chairman Thomas gave an update on administrative matters; including the procurement of office space; the execution of the MOU with the General Services Administration (GSA); and swearing-in procedures.

Chairman Angelides and Vice Chairman Thomas reported on the progress made thus far on the selection of an executive director for FCIC. Chairman Angelides requested that Commissioners forward resumes to himself and a copy to Ms. Newsom.

#### **Agenda Item 5: Consideration of Delegation Authority**

Chairman Angelides introduced the proposed delegation authority and gave an overview.

MOTION: Holtz-Eakin moved and Graham seconded a motion to adopt the proposed delegation authority (see attached).

APPROVED: Motion passed 10-0.

#### **Agenda Item 6: Briefing on Legal Matters, including Record Retention and Donations of Goods and Services**

Mr. Nathan briefed the Commission on current statutes that are and are not applicable to the Commission. Mr. Nathan advised that Commission is not subject to FOIA or sunshine laws, but advised Commissioners to keep all emails and correspondence pertaining to FCIC until such a time that the Executive Director develops a record retention plan with the National Archivist. All official documents of the Commission must be retained and archived.

For the September Commission meeting, Mr. Blodgett will prepare a memo on rules and parameters for the acceptance of goods and services by the Commission

#### **Agenda Item 7: Briefing on Financial Disclosure, Statutory Ethics Requirements, and Commission Ethics Code**

Chairman Angelides informed the Commission that at the conclusion of the FCIC meeting on September 17<sup>th</sup>, Mr. Chisam will provide a voluntary workshop on ethics for interested commissioners.

Mr. Chisam led a discussion on financial disclosure statements and the status of Commissioners as special government employees (those who work 130 days or fewer in a 365 day period).

Although it is the opinion of the House Committee on Standards of Official Conduct that Commissioners are not obligated to file financial disclosures, it was recommended by Mr. Chisam that Commissioners do so. Mr. Chisam offered the assistance of his office in completing these documents by pre-screening the documents for completeness; Stan Simpson will provide this assistance and is reachable at 202-225-7103 or [stan.simpson@mail.house.gov](mailto:stan.simpson@mail.house.gov).

Chairman Angelides and Vice Chairman Thomas requested that Mr. Chisam create a working draft of ethics rules to be discussed at the September 16<sup>th</sup> meeting.

MOTION: Born moved and Thompson seconded a motion to indicate that although the House Committee on Standards of Official Conduct has advised Commissioners that they are not required to file financial disclosures, the Commission chooses to file disclosures voluntarily.

APPROVED: Motion passed 10-0.

MOTION: Graham moved and Holtz-Eakin seconded a motion as follows:

Whereas, the Commission estimates that no appointed Commissioners of this Commission are expected to perform temporary duties for 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 operations 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.

APPROVED: Motion passed 10-0.

#### **Agenda Item 8: Briefing on Travel Reimbursement, Per Diem, and Compensation**

Chairman Angelides reviewed with Commissioners the briefing on travel, per diem, and Commissioner compensation.

#### **Agenda Item 9: Commission Meeting of September 16 and 17**

Chairman Angelides and Vice Chairman Thomas reviewed logistics of the upcoming September FCIC meetings and requested that each Commissioner prepare a brief opening statement. Chairman Angelides welcomed input on the structure of the meeting and what matters should be covered during the public meeting of September 17<sup>th</sup>.

#### **Agenda Item 10: Future Commission Meetings for 2009**

The Commission agreed to meet on Tuesday, October 20<sup>th</sup> and Tuesday, November 17<sup>th</sup>, and to meet every third Tuesday of the month through June 2010, with the exception of December wherein two Commissioners voiced conflicts with December 15<sup>th</sup>, and also where holidays prevent the normal meeting schedule.

It was suggested that some future FCIC public meetings be located outside of Washington D.C.

#### **Agenda Item 11: Other Items of Discussion or Business**

Hennessey requested that once the Commission staff is hired, a general email account be created for the public to deliver feedback and input to the Commission.

**Agenda Item 12: Adjournment**

Chairman Angelides thanked the Commissioners for their participation; and thanked Mr. Blodgett, Mr. Edwards, Mr. Nathan, Mr. Chisam and their staffs for their work; and adjourned the meeting at 2:06pm EDT.

**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Closed Meeting of September 16, 2009**

**Financial Crisis Inquiry Commission Rules of Procedure**

As tentatively adopted on August 19, 2009 and to be ratified on September 16, 2009

**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 For the benefit of the members of the Commission and staff, witnesses who are to appear before the FCIC who wish to provide an opening statement ~~shall~~should endeavor to file with the

Commissioner, at least three (3) business days in advance of their appearance, (and in any event shall file with the Commission no less than two (2) days in advance of their appearance, or 24 hours in advance of a meeting scheduled under exigent circumstances) twenty (20) copies of a written statement of their testimony and proposed exhibits ~~for the benefit of the members of the Commission and staff.~~ Witnesses' opening statements and exhibits shall be kept non-public by the Commission until no earlier than the day of the witnesses' testimony.

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 related to the Commission's conduct of the hearing 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, shall propose the creation, charter, and membership of subcommittees. The Commission shall promptly after such a proposal vote on the existence, charter, and membership of the proposed subcommittee. Each subcommittee must have two or more Commissioners, with staff as may be appropriate. Any Commissioner that is not a member of a given subcommittee may participate in the business of that subcommittee as a member *ex officio* and without voting rights.

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 the President and 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 the President and Congress of the

Commission's 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 the President and 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 the President and 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 by the Commission 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 4 for Closed Meeting of September 16, 2009**

**Proposed Whistleblower Protections**

Pursuant to Rule XIII of the FCIC Rules of Procedure (FCIC Rules), the Commission amends the FCIC Rules by adding the following after FCIC Rule XIII:

**XIV. Policy of Encouraging Knowledgeable Individuals to Share Relevant Information with the Commission.**

In the interests of securing access to the most complete source of information on topics critical to the work of the Commission, it shall be the Commission's policy to encourage persons with relevant information to provide such information to the Commission under terms and conditions which are beneficial to the Commission and protective of such persons' rights and interests. Accordingly, the Commission shall accommodate, consistent with legal obligations, reasonable requests for anonymity and confidentiality by those providing information (including but not limited to witness testimony) to the Commission.

Further, the Commission shall take appropriate steps to help ensure that no corporation, partnership, union, or other institution will retaliate or discriminate against any current or former employee or agent thereof as a result of providing information to the Commission. It shall be the practice of the Commission to cooperate fully with any law enforcement agency or other investigation, regulatory or other, brought under applicable law against those who allegedly take retaliatory or other adverse action against any persons for providing information to the Commission.

**Financial Crisis Inquiry Commission**  
**Agenda Item 6 for Closed Meeting of September 16, 2009**

**Extension of Delegation Authority**

**Delegation to execute agreements and contracts  
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 October 31, 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 October 31, 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: