

*Privileged and Confidential / Draft*

**MEMORANDUM**

To: All Commissioners  
Financial Crisis Inquiry Commission

From: Tim Blodgett  
Administrative Counsel

Date: September 11, 2009

Re: Discussion Topics for Future Ethics Guidelines

**Overview**

The Chairman and the Vice-Chairman have requested that I provide you with a short outline of areas that the Commission may want to address in ethical guidelines. The final document should set forth the statutory requirements of the Commission, as well as the Commission's policy and requirements in non-statutory areas. The document should apply to all Commissioners as well as staff as determined by the Commissioners.

In addition, there may be other areas not listed below that the Commissioners may decide that a policy should be created and the Commission is free to do so (assuming that the proposed policy does not violate a statute).

**I. General Ethical Standard**

In order to fulfill its mission, the Commission's end products need to be above reproach. This is accomplished, in part, by the exemplary behavior of the Commissioners and staff. General ethical standards establish the starting point for producing a complete ethics code and places the Commissioners and staff on notice as to what is expected from them.

The General Ethical Standards may include guidelines on:

1. Outside employment;
2. "Ghost" employee provisions; or
3. Non-discrimination provisions

**II. Statutory Prohibitions and Issues**

On August 18, 2009, the Commission received a memo from the staff of the House Committee on Standards of Official Conduct. This memo outlined various statutory requirements that apply to Commissioners and staff such as bribery, appearance before the commission after employment, dual compensation and outside earned income limits. While some of the issues were resolved with the designation of the Commissioners as "special government employees"

there are requirements that still apply to Commissioners and will apply to senior staff. The ethics code should set forth those statutory requirements.

Included in the statutory requirements is the Code of Ethics for Government Service. The Code applies general ethical standards on all government employees. The Code covers areas such as loyalty to the Government, upholding the Constitution, giving a full day's work for a full day's pay, exposing corruption and no providing of special favors.

### **III. Gifts**

There are two issues that the Commission needs to resolve in terms of gifts: gifts to individual Commissioners and staff; and gifts to the Commission as a whole.

#### **A. Gifts to Commissioners and staff**

In order to avoid the appearance of impropriety, the Commission may wish to put some restrictions on gifts that the Commissioners and staff can receive. The Commission can do this in a number of ways. One would be to have a blanket prohibition against all gifts and then provide a list of exceptions. Some possible exceptions could be:

1. The cost of the gift, i.e. gifts under \$50.
2. Who gives the gift, i.e. gifts from relatives.
3. Allowing specific gifts, i.e. baseball hats or mugs
4. Gifts given in certain situations, i.e. a meal at a site visit

This is the model that the House of Representatives uses.

Another method could be to prohibit a narrow class of gifts. An example of such a rule would be to prohibit gifts that are only given by specific entities or individuals, or to limit certain gifts. The Commission should consider, at a minimum, prohibiting the acceptance of gifts from entities or individuals under investigation by the Commission or is subject to an inquiry by the Commission. The Commission could consider building in reasonable exceptions to this, such as gifts from close relatives who may work for an entity under investigation or who work for a representative of an entity or individual, i.e. a law firm.

#### **1. Gifts to the Commission as a whole**

This topic will be discussed separately with the Commissioners. The Commission has the statutory ability to accept gifts but there are statutory provisions limiting the solicitation of gifts. The Commission should craft rules consistent with those statutory provisions so the Commission can meet its Congressional mandate. In drafting these rules, the Commission should be mindful that the ability to accept gifts falls to the Commission and not the individual Commissioners.

In crafting a rule regarding the receipt of gifts, the Commission may want to think of a mechanism that indicates the will of the Commission to accept a gift or to request a waiver.

There are course of business activities that the Commission can undertake that will not violate the solicitation prohibition. These include advertising employment opportunities, including internships, and requesting “educational” material to assist the Commissioners and staff in understanding the various topics the Commission is charged with investigating.

#### **IV. Financial Disclosure**

While the Commission is not bound by the House of Representatives’ financial disclosure process, the Commission has elected to fall under those provisions, at least for the initial filing. The Commission’s Code of Ethics should include:

1. Which employees have to file;
2. What financial disclosure forms have to be filed;
3. When the filing needs to take place;
4. A process to extend the time for filing to provide Commissioners and senior staff the needed time to file accurate documents;
5. Where the filing must be made; and
6. Who can certify the forms on behalf of the Commission.

#### **V. Conflicts of Interest**

Due to the nature and the breadth of the Commission’s mandate, it is impossible to imagine that a conflict of interest will not arise during the course of the life of the Commission. Therefore the Commission needs to have a process to deal with conflicts of interest. This keeps the work product of the Commission from charges that it was influenced by the financial interests of any Commissioner, group of Commissioners or staff.

The Commission should first define what constitutes a conflict of interest. A conflict could be defined numerous ways, including but not limited to: a monetary interest in any of the entities being investigated by the Commission or related entities to those companies; a specific dollar amount of holdings in entities being investigated; a specific number of shares held; holding loans other than in the ordinary course of business by an entity under investigation; or a relative employed by an entity being investigated or that is representing an entity being investigated.

Once the Commission has defined the conflict, the Commission has a number of options to deal with the conflict, including but not limited to:

1. Requiring the impacted Commissioner or staff member to work with the General Counsel to determine if a conflict does exist;
2. Commissioners or staff to recuse him or herself from that area of inquiry and build a wall to protect the Commission;
3. Commissioners or staff to divest him or herself of the interest or to alter outside financial relationships to mitigate any conflict; or
4. Merely disclose the existence of the conflict.

The Commission should look to tailor the conflict of interest procedure to provide the Commission with complete transparency, allows Commissioners and staff to faithfully serve the Commission, and does not impact the final work product.

## **VI. Public Speaking**

The Commission should consider putting parameters around acceptable speaking engagements of the individual Commissioners and senior staff. This can help to assist the Commission in keeping its work product secure pending the end product and not raise potential conflicts of interest. A possible rule regarding public speaking should address, in part:

1. The relationship of the speech to the Commission's work;
2. Compensation for speaking engagements related to the work of the Commission;  
and
3. The audience that the speaking engagement is before.

## **VII. Non-disclosure of Information**

It is fundamental that a Commissioner or an employee of the Commission not use his or her official position for personal gain, including any gain that would accrue to the individual in the form of compensation for outside employment activities or investments.

Therefore, it is recommended that the Commission create a rule that Commissioners and staff keep all information obtained by the Commission, or work product of the Commission, confidential until such time as the Commission's report is issued. The Commission could also allow for exceptions to such a rule, such as:

1. If the Chairman authorizes the release of the information; or
2. The information is released to outside entities or individuals working on behalf of the Commission; or
3. The information is publicly available.

## **VIII. Outside employment**

Since the Commissioners are special government employees and will continue to have outside employment, the Commission should have a rule dealing with such outside employment and the compensation received from that employment.

The areas that the Commission will need to address are:

1. What constitutes outside employment;
2. How to deal with Commissioners and staff that may work for an organization that has some connection to the areas of Commission inquiry, i.e. law firms;
3. How to deal with "passive" compensation such as pensions, owed fees or sale of ownership interest.

The rule should also require that Commissioners and senior staff work with the General Counsel or the Executive Director to determine if outside employment, compensation and income derived from such employment are consistent with federal law.