



May 27, 2009

TO: The Board of Directors

FROM: Paul M. Nash *Paul Nash*
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SUBJECT: Establishment of the FDIC Advisory Committee on Community Banking

EXECUTIVE SUMMARY

In order to provide the FDIC with a useful mechanism to promote dialogue and obtain advice or recommendations from regulated entities and others impacted by FDIC activities, the Chairman is seeking Board approval for the establishment of a new advisory committee at the FDIC, to be called the FDIC Advisory Committee on Community Banking (hereinafter the "Community Banking Committee" or "CBC"). On November 2, 2006, the FDIC Board approved the establishment of the FDIC Advisory Committee on Economic Inclusion (the "Come IN"), which has provided a valuable forum for the exchange of views on important initiatives focused on expanding access to banking services by underserved populations.

Like the Come IN, the proposed Community Banking Committee would be consistent with the FDIC's mission as insurer, supervisor and receiver and would provide the FDIC with the opportunity to obtain advice or recommendations on a broad range of policy issues that have a particular impact on small community banks and the communities served by such banks, including a focus on rural areas. The CBC will provide a forum for the exchange of views through discussion and debate on current and emerging issues facing the community banking industry and consumers served by the industry. The CBC will serve solely in an advisory capacity and will have no final decision-making authority.

To establish an advisory committee, the FDIC must comply with applicable Federal laws, including the Federal Advisory Committee Act ("FACA"). Under FACA, an advisory committee can be created only when it is determined by the agency head that it is essential to the performance of a duty or responsibility required by law. FACA requires that this determination be made as a matter of formal record after consultation with the General Services Administration ("GSA"), the agency charged by Congress with overseeing the administration of FACA. In its "consultation" with GSA, the agency is required to submit a proposed charter outlining the committee's mission and duties along with a letter explaining why the committee is necessary and how the agency plans to attain a balanced membership on the committee. GSA concurrence or approval regarding the establishment of the committee is not required under FACA; an agency head may still establish the committee if a formal determination is made that it is in the public

interest and necessary to the performance of agency duties imposed by law. Following a required public notification period, the charter is filed with the House and Senate committees with legislative jurisdiction over the agency, and other required entities. FACA requires the House and Senate committees to make a continuing review of the activities of the advisory committee. Once the charter is filed, the committee can begin operation.

FACA sets out many administrative requirements for advisory committees, including, designations of individuals for committee oversight and administration, recordkeeping, and reporting and disclosure requirements. FDIC Executive Secretary Robert Feldman is the agency's Committee Management Officer (CMO"), who is charged with overseeing the administration of FACA for all FDIC advisory committees established under the Act and thus will do so for the CBC. In addition, FACA requires the Chairman to appoint a Designated Federal Official ("DFO") to oversee and coordinate the operations of each individual advisory committee. With respect to the CBC, the Chairman is proposing to appoint Paul M. Nash, Deputy to the Chairman for External Affairs, to be the DFO for the advisory committee. Under FACA, meetings are required to be open to the public, and can only be closed in limited circumstances in accordance with applicable law.

In order to make the CBC function effectively, it is proposed that the Board delegate to the Chairman of the FDIC all authorities necessary to establish and operate the CBC (and any appropriate subcommittees), including the selection of CBC members, the establishment of administrative and operational procedures, as well as budgetary authority. The CBC will operate on a continuing basis, subject to a two-year term and renewal under FACA, until the Chairman, with the concurrence of the Board, determines that its continuance is no longer in the public interest.

It is proposed that the CBC meet at least two times per year, with a majority of members representing community banks of various sizes and charter types, both rural and urban, including a cross-section of institutions from different regions of the country. Other members of the Community Banking Committee will include representatives of individuals, small businesses, not-for-profit community organizations or other entities that rely on community banks to provide credit and other banking services in their communities, as well as one or more representatives of academic institutions. Members selected for the CBC, because of their representation of diverse groups and their intimate knowledge of banking-related issues, will be in a unique position to provide guidance and valuable input on issues of importance to the FDIC that are not generally available through other sources within the FDIC or the Federal government. It is recommended that CBC members be reimbursed for reasonable expenses relating to travel, meals and accommodations in connection with advisory committee business. There would be no other compensation.

BACKGROUND

The Federal Advisory Committee Act

The FACA applies to any committee that is established or utilized by a Federal agency and which furnishes "advice or recommendations" to an agency. Under the Act, an "advisory

committee" is defined as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . which is . . . (A) . . . established by statute . . . or (B) established or utilized by the President, or . . . (C) . . . by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies . . . of the Federal Government."

FACA establishes requirements for creating, managing, operating and terminating advisory committees. Only the Federal Reserve System and the CIA are exempt by statute from its requirements. The FDIC is subject to FACA and the regulations promulgated by GSA, the Federal agency charged with oversight of Federal advisory committees.¹

In establishing advisory committees, FACA sets out certain guidelines for agencies to follow: (1) the committee has to have a clearly defined purpose; (2) the members of the committee must represent a fair balance in terms of points of view represented; (3) the committee must exercise independent judgment and not be inappropriately influenced by the appointing authority or any special interest; and (4) the committee must be adequately funded and staffed. If an advisory committee is not established by statute or the President, the head of an agency may authorize an advisory committee to be formed if he or she makes a determination that the establishment of the committee is in the public interest in connection with the performance of duties imposed on the agency by law. This determination must be made as a matter of formal record after consultation with the GSA Administrator. Even if GSA does not concur with an agency's proposal to establish an advisory committee, FACA does not prohibit the agency from establishing the committee. The agency, however, must still comply with GSA regulations.

FACA also imposes certain recordkeeping and reporting requirements on Federal agencies that establish Federal advisory committees. An agency is required to report information annually to GSA on its advisory committees including the name of each committee, the date and authority for its creation, its functions, a list of reports it has submitted, dates of meetings, names of members, its termination date, and the estimated annual cost of maintaining the committee. Any reports prepared by an advisory committee must be filed with the Library of Congress.

Under FACA, agencies are required to retain all documents and records relating to advisory committees and make them available for public inspection and duplication. Such documents and records also are subject to applicable Federal disclosure laws. Detailed minutes of each committee must be maintained. Agencies also are required to keep records that fully disclose the

¹ There have been a number of presidential directives on the establishment of advisory committees in recent years. In 1993, President Clinton issued an executive order that limits Federal agencies from establishing any new advisory committees unless the agency head finds compelling considerations necessitating the committee's creation and receives approval from the Office of Management and Budget ("OMB"). Although the executive order was issued under the authority of FACA, which applies to the FDIC, the order does not direct but instead merely "requests" that all independent regulatory commissions and agencies comply with the order. Subsequently, OMB issued a circular requiring OMB review and approval of new advisory committees. The OMB circular derives its authority from the executive order. The Legal Division has opined that as an independent regulatory agency, the FDIC is not legally bound by the provisions of the executive order or the OMB circular, but is merely requested to comply. Although the FDIC is not bound by these directives, the FDIC intends to notify OMB of the establishment of the advisory committee after filing its charter.

disposition of funds that are "at the disposal" of the committee. The Comptroller General is authorized to have access to these latter records for the purpose of audit and examination.

The applicability of FACA to a particular group depends upon the structure of the group, the type of work it is expected to produce, and how the group's work is utilized. Groups or committees that may not be subject to the Act include: committees exempted by an Act of Congress; committees composed entirely of full-time employees of the Federal government; meetings initiated by an agency official solely to exchange facts or information; meetings initiated by a non-governmental group with agency officials to express the group's views provided the agency does not use the group recurrently as a preferred source of advice; committees that are established to perform primarily operational as opposed to advisory functions; and meetings initiated by agency officials for the purpose of obtaining the advice of individual attendees and not for consensus advice or recommendations. Formal, structured groups with a limited or fixed number of members that are operated with a specific purpose with regularly scheduled meetings generally are subject to FACA. On the other hand, FACA may not be triggered for a focus group or roundtable discussion format if discussions are held on an infrequent basis to hear various ideas expressed by individuals where no group policy or recommendations are made to the agency.

ESTABLISHMENT OF AN ADVISORY COMMITTEE AT THE FDIC

Establishment of FDIC Advisory Committee on Community Banking

A. Committee's Purpose

The establishment of the FDIC Advisory Committee on Community Banking is consistent with the mission of the FDIC. The FDIC's mission, mandated by statute, is to maintain public confidence in, and promote, a stable banking system by the efficient and effective supervision of state non-member banks and other FDIC-insured institutions, management of the deposit insurance funds, and effecting resolutions of failed or failing insured institutions. The purpose of the CBC would be to provide advice and recommendations on a broad range of policy issues that have a particular impact on small community banks throughout the United States and the local communities that are served by community banks, including a focus on rural areas. The CBC will review various issues that may include, but not be limited to, the latest examination policies/procedures, credit/lending practices, deposit insurance assessments, insurance coverage issues, regulatory compliance matters, as well as any obstacles to the continued growth and stability of community banks to extend financial services in their local markets in the current environment.

The CBC would be utilized to gather information and promote discussion on a variety of current and emerging issues impacting community banks and will help the FDIC to better identify and prioritize issues of concern, and if necessary, to develop and implement strategies and methods to remove obstacles to the continued growth and prosperity of community banks.

The CBC may explore policy options for changes in statutes, regulations or supervisory practices or procedures that will assist community banks in better serving their communities while assuring the continued safety and soundness of the institutions.

FACA requires that an advisory committee be subject to a two-year term, unless earlier renewed for successive two-year periods with the filing of a new charter. Subject to these requirements of FACA, the CBC would operate on an ongoing basis until the Chairman of the FDIC, with the concurrence of the Board, determines that its continuance is no longer in the public interest. The duties of the CBC would be solely advisory to the FDIC. Determinations of actions to be taken or policies to be adopted with respect to any matters upon which the CBC provides advice or recommendations would be made only by the FDIC.

B. Legal Requirements to Establish an Advisory Committee at the FDIC

If the FDIC forms an advisory committee, it would generally be governed by FACA and the rules promulgated by GSA, which require the FDIC to do the following:

- Identify as a matter of public record that the committee is in the public interest and is consistent with the mission of the FDIC;
- Consult with the GSA on the establishment of the advisory committee by explaining the need for the committee, stating the reasons why the agency cannot perform the functions of the committee and describing the FDIC's plan to attain a fairly balanced membership for the committee;
- Utilize the committee for advisory purposes only;
- File a committee charter with the Congressional banking committees with jurisdiction over the agency (i.e., U.S. Senate Committee on Banking, Housing and Urban Affairs, and the U.S. House of Representatives Committee on Financial Services), GSA, and the Library of Congress;
- Establish uniform administrative guidelines and controls for the committee;
- Comply with recordkeeping, reporting and disclosure requirements;
- Designate a Committee Management Officer to oversee the administration of the Act's requirements and a Designated Federal Official to supervise the committee;
- Select advisory committee members who will be broadly representative of diverse groups, which are impacted by banking-related issues;
- Open the committee's meetings to the public, unless properly closed pursuant to the Government in the Sunshine Act.; and
- Terminate the committee after two years, unless renewed with a new charter.

C. Delegation of Authority to Establish and Operate Advisory Committee

FACA requires the "agency head" to make a determination, as a matter of formal record, to establish an advisory committee. Therefore, to be consistent with FACA, it is proposed that the Chairman be delegated authority by the Board of Directors to formally establish the CBC. It is further recommended that the Chairman, or her designee, be delegated authority to take such other actions as may be necessary to properly form and organize the CBC, including the establishment of subcommittees. Such other actions include, among other things, consultation with GSA, filing of the committee charter with the appropriate committees of Congress and other required entities, designations of the Committee Management Officer and the Designated Federal Officer, selection of committee members, establishment of administrative guidelines and management controls, budgeting authority for establishing and operating the committee, and other requirements mandated by FACA, or the rules promulgated thereunder. The CBC would report directly to the FDIC Chairman, or her designee.

D. Composition of Committee

It is proposed that the CBC be composed of various individuals from inside and outside the Federal government who would be representative of a broad and diverse range of interests, perspectives and expertise on banking-related issues and who would provide unique insights and guidance to the FDIC on such issues. Because of their diverse interests and knowledge of banking, bank regulation, and deposit insurance, the members of the CBC would provide valuable information and perspectives that are not generally available through other sources within the FDIC or the Federal government. The CBC would provide a forum for public discussion and debate on a broad range of policy issues that have a particular impact on small, independent community banks throughout the United States and the local communities that are served by community banks, as well as provide valuable advice to the FDIC.

It is proposed that the CBC not be any larger than a group consisting of 20 individuals. The majority of the members of the CBC will represent community banks of various sizes and charter types, both rural and urban, including a cross-section of institutions from different regions of the country. Other members of the CBC will include representatives of individuals, small businesses, not-for-profit community organizations or other entities that rely on community banks to provide credit and other banking services in their communities, as well as one or more representatives of academic institutions.

It is proposed that CBC members not be compensated for their services, but instead be reimbursed for reasonable expenses for travel, meals and accommodations in connection with advisory committee meetings.

E. FDIC Staffing

It is proposed that the CBC use FDIC personnel from various divisions and offices to assist in the administration of the advisory committee. Staff support would be necessary from those FDIC divisions that are more closely aligned with the proposed mission of the advisory committee, *i.e.*, the Division of Supervision and Consumer Protection, the Division of Resolutions and Receiverships, and the Division of Insurance and Research. The Legal Division also would be involved for legal support for the operation of the CBC and for assisting in the administration of the CBC, for example, preparation of minutes of committee meetings, preparation of Federal Register notices regarding meetings, consultation regarding any applicable conflict of interest provisions or standards applied to advisory committee members, and other ministerial duties related to the CBC. The Division of Administration will likely be involved in coordinating all of the logistics for CBC meetings. Staff from other divisions also may be tasked to perform certain functions for the CBC for their particular expertise on an as-needed basis. We anticipate that employees from each of the above-mentioned divisions would be necessary on a collateral-duty basis. In addition to tasks related to the administrative operations of the CBC, it is also contemplated that FDIC staff would likely be necessary to gather, read, and analyze information that is prepared for each committee meeting and brief Board members.

F. Costs to Agency

It is anticipated that the cost to establish and operate this advisory committee, including FDIC staffing and resources, overhead, and reimbursements to committee members, should not exceed \$300,000 per year.

Other Advisory Committees at the FDIC

The FDIC currently has one other advisory committee, the ComE IN. Over the years, the FDIC has had only a few other advisory committees. In 1977, the FDIC established the Advisory Committee on State and Federal Regulation of Banks; it was dissolved in 1979. In addition, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) required the creation of the Savings Association Insurance Fund Industry Advisory Committee; it was exempted by Congress from the requirements of FACA. Moreover, Congress required the establishment of an Affordable Housing Advisory Board in the RTC Completion Act of 1992. The Affordable Housing Advisory Board, however, was subject to FACA. All of these committees have been terminated. Moreover, in 2002, Chairman Powell established an advisory committee at the FDIC, namely, the FDIC Advisory Committee on Banking Policy. The committee charter was renewed once in 2004, but in February 2006, the charter expired.

Use of Advisory Committees at Other Banking Agencies

A. The Federal Reserve

The Federal Reserve Board currently has three advisory committees, two of which are required by statute. All are exempt from FACA.

The Federal Advisory Council is required by statute to advise the Board of Governors on the general affairs of the Federal Reserve banking system, including discount rates, rediscount business, note issues, reserve conditions, purchase and sale of gold or securities by the reserve banks, and the banks' open market operations. It is composed of twelve representatives of the banking industry and consults with the Board on all matters within the Board's jurisdiction. Meetings are generally held four times per year. Member terms are for one year, but can be renewed.

In 1976, Congress required the Board of Governors to establish the Consumer Advisory Council to advise and consult with the Board concerning its responsibilities under the Consumer Credit Protection Act and on other matters in the area of consumer financial services. It has 30 members representing a cross-section of interests, each appointed by the Board of Governors to serve a staggered three-year term. The Council meets three times per year. Council meetings are generally open to the public.

The Thrift Institutions Advisory Council was established by the Board of Governors in 1980 to provide information and views on the special needs and problems of thrift institutions. The Council consists of 12 members selected by the Board of Governors representing thrifts, mutual savings banks, and credit unions. Members serve staggered two-year terms. The Council meets three times per year. The meetings of the Federal Advisory Council and the Thrift Institutions Advisory Council are closed to the public.

B. Other Federal Banking or Banking-Related Agencies

In December 2008, the Office of Thrift Supervision established a Mutual Savings Association Advisory Committee to provide OTS informed advice and recommendations regarding current and future circumstances affecting mutually-owned savings associations. This advisory committee is still in the formation stages (they expect to hold the first meeting in early June 2009). The Office of the Comptroller of the Currency and the National Credit Union Administration do not currently have any advisory committees. The Treasury Department, including its various bureaus and offices, maintains nine advisory committees subject to FACA.

RECOMMENDATION

It is recommended that the Board approve the establishment of the FDIC Advisory Committee on Community Banking as detailed in the attached resolution. The proposed advisory committee should enhance the operations and mission of the FDIC by providing the FDIC with a forum for the exchange of views and public debate on current and emerging issues that have a particular impact on small community banks throughout the United States and the local communities that are served by those banks.