FDIC
Federal Deposit Insurance Corporation
550 17th St. NW Washington DC, 20429 Legal Division

October 10, 2006

TO: FDIC Board of Directors

FROM: Douglas H. Jones
Acting General Counsel

Erica F. Bovenzi
Deputy General Counsel
Corporate Operations Branch

SUBJECT: Establishment of FDIC Advisory Committee on Economic Inclusion

EXECUTIVE SUMMARY

In order to provide the FDIC with a useful mechanism to promote dialogue and obtain advice or recommendations from regulated entities or others impacted by FDIC activities, the Chairman is seeking the Board of Directors' ("the Board") approval for the establishment of a new advisory committee at the FDIC, to be called the FDIC Advisory Committee on Economic Inclusion ("the Committee"). On January 16, 2002, the Board of Directors delegated authority to Chairman Powell to establish the FDIC Advisory Committee on Banking Policy. That distinguished committee served the FDIC from 2002 until the expiration of its charter on February 16, 2006.

Like the Committee on Banking Policy, the proposed 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 important initiatives focused on expanding access to banking services by underserved populations. The Committee will provide a forum for the exchange of views through discussion and debate on current and emerging issues on the delivery of financial services to underserved communities. The Committee only will serve an advisory function 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, 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. 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 this Committee function effectively, it is proposed that the Board delegate to the FDIC Chairman all necessary authority to establish and operate the Committee (and any appropriate subcommittees), including the selection of Committee members, establishment of administrative and operational procedures, and budgetary authority. The Committee 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 Committee meet at least two times per year, with members representing a cross-section of interests from the banking industry, the federal government, state regulatory authorities, consumer or public advocacy organizations, community-based groups, as well as others impacted by banking-related practices. Members selected for the Committee, because of their representation of diverse groups with intimate knowledge of banking-related issues and their impact on various segments of the American public, will be in a unique position to provide guidance and valuable comment 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 Committee 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 Federal Advisory Committee Act ("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 the General

Services Administration, 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 a clearly defined purpose; (2) the members of the committee represent a fair balance in terms of points of view represented; (3) the committee will exercise independent judgment and not be inappropriately influenced by the appointing authority or any special interest; and (4) the committee 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 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. Agencies are 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 the committee 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 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 the Act 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

[1] There have been 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.

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 Economic Inclusion

A. Committee's Purpose

The establishment of the FDIC Advisory Committee on Economic Inclusion 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 national 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 resolutions. The purpose of this Committee would be to provide advice and recommendations on issues dealing with providing greater access and offerings of financial services to underserved communities. This may include, but will not be limited to, reviewing basic retail financial services such as check cashing, money orders, remittances, stored value cards, short-term loans, savings accounts, and other services that promote asset accumulation by individuals and financial stability.

The Committee would be utilized to gather information and data on those issues impacting the access to and participation in the banking system by individuals from underserved populations which in turn will help the FDIC to better identify and prioritize issues of concern, and if necessary, to develop and implement strategies and methods to improve banking access and offerings to underserved populations. Information would be gathered that would assist the agency in evaluating its effectiveness in improving the delivery of financial services to the underserved communities and in dealing with the entities it regulates, including the costs and benefits associated with existing regulations and the efficiency of supervisory methods currently employed. The Committee may explore policy options for changes in statutes, regulations or supervisory practices or procedures that will better secure the public policy goals of delivering financial services more efficiently and at less cost if possible to a broader spectrum of individuals while maintaining a safe, competitive and innovative banking system.

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 Committee would operate on an ongoing basis until the FDIC Chairman, with the concurrence of the Board, determines that its continuance is no longer in the public interest. The duties of the Committee would be solely advisory to the FDIC. Determinations of actions to be taken or policies with respect to any matters upon which the Committee provides advice or recommendations would be made only by the FDIC.

B. Legal Requirements to Establish Advisory Committee at the FDIC

If the FDIC forms an advisory committee, it would be governed by FACA and the rules promulgated by GSA, which would require 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 General Services Administration on the establishment of an 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 (U.S. Senate Committee on Banking, Housing and Urban Affairs, 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.

- Terminate the committee after two years, unless renewed with a new charter.

C. Delegation to the FDIC Chairman of Authority to Establish and Operate Advisory Committee

FACA requires the "agency head" to make the determination as a matter of formal record for establishing an advisory committee. Therefore, to be consistent with FACA, it is proposed that the Chairman be delegated the necessary authority by the Board of Directors to take such actions to establish and organize the Committee, including the establishment of subcommittees. This includes, among other things, consultation with the General Services Administration, 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 Committee would report directly to the FDIC Chairman, or her designee.

D. Composition of Committee

It is proposed that the Committee be composed of various individuals from inside and outside the Federal government who would be representative of a broad and diverse range of groups, perspectives and expertise on banking-related and consumer-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, banking regulation, and deposit insurance, the members of the Committee would provide valuable information and perspectives that are not generally available through other sources within the FDIC or the Federal government. The Committee would provide a forum for public debate on many significant issues relating to the expansion of financial services to underserved populations, including technological innovations, as well as provide valuable advice to the FDIC.

It is proposed that the Committee not be any larger than a group consisting of 20. Members of the Committee would include representatives from the following groups: state supervisory authorities; the federal government; bankers who will represent a cross-section from the banking industry; consumer or public advocacy organizations; community-based groups; and others impacted by national banking policy.

It is proposed that Committee 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 Committee use FDIC personnel from various divisions to assist in the administration of the 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 Committee and for assisting in the administration of the Committee, for example, preparation and transcription 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 Committee. Staff from other divisions also may be tasked to perform certain functions for the Committee 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 Committee, 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 the 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 has no current advisory committees. Over the years, the FDIC has had only a few advisory committees. In 1977, the FDIC established the Advisory Committee on State and Federal Regulation of Banks; it was dissolved in 1979. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 required the creation of the Savings Association Fund Industry Advisory Committee; it was exempted by Congress from the requirements of FACA. 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, as noted earlier, in 2002, Chairman Powell established an advisory committee at the FDIC, 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 Board

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. It advises 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 4 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

The other banking agencies, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration, do not currently have any advisory committees.

The Treasury Department, including its various bureaus and offices, maintains 9 advisory committees subject to FACA. Currently, the Securities and Exchange Commission ("SEC") has no active advisory committees subject to FACA. During 2006, the SEC had one advisory committee subject to FACA, the Advisory Committee on Smaller Public Companies, but that committee completed its work earlier this year and issued a final report. SEC staff advised that the committee will be terminated in the near future.

RECOMMENDATION

It is recommended that the Board approve the establishment of the FDIC Advisory Committee on Economic Inclusion 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 impacting the provision of financial services to underserved populations.