

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF MONETARY AFFAIRS

Date: December 3, 1992
To: Federal Open Market Committee
From: Normand Bernard
Subject: Reasons for Discontinuing Memorandum of Discussion in 1976 and Later Congressional Efforts to Reinstate It

At its meeting on May 18, 1976, the Federal Open Market Committee voted to discontinue the preparation of detailed minutes for its meetings. Such minutes, which were then called the "memorandum of discussion" to distinguish them from the formal minutes, had been prepared for every meeting since 1936.¹ The Committee gave the following reason for its action in the policy record for the May 1976 meeting:²

"The decision to discontinue these memoranda reflected the Committee's judgment that the benefits derived from them did not justify their relatively high costs, particularly in light of the changes made in the policy record."

1. The formal minutes were identical to those that are currently prepared. Those minutes (and the policy record) were released to the public after a lag of 45 days prior to May 1976, while the memoranda of discussion were released after five years (subject also to the deletion of sensitive materials mainly relating to foreign developments).

2. At its meeting on February 17, 1976, the FOMC discussed the implications of an adverse U.S. District Court ruling earlier in the year in a suit brought under the Freedom of Information Act. After that discussion, the Committee agreed with a suggestion by Chairman Burns to appoint a subcommittee to consider ways to deal with this issue. The subcommittee was comprised of Governors Coldwell (Chairman) and Partee, and Presidents Mayo and Winn. Their report, dated March 15, 1976, is available in FOMC files. The Committee discussed the desirability of continuing the memorandum of discussion at a special meeting on March 29, at the regular meeting on April 20, and finally at the meeting on May 18, 1976.

No memorandum of discussion was prepared for meetings after March 16, 1976.

The changes in the policy record approved at the meeting involved shortening the publication lag from 45 days to "shortly after the next regularly scheduled meeting." In 1976 the Committee was meeting on a monthly schedule and the new rule had the effect of shortening the publication lag to about 30 days or occasionally to around 35 days, depending on whether the intermeeting interval was 4 weeks or 5 weeks. At this meeting, the FOMC also decided that "policy records would be expanded to include more information concerning members' views on longer-run and current policy." As a result, the length of the typical policy record was more than doubled.

In taking this action, the FOMC agreed with a recommendation by Chairman Burns in a memorandum to the Committee dated April 19, 1976 (copy attached). In that memorandum, Chairman Burns stated in part: "My conclusion reflects our experience in connection with the recent Court³ order that we make 'segregable facts'⁴ from the memorandum available to a plaintiff. The premature disclosure of 'segregable facts' could, in some cases, do damage to the work of the Committee--particularly if the present Court or some later one rules that we acted inappropriately in withholding certain facts about foreign currency operations and procedural matters. Moreover, the effort

3. Attached is a brief note by Mr. Siciliano concerning the eventual disposition of this case (Merrill v. FOMC), including a decision by the Supreme Court in 1979 regarding the related issue of the immediate release of the directive.

4. "Segregable facts" in this context are nonconfidential facts that can reasonably be segregated from confidential information. Such information includes opinions, recommendations, and deliberations of FOMC members and staff. Nonconfidential facts are deemed to be reasonably segregable if, standing alone, they are intelligible to the reader. Most sentence fragments are not deemed to be "segregable facts."

to comply with the Court order in an appropriate manner required the expenditure of a tremendous amount of time by our senior staff and a considerable amount of my own time." The memorandum went on to recommend alternative procedures including an expansion of the policy record and a reduction in the lag for releasing the policy record. Chairman Burns concluded that "the public would be better informed about the Committee's actions under the proposed procedures than it is at present, and the Committee's needs would be served more efficiently."

Subsequent Developments

On June 30, 1976, Chairman Burns commented on the reasons for the Committee's decision in the course of testimony before the Joint Economic Committee. During the hearing (which was focused on general policy and economic issues), both Senator Proxmire (Chairman of the Senate Banking Committee) and Congressman Reuss (Chairman of the House Banking Committee) expressed strong reservations about the decision to discontinue the memorandum of discussion. They urged Chairman Burns to bring the issue back to the FOMC for a review, and he agreed to do so. The Committee reconsidered the matter at its meeting of July 19-20, 1976 and reaffirmed its earlier decision. As at the meeting on May 18, Governor Coldwell cast the lone dissenting vote. A letter to the chairmen of the two banking committees informed them of the FOMC's reconsideration and provided some elaboration of the reason given in the policy record for the May 1976 meeting. A copy of that letter, dated July 26, is attached.

Subsequently, bills were introduced in 1977, 1979, 1981, and 1983 that would have required the FOMC to prepare "detailed minutes" and that provided for deferred availability of

such minutes to the public. None of these bills made it through both houses, though one (in 1979) was passed by the House. The bill was approved by the Senate Banking Committee, but it was not passed by the full Senate before adjournment.

In its testimony on these legislative proposals, the Board gave its qualified endorsement to the reinstatement of detailed minutes.⁵ There follows a brief description of the various bills and/or excerpts from testimony presented by Chairman Burns (1977), Governor Coldwell (1979), Governor Schultz (1981), and Chairman Volcker (1983). It might be noted that the different bills provided for minimum periods of three years (1977 and 1979) or four years (1981 and 1983) before the detailed minutes could be released to the public. As reflected in the excerpts, Chairman Burns was strongly opposed to any release before five years; Governor Coldwell indicated the Board's acceptance of a three-year minimum (though some Board members preferred a longer delay); and both Governor Schultz and Chairman Volcker opposed any delay of less than four years. References to 3-1/2 or 4-1/2 year delays in some of the excerpts relate to provisions in the bills that would have required all of the detailed minutes for a given year to be released at the same time, thus implying maximum delays close to four or five years (for January meetings) and minimum delays of about three or four years (for December meetings).

5. In 1977, the House Subcommittee on Domestic Monetary Policy solicited the views of economists, historians, bankers, and former Board members on the value of detailed FOMC minutes. It received 81 written opinions, including views from former Governors Daane, Maisel, and Robertson. See attachment 4 reproduced from a 1979 House Banking Committee report.

1977

H.R. 9465: A bill to require the FOMC to maintain detailed minutes of its meetings and to release those minutes to the public 3 years after each meeting.

Chairman Burns: "We are sympathetic to the concerns that underlie this proposal, and we are reluctant to oppose it. However, we believe there are three shortcomings in the bill as it is presently drafted. First, no provision is made for exclusion of material that may be embarrassing to foreign governments or institutions. Second, three years is not a sufficiently long period to avoid the inhibiting effects that may derive from the anticipated release of the views expressed at FOMC meetings. If this proposal were to be adopted, we would strongly prefer a return to the prior practice of releasing the memorandum with a five-year lag. Third, and most important, the bill does not address the possibility that the FOMC might be compelled under the Freedom of Information Act to make public all or significant portions of the memoranda more promptly than the specified period, whether it be three or five years. In the absence of expressed statutory protection against premature disclosure of the memoranda, we would feel compelled to object to a proposal to return to the practice of keeping extensively detailed minutes of FOMC meetings."

1979

H.R. 4998: The minutes are to include a transcript of the proceedings of each meeting which may be edited for style but without changes in substance. The Board may delete from the minutes information regarding foreign countries and central banks and international institutions....Such deletions must be noted, and the legislation requires that the information eventually be published. The minutes themselves would be published by the Board on, but not before, the first business day of February of the fourth calendar year following the one in which the meeting involved occurs. (Senate summary)

Governor Coldwell: "The Board sympathizes with the concerns that underlie these proposals and has no objection to publication of such minutes provided it is made clear in legislation that no portion of the minutes may legally be released prior to a specified minimum period of at least 3 years and provided that references to sensitive international developments can be screened by the FOMC and withheld for additional periods..."

1981

H.R. 4478: This bill reestablishes the practice of the FOMC to maintain detailed minutes and provides for their public release yearly on an average 4-1/2-year deferred basis... The minutes of each such meeting

shall contain a detailed record of the proceedings of such meeting and shall be prepared in accordance with publicly available guidelines prescribed by the Board. Such guideline may authorize the inclusion of staff reports. Views expressed by any member of the Committee shall be attributed to such member... Before the publication of any such minutes...the Board may delete from such minutes any information regarding any foreign country, central bank of a foreign country, or any international institution... (Subcommittee Chairman Walter Fauntroy's summary).

Governor Schultz: "The Board sympathizes with the concerns that underlie this proposal and has no objection to publication of such minutes in accordance with the provisions of H.R. 4478." In response to a question during the hearing as to whether he "would take kindly to a benign little amendment to (reduce the lag) to three-and-a-half years," Governor Schultz replied: "It is my judgment and the judgment of the other members of the FOMC that four-and-a-half years is a preferable time period, but I can't sit here and pound the desk and tell you it would certainly not be in the best interests of the country if the time period were somewhat shorter because it is a judgmental question."

1983

H.R. 4009, The Federal Reserve Modernization Act. (See Attachment 5 for the text of this bill as it relates to detailed minutes.)

Chairman Volcker: "The Board understands the desire to establish a more detailed record that might be of future interest to historians, economists, and other close students of monetary policy. Accordingly, the Board has no objection to the preparation and eventual release of such minutes provided a suitable period of time has elapsed. We believe such a time period is essential to preserve the confidentiality and spontaneity of the deliberations. The provisions of H.R. 4009 make clear that no portion of the minutes may legally be released before a specified minimum period of approximately four years after the calendar year in which the meeting occurred, and provides for the withholding of references to sensitive international financial developments for additional periods. A minimum period of that length is necessary to avoid inhibiting the frank exchange of views during policy discussions and the risk of politicizing the decision-making process."

Attachments

1. Memo to FOMC from Chairman Burns, dated April 19, 1976, recommending that the memorandum of discussion be discontinued.
2. Letter to Chairman Proxmire from Chairman Burns, dated July 26, 1976, informing him that the FOMC had reaffirmed its decision to discontinue the memorandum of discussion.
3. Note from Mr. Siciliano regarding court decisions in the Merrill case.
4. Excerpt from the Report of the Committee on Banking, Finance, and Urban Affairs, dated September 7, 1979, providing certain background information including a report of the views of 81 "experts."
5. Text of H.R. 4009 (portion relating to "detailed minutes.")

At its meeting on May 18, 1976, the Federal Open Market Committee voted to discontinue the memorandum of discussion, a document that had been prepared for every meeting since 1936. In the policy record for that meeting, the Committee succinctly stated⁶ the following reasons for its action:

"The decision to discontinue these memoranda reflected the Committee's judgment that the benefits derived from them did not justify their relatively high costs, particularly in light of the changes made in the policy record."

The changes in the policy record approved at the meeting involved shortening the publication lag from 45 days to "shortly after the next regularly scheduled meeting." In 1976 the Committee was meeting on a monthly schedule and the new rule had the effect of shortening the publication lag to about 30 days or occasionally to around 35 days, depending on whether the intermeeting interval was 4 weeks or 5 weeks. At this meeting, the FOMC also decided that "policy records would be expanded to include more information concerning members' views on longer-run and current policy." This resulted in a lengthening of the

6. There was no memorandum of discussion prepared for meetings after March 16, 1976 and thus no official record of the discussion exists. Available records indicate that the Committee discussed the desirability of continuing the memorandum of discussion at a special meeting on March 29, at the regular meeting on April 20, and finally at the meeting on May 18, 1976. In addition, there was some discussion at the meeting on February 17, 1976, of the implications of an adverse U.S. District Court ruling earlier in the year in a suit brought under the Freedom of Information Act. After that discussion, the FOMC agreed with a recommendation by Chairman Burns to appoint a subcommittee to consider ways to deal with this issue. The subcommittee was comprised of Governors Coldwell (Chairman) and Partee, and Presidents Mayo and Winn. A copy of their report, dated March 15, 1976, is available in FOMC files.

policy record from about 4 to 5 pages to around 15 pages in 1976.

Subsequent Developments

On June 30, 1976, Chairman Burns commented on the reasons for the Committee's decision in the course of testimony before the Joint Economic Committee. During the hearing (which was focused on more general policy and economic issues), both Senator Proxmire (Chairman of the Senate Banking Committee) and Congressman Reuss (Chairman of the House Banking Committee) expressed strong reservations about the decision to discontinue the memorandum of discussion. They urged Chairman Burns to bring the issue back to the FOMC for a review and he agreed to do so. The review was on the agenda for the meeting of July 19-20, 1976 and after discussion the FOMC reaffirmed its decision. As at the meeting on May 18, Governor Coldwell cast the lone dissenting vote. A letter to the Chairmen of the two banking committees informed them of the FOMC's reconsideration and provided some elaboration of the reason given in the policy record for the May 1976 meeting. A copy of that letter, dated July 26, is attached. Also attached is a copy of a memorandum from Chairman Burns to the FOMC, dated April 19, 1976 in which he recommended that the memorandum of discussion be discontinued.

Subsequently, a series of bills were introduced in 1977, 1979, 1981, and 1983 that would have required the FOMC to prepare "detailed minutes" and that provided for deferred availability of such minutes to the public. None of these bills made it through both houses, though one (in 1979) was approved by the House. In the Senate, the bill was endorsed by the Banking Committee, but it was "vacated" on the Senate floor because of an

objection from Senator Chiles who reportedly wanted to subject the FOMC to the Government in the Sunshine Act.

In its testimony on these legislative proposals, the Board gave all of the bills its qualified endorsement as the following excerpts illustrate:

1977

H.R. 9465: Bill to require the FOMC to maintain detailed minutes of its meetings and to release those minutes to the public 3 years after each meetings.

Chairman Burns: ". . . we are sympathetic to the concerns that underlie this proposal, and we are reluctant to oppose it. However, we believe there are three shortcomings in the bill as it is presently drafted. First, no provision is made for exclusion of material that may be embarrassing to foreign governments or institutions. Second, three years is not a sufficiently long period to avoid the inhibiting effects that may derive from the anticipated release of the views expressed at FOMC meetings. If this proposal were to be adopted, we would strongly prefer a return to the prior practice of releasing the memorandum with a five-year lag. Third, and most important, the bill does not address the possibility that the FOMC might be compelled under the Freedom of Information Act to make public all or significant portions of the memoranda more promptly than the specified period, whether it be three or five years. In the absence of expressed statutory protection against premature disclosure of

the memoranda, we would feel compelled to object to a proposal to returning the a practice of keeping extensively detailed minutes of FOMC meetings."

1979

H.R. 4998: The minutes are to include a transcript of the proceedings of each meeting which may be edited for style but without changes in substance. The Board may delete from the minutes information regarding foreign countries and central banks and international institutions.....Such deletions must be noted, and the legislation requires that the information eventually be published. The minutes themselves would be published by the Board on, but not before, the first business day of February of the fourth calendar year in which the meeting involved occurs. (Senate summary)

Governor Coldwell: "The Board sympathizes with the concerns that underlie these proposals and has no objection to publication of such minutes provided it is made clear in legislation that no portion of the minutes may legally be released prior to a specified minimum period of at least 3 years and provided that references to sensitive international developments can be screened by the FOMC and withheld for additional periods..."

1981

H.R. 4478: This bill reestablishes the practice of the FOMC to maintain detailed minutes and provides for

their public release yearly on an average 4-1/2-year deferred basis....The minutes of each such meeting shall contain a detailed record of the proceedings of such meeting and shall be prepared in accordance with publicly available guidelines prescribed by the Board. Such guideline may authorize the inclusion of staff reports. Views expressed by any member of the Committee shall be attributed to such member...Before the publication of any such minutes....the Board may delete from such minutes any information regarding any foreign country, central bank of a foreign country, or any international institution...

Governor Schultz: "The Board sympathizes with the concerns that underlie this proposal and has no objection to publication of such minutes in accordance with the provisions of H.R. 4478."

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Chairman Volcker: "The Board understands the desire to establish a more detailed record that might be of future interest to historians, economists, and other close students of monetary policy. Accordingly, the Board has no objection to the preparation and eventual release of such minutes provided a suitable period of time has elapsed. We believe such a time period is essential to preserve the confidentiality and spontaneity of the deliberations. The provisions of H.R. 4009 make clear that no portion of the minutes may

legally be released before a specified minimum period of approximately four years after the calendar year in which the meeting occurred, and provides for the withholding of references to sensitive international financial developments for additional periods. A minimum period of that length is necessary to avoid inhibiting the frank exchange of views during policy discussions and the risk of politicizing the decision-making process.

Attachments

1. Memo to FOMC from Chairman Burns, dated April 19, 1976, recommending that the memorandum of discussion be discontinued.
2. Letter to Chairman Proxmire from Chairman Burns, dated July 26, 1976, informing him that the FOMC had reaffirmed its decision to discontinue the memorandum of discussion.
3. Staff estimate of the yearly cost (\$ 64,000 in 1977) of producing the memorandum of discussion.
4. Suggested responses to possible questions prepared for Chairman Volcker prior to his testimony on the "detailed minutes" bill in October 1983.