

FDIC Outside Counsel Deskbook

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Forms & Related Links

Alternative Dispute Resolution/Binding Arbitration

Budget Forms

Byrd Amendment

Conflicts of Interest

Electronic Funds Transfer (EFT) Guidelines

Invoice Package

Legal Referral

Legal Services Agreement forms

Travel

Related Information

Historical Information



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Outside Counsel Deskbook

Purpose

The Outside Counsel Deskbook ("Deskbook") has been prepared by the Legal Division ("Legal Division" or "Division") of the FDIC. The Deskbook is designed to provide information to attorneys and law firms who are engaged to represent the interest of the FDIC ("Outside Counsel" or "firm"). It sets forth the FDIC's requirements and many of the terms of the relationship between the FDIC and Outside Counsel. It is important that Outside Counsel read, maintain familiarity with and adhere to the provisions in the Deskbook.

The Deskbook includes the policies, procedures, and forms that the FDIC requires its Outside Counsel to follow and use. Each chapter covers a key area of interest and the appendices and Forms & Related Links provide additional information, forms and worksheets.

The Deskbook supersedes the prior Outside Counsel Deskbook (December 1, 1998) which superseded all prior Guides for Outside Counsel ("Guides") including the Guide for Outside Counsel prepared by the Legal Division of the Resolution Trust Corporation ("RTC").

Effective Date

The effective date of the Deskbook is June 1, 2005. The Legal Division may amend the Deskbook from time to time. Amendments shall be effective on the dates specified by the Legal Division.

Forms & Related Links

Alternative Dispute Resolution/Binding Arbitration

- [Binding Arbitration - FDIC Directive 5310.1 \(June 5, 200\) - Word 109k \(Word Help\)](#)
- [Final Statement of Policy Regarding Binding Arbitration](#)

Budget Forms

- [Litigation Budget Form - Word 65k \(Word Help\)](#)
- [Amended Litigation Budget Form - Word 63k \(Word Help\)](#)
- [Non-Litigation Budget Form - Word 59k \(Word Help\)](#)
- [Amended Non-Litigation Budget Form - Word 64k \(Word Help\)](#)

Byrd Amendment

- [Byrd Amendment Implementation Statement](#)
- [Certification Form - Word 62k \(pages 8 & 9 of FDIC Certification Form 3700/04A\) \(Word Help\)](#)
- [Disclosure of Lobbying Activities Form - PDF 51k \(PDF Help\)](#)

Conflicts of Interest

- [Representations and Certifications for Legal Contractors - Word 63k \(Word Help\)](#)
- [Outside Counsel Conflicts of Interest Procedures](#)
- [2003 Statement of Policies Concerning Outside Counsel Conflicts of Interest](#)
- [12 C.F.R. Part 366 - Minimum Standards of Integrity and Fitness for an FDIC Contractor](#)
- [Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues With the FDIC](#)

Electronic Funds Transfer (EFT) Guidelines

- [EFT Requirements](#)
- [Substitute Form W-9 Request for Taxpayer ID Number and Certification - Word 71k \(Word Help\)](#)
- [Payee Information for Automatic Deposit of Payment form - Word \(Word Help\)](#)

Invoice Package

- [Legal Invoice Fee & Expenses form - Word 79k \(Word Help\)](#)

Legal Referral

- [Referral Letter](#)
- [Byrd Amendment Implementation Statement](#)
- [Certification Form - Word 62k \(pages 8 & 9 of FDIC Certification Form 3700/04A\) \(Word Help\)](#)
- [Disclosure of Lobbying Activities Form - PDF](#)

Legal Services Agreement forms

- [Legal Services Agreement - Word 52k \(Word Help\)](#)
- [Legal Services Agreement Amendment - Word \(Word Help\)](#)
- [Legal Services Agreement Amendment Continuation Sheet - Word 134k \(Word Help\)](#)
- [Legal Service Agreement Rate Schedule - Word 81k \(Word Help\)](#)
- [Legal Service Agreement Rate Schedule Continuation Sheet 97k \(Word Help\)](#)
- [Foreign Firm Legal Services Agreement](#)

Travel

- [Law Firm Travel Voucher form - Word 118k \(Word Help\)](#)
- [Law Firm Travel Voucher Continuation form - Word 149k \(Word Help\)](#)
- [Law Firm Travel Voucher Sample](#)
- [FDIC's Contractor Travel Reimbursement Guidelines \("Guidelines"\) 71k \(Word Help\)](#)
- [GSA Per Diem Rates](#)

Related Information

- [Information for Prospective Outside Counsel](#)
- [Current FDIC Outside Counsel Contacts List](#)

Historical Information

- [Outside Counsel Deskbook \(1998\) \(Superseded\)](#)

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Outside Counsel Deskbook

Representing the FDIC

1.1 Scope of the Deskbook

The Deskbook describes the policies and procedures that must be followed by Outside Counsel beginning with the execution of a Legal Services Agreement ("LSA") (refer to [Chapter 3](#)), continuing through retention and concluding with post-representation responsibilities

1.2 Identifying the FDIC as a Client

You may list the FDIC as a client in published materials as long as you adhere to the following restrictions

You may not represent that you have been "approved" as Outside Counsel for the FDIC. As Outside Counsel, you are required to comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of "expert" status, expertise, or specialization. Similarly, you may not quote FDIC materials or staff comments as to performance evaluations, if any.

1.3 Statutory Compliance

The Legal Division requires all Outside Counsel to be familiar and comply with all applicable statutes and orders, as well as regulations, policies, procedures and directives promulgated pursuant thereto. Refer to [Appendix B](#) for a representative list of applicable federal laws and regulations.

1.4 Equal Employment Opportunity and Diversity

The FDIC has a strong commitment to equal opportunity under the law. As part of the FDIC's Minority and Women Outreach program, the Legal Division actively seeks to consider for engagement firms owned by minorities and/or women. Moreover, the FDIC expects its contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a qualified covered veteran as defined by 38 U.S.C. § 4212(a)(3).

"Minority-owned firms" are those that are at least 51% owned and controlled (through day-to-day management) by one or more persons who are members of one or more of the following groups:

- Black American,
- Hispanic American,
- Native Americans,
- Asian Pacific Americans,
- Sub-Continent Asian Americans, and
- Members of other groups designated from time to time by the Small Business Administration (SBA)

"Women-owned firms" are those that are at least 51% owned and controlled (through day-to-day management) by non-minority women. Firms claiming minority- or women-owned status must certify their status as such to the FDIC, and the FDIC may require additional information to verify the status.

The FDIC also participates in the Small Business Administration's (SBA's) Socially Disadvantaged Business (SDB) program. However, at this time, legal services are not an industry recognized by the SBA for SDB benefits.

1.5 Ethical Considerations

The FDIC expects you to maintain the highest ethical standards and to comply with all applicable laws, rules

and regulations governing ethical conduct. In particular, you should be cognizant of the following

- To avoid any appearance problem, neither you nor any person associated with your firm shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of monetary value to any employee of the FDIC which is not in conformity with 5 C F R § 2635, Subpart B, of the Standards of Ethical Conduct for Employees of the Executive Branch. While private firms may host social or holiday functions for business associates and others with whom they do business, there are limitations on attendance at these events by FDIC employees. With few exceptions, FDIC employees may not solicit or accept gifts from anyone who does, or seeks to do, business with the FDIC.
- Your firm may hire former FDIC employees, but as former employees they are subject to the government-wide post-employment statute, 18 U.S.C. § 207, which affects what they can do for your firm. Generally, however, former FDIC employees may work on matters that they worked on personally or which were under their supervision while at the FDIC, with special consideration and caution given to representing these matters back before the FDIC or to the Federal government.
- If an FDIC employee was involved in negotiating your firm's current LSA, that individual upon joining your firm may not, during the duration of the LSA, renegotiate the rate schedule, request changes in service providers or be involved in any matter pertaining to questions of the competence of the services provided by your firm under the LSA.

For more information, contact the Ethics Section, FDIC Legal Division, Washington, D.C. at (877) 275-3342

1.6 File Retention

All information maintained in the legal matter files, whether supplied by the FDIC or third parties or created by you, including attorney work product, is the property of the FDIC.

Under no circumstances may you withhold files for any reason including a dispute over payment.

Upon completion or termination of the matter, you are responsible for the preservation of the files until the FDIC authorizes the files' destruction or the FDIC orders their transfer to the FDIC or another organization. Refer to [Chapter 8](#) and [Chapter 9](#).

NOTE There are separate records retention requirements for underlying support documentation related to your FDIC invoices. Refer to [Section 1.7](#) below and [Chapter 7, Section 7.11](#).

1.7 Audit Rights

Outside Counsel must permit the FDIC, the FDIC Office of Inspector General and the General Accounting Office, or their representatives, to conduct audits or reviews of your FDIC billings, including previously paid invoices. All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process.

For purposes of subsequent audits, Outside Counsel must retain copies of all invoice packages and original underlying support documentation, including time sheets and time and expense adjustment records, for at least three years after final payment under the legal referral.

The recordkeeping requirements for electronic billing (timekeeping) systems are discussed in [Appendix C](#). The FDIC reserves the right to obtain additional information upon review of any itemized fee bill or support documentation.

1.8 Fees and Expenses

The Legal Division will consider flat rate and other innovative rate proposals.

You must include in your fees or hourly rates for legal services your costs of doing business, including all "overhead," general and administrative costs, fringe benefits, and profit. You may not submit and the FDIC will not pay invoices for such costs of doing business. "Markups" above any costs actually incurred by you for any supplies or services obtained by you for the Legal Division shall not be charged to the FDIC, any discounts you receive are expected to be passed on to the FDIC.

The FDIC will only pay reasonable costs for services rendered or supplies provided in the course of representation. The invoice process is discussed in *Chapter 7*.

The FDIC expects that computer software or other intellectual property required in the course of your representation of the FDIC will be included as an overhead component of your fees or hourly rates. Therefore, FDIC shall not reimburse you for such expenses absent prior written approval from the Senior Counsel of the FDIC Legal Information and Technology Unit (LITU). All computer software and other property purchased at FDIC expense shall be the property of the FDIC and shall be delivered to the FDIC at closeout of the matter (case) in accordance with the procedures contained in *Chapter 8*. All licenses of computer software and other intellectual property shall name the FDIC as the licensee or shall be assignable to the FDIC without any additional cost upon close out of the matter.

NOTE The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in sanctions. Under no circumstances may Outside Counsel attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment for services rendered.

1.9 Malpractice Insurance

You are required to maintain adequate malpractice insurance when representing the FDIC in all matters. You must advise the Legal Division of the identity of your malpractice insurance carrier, the extent and duration of your coverage, and limitations on your coverage that may affect the FDIC. You must furnish a copy of the malpractice insurance policy upon request by the Legal Division of the FDIC or the Office of Inspector General.

1.10 Contacts with the Media and the Public

Extra-judicial statements regarding FDIC matters are almost always inappropriate and often counterproductive. If media representatives contact you concerning cases that you are handling on behalf of the FDIC, you may confirm factual matters that are a matter of public record. Under no circumstances shall you comment to the media on other specifics of a case, such as potential appeals or settlements, or on more general matters involving the FDIC's policies and procedures or decision-making.

FDIC Office of Public Affairs

All media inquiries concerning FDIC matters must be referred to the FDIC Office of Public Affairs in Washington, D C , at (877) 275-3342 for response. Additionally, you should promptly advise the FDIC Oversight Attorney of the inquiry and referral to the FDIC Office of Public Affairs.

Speaking Engagements

If you address the public at seminars or other functions on topics pertaining to the FDIC or laws and regulations affecting the FDIC, you must disclose to the audience that you are making the presentation on your own behalf and not on behalf of the FDIC.

1.11 Role of FDIC Oversight Attorney

Attorneys in the Legal Division are responsible for managing all legal assignments and litigation, including matters referred to Outside Counsel. Outside Counsel must consult with the Oversight Attorney on all strategic and major tactical decisions associated with a matter.

On routine cases the Legal Division does not expect to be involved in every decision. **However, important decisions always should be raised with your Oversight Attorney in sufficient time to allow for meaningful review and consideration of the issues especially if a case involves policy issues or substantial sums.**

At the Beginning of the Legal Matter

It is important at the beginning of a legal matter to identify clearly the objectives to be achieved and possible alternative courses of action. As a general matter (depending in part on the scope of the assignment), the Oversight Attorney will

- Define the goals and objectives to be achieved
- Outline your role and expected duties

- Discuss with you the scope of the required case plan and budget designed to achieve the FDIC's goals and objectives in a cost-effective manner *Refer to Chapter 6*

During the Course of the Legal Matter

During the course of the legal matter, the Oversight Attorney will

- Review your work and may participate in representation
- Monitor progress against the case plan and budget
- Review and obtain approval of any significant changes in the case plan or budget
- Keep FDIC business personnel informed of developments
- Coordinate contacts between Outside Counsel and FDIC business personnel, as discussed below
- Evaluate your performance as Outside Counsel on an on-going basis. Among the items evaluated are the quality of the services provided, cost consciousness, responsiveness to Legal Division and business personnel, effective management of matters referred, and compliance with FDIC policies and procedures

Contacts with Other FDIC Offices

Generally all contact with non-legal FDIC personnel should be made through the Legal Division. This policy permits the most efficient utilization of resources and serves to avoid duplication of effort and to minimize costs. Therefore, you are expected to direct all communications to your Oversight Attorney, except in the following circumstances:

- When referring a media inquiry to the FDIC Office of Public Affairs,
- When your Oversight Attorney indicates otherwise,
- When immediate action is required and neither your Oversight Attorney nor his/her supervisor can be reached,
- When responding to the FDIC's Office of Inspector General, or
- When seeking limited factual information that can be obtained in a relatively brief amount of time (such as payoff figures for a loan or the address of a borrower)

Under special circumstances or in certain types of litigation, your Oversight Attorney may make arrangements for more extensive direct contact with FDIC business personnel. This might occur, for example, in a case involving an in-depth investigation of an institution's records.

Charges for time and expenses related to contacts other than those authorized may not be paid.

1.12 Termination

The Legal Division reserves the right to discontinue its relationship with you for any or no reason. Notification will be confirmed in writing. You will be contacted and provided instructions concerning disposition of files and other FDIC property. Your cooperation during transition is an ethical obligation and necessary for an orderly transfer of legal matters.

You must forward upon demand of the Legal Division all files and documents concerning the terminated legal matter(s) including all work product of your firm. It is important that you promptly forward files as instructed. Failure to do so may delay or prevent payment of your final invoice. Under no circumstances may you withhold files in the event of a dispute with the FDIC.

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Outside Counsel Deskbook

Conflicts of Interest

2.1 Legal Division Conflicts Policies and Procedures

FDIC policies and procedures governing Outside Counsel conflicts of interest are found in the "[Statement of Policies Concerning Outside Counsel Conflicts of Interest](#)" and "[Outside Counsel Conflicts of Interest Procedures](#)" (collectively, "Conflicts Policies and Procedures") You should refer to the Conflicts Policies and Procedures, as they may be amended, for specific guidance on conflicts of interest

2.2 FDIC Regulations and Policies

There are also specific reporting requirements contained in the regulations at [12 C F R Part 366](#), as amended or superseded. These regulations prescribe minimum standards of fitness and integrity for Outside Counsel and any employees, agents, or subcontractors (such as experts or consultants) who are used to provide professional services on FDIC matters. See also [FDIC Form 5200/01 for representations and certifications required by the FDIC in accordance with 12 C F R Part 366](#)

In addition, you should be cognizant of the requirements of the "[Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues with FDIC](#)", which specifies that Outside Counsel may be deemed to have a conflict of interest as a result of unresolved audit issues with the FDIC

2.3 Rules of the Legal Profession

You must also observe applicable state bar rules of professional responsibility with respect to conflicts of interest and confidentiality, and the [American Bar Association Model Rules of Professional Conduct](#) to the extent that these are not contrary to applicable state bar rules

2.4 Required Disclosures

In general, Outside Counsel must disclose, in writing to the Legal Division, information concerning actual or potential conflicts of interest and matters that may present the appearance of a conflict. Disclosure should be made to the conflicts coordinator in the office or section that is responsible for overseeing your Legal Services Agreement. Refer to [Chapter 3](#)

Required disclosures include but are not limited to the following

- Whether your firm currently represents any interest adverse to the FDIC in any of its capacities or a subsidiary of a failed insured depository institution
- Whether your firm previously represented an open insured depository institution that subsequently failed or previously represented any interest adverse to such an institution
- Whether there exists an actual or potential conflict or the appearance of a conflict of interest between your firm and the
 - Board of Governors of the Federal Reserve System,
 - Office of the Comptroller of the Currency,
 - National Credit Union Administration,
 - Office of Thrift Supervision, or
 - Department of Justice (on matters involving failed insured depository institutions or their directors, officers or related third parties)
- Whether your firm or any attorney of your firm currently has any outstanding debt, whether performing

or in default, owed to any failed insured depository institution

- Whether any attorney of your firm has served or serves as an officer, director or substantial shareholder of any insured depository institution
- Whether any attorney of your firm has served or serves as a trustee in bankruptcy or as a receiver in any federal or state court or administrative proceeding
- Whether your firm has represented or represents a debtor-in-possession, trustee in bankruptcy, or a receiver in a proceeding in which the FDIC in any of its capacities has an interest as a creditor or otherwise
- Whether your firm represents a creditor in a bankruptcy, receivership, or other litigation proceeding where the FDIC in any of its capacities has asserted claims against the same debtor in either the same or an unrelated proceeding
- Whether your firm represents any insurance carrier or any stockholder or class of stockholders in an action against a director or officer of an insured depository institution
- Whether your firm represents any insured depository institution in regulatory matters or assistance transactions
- Whether your firm represents a prospective bidder for a troubled or failed institution or the assets of such an institution
- Whether your firm represents any officer, director, debtor, creditor, or stockholder of any failed or assisted insured depository institution in a matter relating to the FDIC in any of its capacities
- Whether any attorney of your firm is closely related to any person employed by the FDIC, is in litigation with the FDIC in any of its capacities, has outstanding debt owed to any failed depository institution or an ownership interest in such an institution. This includes spouse, dependent child or member of the immediate household
- Whether your firm or any attorney of your firm has been or is currently subject to any prior or pending claims or investigations by the FDIC in any of its capacities
- Whether your firm or any management official of your firm has been charged with the commission of a felony or is currently a party to an administrative or judicial proceeding in which fraudulent activity is alleged

2.5 Duty to Disclose at Application and Thereafter

At the time of application, the Legal Division requires that you disclose all actual or potential conflicts of interest and matters that may present the appearance of a conflict. You are also required at the time of application to comply with the requirements of 12 C.F.R. Part 366. Information about your system for tracking conflicts and your policy regarding the resolution of conflicts must also be provided.

After application, you must disclose in writing all actual or potential conflicts and matters that may present the appearance of a conflict to the Legal Division as soon as you learn of their existence. When in doubt about the existence of a conflict, you should nevertheless disclose the matter and seek a waiver. Even after a conflict has been reported or a waiver granted, you must notify the Legal Division of any material change in facts.

2.6 Conflict Determination

It is solely within the discretion of the Legal Division to determine whether an actual or potential conflict exists. Moreover, even the appearance of a conflict may result in the denial of a waiver or imposition of other corrective actions.

Conflicts of interest may only be waived by the Legal Division in writing. Generally, requests for waivers of conflicts of interest are granted or denied on behalf of the FDIC by the FDIC Outside Counsel Conflicts Committee in Washington, D.C.

Requests for waivers are considered only on a case-by-case basis

Conflict of Interest for Waiver Request Process:

- 1 Written request for waiver of conflict from law firm to Legal Services Unit Washington, D C
- 2 Legal Services Unit contacts oversight attorney(s) who make(s) a recommendation
- 3 Legal Services Unit submits the request and recommendation for requisite Legal Division approval
- 4 Legal Services Unit submits the request to the Conflicts Committee
- 5 Conflicts Committee makes determination
- 6 Legal Services Unit notifies outside counsel and FDIC LSA Office of Committee's decision

2.7 Noncompliance

Failure to disclose promptly actual or potential conflicts of interest, or matters that may present the appearance of a conflict, as well as failure to comply with FDIC's conflicts of interest policies and procedures, may result in the following

- Imposition of a bar to application, &
- Termination of your legal services,
- Suspension of new referrals,
- Disallowance in whole or in part of fee bill(s) for services rendered,
- Denial of a conflict waiver, or
- Other corrective actions, including referral to the appropriate state licensing authorities or civil or criminal actions

You are not permitted to go forward with a representation adverse to the FDIC until the conflict has been waived or the situation otherwise resolved to the satisfaction of the Legal Division

In the event your legal services are terminated, you must follow FDIC policies and procedures, return all files, and otherwise cooperate fully in the orderly transfer of matters as the Legal Division directs

2.8 FDIC as Former Client

You have the continuing responsibility to report in writing any actual or potential conflict of interest or appearance of a conflict, regardless of whether you are representing the FDIC on active matters at the time of discovery

Note that in the event you no longer represent the FDIC, you may not without a waiver later represent another client against the FDIC in a matter substantially related to any matter in which you previously represented the FDIC

You are also expected to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation. Refer to [Chapter 9](#)

2.9 Questions Concerning Conflicts

For information, contact the Legal Services Unit in Washington, D C , at (877) 275-3342

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Outside Counsel Deskbook

Legal Services Agreement (LSA)

3.1 Application

As Outside Counsel interested in representing the FDIC, you requested and received an application package from the Legal Division. The application package requires various disclosures and requests information including areas of expertise, firm composition, and conflicts of interest.

Application procedures are set forth in the brochure entitled *Information for Prospective Outside Counsel*.

The information and disclosures, some statutorily mandated, were necessary for the Legal Division to determine whether the FDIC could retain your services. The Legal Division considers rates, abilities, areas of expertise, conflicts of interests, need for additional Outside Counsel in a particular geographic area and other factors when determining whether to negotiate an LSA with a firm. The firm proposed a rate schedule for each office (location) of the firm that may provide services. Included in the application package was the FDIC standard form (LSA). Refer to *LSA Forms*.

3.2 Purpose of LSA

The LSA is an agreement between you and the FDIC that contains terms and conditions applicable to legal referrals and is incorporated in all referral letters. The Deskbook, as it may be amended from time to time, is expressly incorporated in the LSA and the referral letter. FDIC's execution of an LSA with your firm is not a guarantee that you will receive legal referrals from the FDIC.

Outside Counsel is hereby notified that the FDIC does not view the standard form Legal Services Agreement as confidential under the Freedom of Information Act (FOIA) Exemption 4 and generally treats outside counsel's standard rates charged to the FDIC as public information and releasable pursuant to the FOIA.

3.3 LSA Duration

The FDIC will execute only one LSA with your firm for the duration of the LSA. Refer to *LSA Forms*. Your LSA is effective on the date specified in the LSA. If no effective date is indicated, it is effective as of the date signed by the FDIC. The term of your LSA is two years from the effective date unless the Legal Division elects to terminate or extend it prior to its expiration. FDIC reserves the right to terminate your LSA without cause or advance notice. Absent compelling reasons no increase in the rate schedule attached to the LSA will be permitted during its term.

If at the end of the term you are working on a legal referral and do not renew your LSA, your LSA will continue for the sole purpose of completing existing work under the same terms and conditions provided your LSA expressly permits continuation. If your LSA has the continuation provision, your LSA will continue until the earliest of

- All work on outstanding legal referrals is complete,
- A new LSA is executed, or
- FDIC exercises its right to terminate your LSA

Continuation of your LSA is not the same as renewal of your LSA. Continuation does not permit you to receive any new referrals.

3.4 LSA Renewal

When your LSA is within 90 days of expiration, you should contact the Legal Division office or section that

oversees your LSA if you wish to renew your LSA. This is usually the FDIC office or section that entered into the LSA with your firm. LSA renewal is necessary to receive new referrals and to request new hourly rates. The FDIC has a limited need for Outside Counsel and does not guarantee that it will agree to the renewal.

3.5 LSA Amendment

An amendment to your LSA may be necessary when there has been a change in the information you submitted in your application package. Refer to the *LSA Forms*. It is your responsibility to inform the FDIC of all new or changed information concerning your firm. If your LSA information is not current, you may not be able to perform legal services for the FDIC. This information includes, but is not limited to:

- Structural changes in your firm, and
- Adding or removing billable individuals

In addition, payment of your invoices may be delayed if information is not up-to-date. If you are unsure whether or not you need to amend your LSA, contact the Legal Division office or section that oversees your LSA immediately.

Structural Changes

You may need to amend your LSA when a structural change occurs in your firm. Structural changes may impact your relationship with the FDIC in areas such as conflicts of interest or malpractice insurance coverage. In addition, these changes may also impact the FDIC's invoice payment process. Examples of law firm structural changes include:

- Firm dissolution,
- Merger or other ownership changes,
- Change from a partnership to a professional corporation,
- Law firm name change, or
- Change of address or addition of a new branch office

After reviewing information that you submit concerning any structural change, the FDIC office or section that oversees your LSA will determine what action is appropriate.

NOTE: If your firm has multiple offices, identify the branch office(s) in which the structural change occurred by entering the city and state in which the office is located on the LSA Amendment form.

New Federal Tax Identification Number (TIN)

A new federal TIN requires, at a minimum, an amendment to your LSA. You should submit an LSA Amendment form. If the FDIC determines that a new LSA is necessary, the FDIC may permit you to continue handling existing assignments and may place your firm in "Restricted" status until you have entered into a new LSA. In this situation, you will not be eligible to receive new referrals until the FDIC executes a new LSA.

NOTE: Structural changes that result in a new TIN usually require a new application and the execution of a new LSA. A new TIN also changes information used for payment of your invoices by electronic funds transfer (EFT) and will require the execution of new EFT forms. See the [EFT guidelines](#).

WARNING: If after the FDIC requires your firm to enter into a new LSA and you do not do so within 90 days from the date the FDIC receives notification of the new TIN, the Legal Division may transfer all matters you are currently handling from your firm.

Adding and Removing Billable Individuals

You must inform the FDIC in writing when you are adding or removing billable individuals to a rate schedule attached to your LSA. Complete the LSA Amendment form when any attorney, paraprofessional, or other billable individual is added or removed.

NOTE If an attorney who is primarily responsible for any legal matter is to be removed from the list of billable individuals, you should provide the following additional information to the appropriate Oversight Attorney(s)

- Each case matter number for which the attorney is responsible, and
- New proposed law firm contact attorney for each matter

3.6 Completion of LSA Amendment Form

1 When completing an LSA Amendment form

- a Complete a separate form for each branch office of a multiple-office firm. Enter the federal tax identification number, law firm name, and branch office location.
- b Make changes, as appropriate, to the law firm name, address, telephone number, fax number, e-mail address, and contact attorney.
- c For each billable individual, listed alphabetically, type A to add or D to delete and provide the following information:
 - State License,
 - Position, and
 - Years in Practice
- d Type M for male or F for female in the gender field.
- e Type the standard rate, percent discount, and proposed FDIC rate.
- f Sign and date the completed LSA Amendment form.

NOTE You may attach continuation sheets if necessary to document changes to the LSA

2 Mail the original form to the FDIC office or section that oversees your LSA

3 Mail a copy of the original form to the Legal Division

Federal Deposit Insurance Corporation
 Attn: Legal Services Unit
 550 17th Street, NW, Room H-3007
 Washington, DC 20429-9990

4 The FDIC will notify you if your request to amend your LSA is approved. You will receive a copy of the fully-executed LSA Amendment form in the mail. You may not bill the FDIC for the services of billable individuals who have not been included on the FDIC-approved rate schedule.

5 After approval of the changes, the updated information will be entered into the FDIC's computer system. This will allow you to begin billing and will allow payment to your firm on future work.

NOTE When you request an amendment to your LSA, the Legal Division may elect to

- Amend the existing LSA,
- Require you to enter into a new LSA, or
- Take other actions to protect the interests of the FDIC

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Outside Counsel Deskbook

Legal Referral

4.1 Legal Referral

When the Legal Division retains you to provide services for a particular case or matter a legal referral will be made to you. A legal referral generally is for one matter but may encompass one or more "legal matters." For example, a legal referral may encompass litigation of a particular case, assistance with a subsequent appeal, and/or a related bankruptcy case. As stated in *Chapter 3*, FDIC's execution of an LSA with your firm does not constitute a legal referral and is not a guarantee that you will receive legal referrals from the FDIC.

The Legal Division reserves the right to terminate a legal referral or legal matter for any reason, including unsatisfactory performance. Refer to *Chapter 1, Section 1.12*. In addition, you may not subcontract any legal work referred to you without prior written authorization of your Oversight Attorney.

4.2 Referral Letter

The referral letter identifies the specific services requested and the terms and conditions of the legal referral. The referral letter incorporates several documents, including your LSA, the Deskbook and the case/matter budget(s) which are required to be submitted by the Outside Counsel and approved by the Legal Division. The incorporated documents, as well as the referral letter, may be amended or modified.

At the time the legal referral is made, you must confirm that no material changes have occurred that affect the representations and conflicts certifications contained in the application package submitted to the Legal Division.

4.3 Byrd Amendment -- Legal Referrals Over \$100,000

If the amount of the approved case/matter budget(s) exceeds \$100,000, you must comply with provisions of the Byrd Amendment. See the Byrd Amendment requirements and applicable forms.

4.4 Legal Division Participation

When making a legal referral, the Legal Division reserves the right to participate in or to assume complete responsibility for any matter referred to you. This may include providing you with prior briefs and research, or staffing a matter jointly with you.

4.5 Selection of Outside Counsel

The Legal Division attempts to select Outside Counsel on a competitive basis whenever possible. When retaining Outside Counsel to perform legal services, the Legal Division considers several factors, including

- The experience of Outside Counsel in the type of legal work required to be performed
- The geographic location of Outside Counsel
- The capacity of Outside Counsel to handle the anticipated volume of work
- Whether the fees or rates proposed by Outside Counsel are competitive in comparison to other firms' rates. Whether the proposed rates reflect discounts
- Whether FDIC payments to the firm exceed or are approaching the limits the FDIC has established for eligibility to receive new referrals

- Whether provision of legal services by Outside Counsel would constitute or give rise to an actual or potential conflict of interest or the appearance of a conflict of interest *Refer to Chapter 2*
- Whether the firm has a reputation for competence, integrity, cost effectiveness and cooperativeness

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Outside Counsel Deskbook

Case Management

5.1 General Case Management

The FDIC's goal is to obtain the best resolution of legal matters at the lowest reasonable cost. Consistent with that goal, we expect you to manage time carefully.

The FDIC will not pay for costs associated with

- Excessive conferencing,
- Unnecessary review of documents or files,
- Unnecessary polishing of documents,
- The "learning curve" for FDIC matters, and
- Unfocused legal research, and
- Excessive, unreasonable or unapproved expenses

You are required to discuss staffing with your Oversight Attorney and assign no more attorneys or paraprofessionals than are necessary to adequately represent the FDIC. You must refrain from rotating assignments away from attorneys knowledgeable about FDIC matters or using FDIC projects for the purpose of training firm personnel.

Cost-effective representation on every matter requires that you

- Consult with your Oversight Attorney on strategic, tactical, or cost-related decisions on a matter, including pre-filing review of pleadings by your Oversight Attorney
- Have a clear understanding of your role and the role of your Oversight Attorney
- Insist that your Oversight Attorney define the goals and objectives to be achieved
- Send your Oversight Attorney copies of all correspondence, pleadings and other filings promptly upon receipt unless instructed otherwise
- Make effective use of Legal Division resources, including its attorneys and the FDIC Legal Research Bank described in Section 5.2, to the greatest extent possible
- Develop a case plan and budget that will achieve the FDIC's goals and objectives and obtain the written approval of the Legal Division for it, as well as for any increase in the total budget amount
- Promptly advise your Oversight Attorney of all significant developments

Special Issues

A number of legal issues are of special interest to the FDIC either because they are peculiarly related to FDIC activities and rights, or because of the need for a uniform, nationwide approach. These "special issues" include such matters as interpretation of the Federal Deposit Insurance Act, or other federal statutes, as well as matters involving the status of the FDIC in its conservatorship, receivership, or corporate capacities.

Outside Counsel representing the FDIC, FDIC asset servicers, or other FDIC related interests are required to be alert to these issues in matters referred for representation. You must contact the FDIC Oversight Attorney

before undertaking any research or drafting with respect to these issues. Relevant research or statements of agency policy concerning "special issues" will frequently be provided to you and, in many cases, the Legal Division may wish to handle those portions of a matter directly or in cooperation with the firm.

Special Issues List

The Special Issues List, which is provided for illustrative purposes, includes without limitation

Actions involving the Federal Deposit Insurance Corporation and another state or federal financial institution regulator or federal agency

Agency status of FDIC, RTC, and FHLBB

Comparative Fault/Contributory Negligence

Conflicts between insolvent institutions including conservatorships, receiverships, and bridge banks

Constitutional challenges to actions and statutes taken by FDIC officials affecting the FDIC

Crime Control Act of 1990 ("CCA") Pub L No 101-647, 104 Stat 4789

Department of Justice initiated subpoenas (Grand Jury or Trial) and requests for information

Deposit Insurance Funds Act of 1996

Employee benefit and ERISA litigation Employee lawsuits involving any agency personnel whether as named parties, deponents or witnesses

Environmental issues including, but not limited to CERCLA, RCRA, USTs, asbestos, lead-based paints, wetlands, endangered species, and NEPA

Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA")

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")

Freedom of Information Act (FOIA)

Gramm-Leach-Bliley Act (GLBA)

Indemnification of employees, officers or directors of failed institutions

Interpretations of FDIC statutes, regulations, or policy statements

Involuntary Sale of FDIC Property, 12 USC 1825(b)

Judicial Restraints of Receivers Powers, 12 USC 1821 (j)

National depositor preference and prudential mootness

Privacy Act and Right to Financial Privacy Act

Pro-rata vs pro tanto settlement bar rule

Publicity any case likely to generate publicity

Punitive damages

Qualified Financial Contracts, including derivatives, repurchase agreements, and swaps

Racketeer Influenced and Corrupt Organizations Act ("RICO")

Repudiation of contracts 12 USC 1823 (e)

Securities acts Securities Act of 1933 and Securities Exchange Act of 1934

Standard of Liability of Directors and Officers and 18 U S C 1821(k)

Tax matters – both income tax and property tax

Tort Claims (Federal Tort Claims Act)

Unrecorded Agreements / D'oench, 12 USC 1823(e) and 1821 (d) (9) (A)

Decisions that should be made only in consultation with your Oversight Attorney (absent exigent circumstances) include, without limitation

- Hiring experts and other professional service providers,
- Secretarial overtime,
- Use of law clerks or summer interns,
- Travel,
- Contacts with FDIC business staff,
- Legal research, and
- Staffing at conferences, court appearances, depositions, or meetings

The Legal Division expects timely, cost-effective solutions. Failure to conform to the required cost-saving measures noted above may result in disallowance of the billed amounts by the Legal Division

Reports

FDIC management procedures require that you keep your FDIC Oversight Attorney fully informed as to the status of each matter you are handling. Reporting will vary by type and size of case, and by firm. A status report for any matter you are handling shall be submitted to your Oversight Attorney as often as directed.

Reports should

- Be brief but meaningful,
- Emphasize developments since the last report,
- Review whether the case is proceeding in line with the case plan and budget, and if not
- Explain why actual costs differ from projected or budgeted amounts

5.2 FDIC Legal Research Bank

To avoid duplication of legal research and to obtain the benefits of previous legal research, the Legal Division established the FDIC Legal Research Bank ("Legal Research Bank"), designed to centralize substantive briefs, unpublished opinions, and other legal research materials utilized in FDIC cases.

The Legal Research Bank is intended to assist you in representing the FDIC by making legal research materials readily available to you and to reduce the FDIC's legal research bills.

Documents in the Legal Research Bank are available in full-text in a private FDIC database on Westlaw (the "Legal Research Bank Database" or "Database"). Each law firm with a current Legal Services Agreement is eligible to open an account for on-line research in the Legal Research Bank Database.

You are required to minimize legal research costs on FDIC matters. Thus, you must check the Legal Research Bank Database at the beginning of every authorized legal research project. Failure to consult the Database may result in disallowance of associated charges for unnecessary legal research.

You are required to submit promptly your final, substantive FDIC legal work product (e.g., briefs, legal research memoranda, as well as significant court opinions in FDIC cases) directly to the Legal Research Bank staff at the address indicated below for inclusion in the Legal Research Bank.

In representing the FDIC, you authorize the FDIC to include those materials (and any other written materials prepared in the representation of the FDIC) in the Legal Research Bank. You also consent to the reproduction, dissemination, distribution, or other use of such written materials (including the use of those materials in other documents prepared for the Legal Division) by any authorized user of the Legal Research Bank.

Inquiries about the Legal Research Bank Database should be directed to the Legal Research Bank staff at (877) 275-3342 and work product should be sent to: thopkins@fdic.gov or the Legal Research Bank, 550 17th Street, NW, Room H-3119, Washington, D.C. 20429-9990

5.3 Alternative Dispute Resolution ("ADR")

The FDIC is committed to the use of alternative dispute resolution ("ADR") in appropriate cases. The FDIC views such techniques as potentially less costly, less time consuming, and a more effective means of facilitating negotiated settlements. Thus, throughout the course of a lawsuit you are required to periodically review the case to determine whether ADR is appropriate and to explore all opportunities for utilizing non-judicial dispute resolution approaches.

When settlement negotiations reach an impasse, particularly if technical or factual issues are central to a dispute, the use of ADR and a third-party neutral should be considered.

When ADR is used, you are expected to comply with current FDIC ADR policy. Your Oversight Attorney can provide information on use of binding arbitration (Directive 5310.1) and the selection and payment of neutrals.

Claims between FDIC-controlled institutions (including receiverships, conservatorships, acquired or assisted institutions, asset servicers, and bridge banks) must immediately be brought to the attention of your Oversight Attorney. These claims must be resolved through the use of the FDIC's internal ADR program unless otherwise directed by your Oversight Attorney. Costs incurred in the unauthorized litigation of such claims may be disallowed.

5.4 FDIC as a Litigant

The FDIC's litigation philosophy is to pursue an aggressive, forthright, and consistent approach with our overall objective of resolving litigation in an expeditious and cost-effective manner.

The Legal Division avoids extreme advocacy positions that are not likely to have a substantive impact on the outcome of litigation. Coercive, delaying, or obstructive tactics also are to be avoided.

We discourage excessive motion practice unless there is a clear strategic advantage to be gained. Where appropriate, however, motions to dismiss, for judgment on the pleadings, or for summary judgment should be employed to resolve or refine as many of the issues in dispute as possible.

The FDIC wishes to avoid costly delays that frequently result from abuses of the discovery process. Lengthy interrogatories or requests for extensive document production for the purpose of burdening another party are to be avoided. The Legal Division specifically requests that you consider available remedies and sanctions when another party appears to be abusing the discovery process.

Questions concerning litigation strategies should be addressed to your Oversight Attorney.

Discovery Requests - FDIC, Other Federal or State Agencies

To obtain all requisite authorizations and instructions for coordination of a response, you must immediately contact your Oversight Attorney when you receive a

- Notice of deposition or subpoena of an employee of the FDIC, or other federal or state agency, or
- Subpoena or request for production of documents generated by the FDIC, or another federal entity

Similarly, you should consult with your Oversight Attorney prior to contacting employees of the FDIC or other federal entities, or obtaining documents generated by another federal entity

Filing Fees

In the United States District Courts and Courts of Appeals, the FDIC is not required to pay filing fees or post any bond to pursue an appeal 12 U S C 1819(b)(4)

Experts and Other Professional Service Providers

The decision to hire experts and other professional service providers should only be made in consultation and with the approval of your Oversight Attorney (absent exigent circumstances) **It is very important that experts and other professional service providers are screened for conflicts of interest and are eligible to provide services** Such conflicts screening and approval should be documented *Refer to Chapter 2 and conflicts of interest*

The proposed rates, compensation, and expenses should be reasonable in light of the matter for which they are hired and the customary levels for their professions Under **no** circumstances can compensation be based upon a contingent fee arrangement You should try to obtain discounts when possible

Absent express Legal Division permission, experts and other professional service providers may only be compensated for fees and expenses in accordance with the requirements of this Deskbook *Refer to Chapter 7 for format requirements* The Legal Division considers your oversight of experts and other professional service providers an important duty under your legal referral

Settlements

The settlement possibilities of each matter should be identified and considered early in the proceedings and at each stage thereafter Cases should be settled as early as practicable under the circumstances You will be asked to review the likelihood of success with your Oversight Attorney on an on-going basis so that FDIC will have current information on which to base its decisions

Generally, Oversight Attorneys are involved in settlement discussions You must communicate all settlement offers, including any deadlines imposed, to your Oversight Attorney as soon as practicable Such communications may be oral unless your Oversight Attorney instructs otherwise

You should advise the opposing party's counsel, and the court, as appropriate, that your Oversight Attorney will review all settlement offers or bankruptcy plans with the appropriate FDIC representatives and obtain necessary decisions

The time needed to obtain authority to accept or reject a settlement offer may vary You should provide sufficient notice to the Legal Division to secure FDIC pre-approved settlement authority for court-ordered mediation

The Legal Division generally assesses proposed settlements on the likelihood of success and the likely net economic recovery, considering, among other factors, the cost of litigation and the amount and collectability of a judgment, using net present-value analysis

most cases, the Legal Division will not consider an offer to settle a matter for less than the full amount claimed without verified financial information, on the approved form which will be furnished by your Oversight Attorney The debtor's disclosure statement and any other available financial information should be supplied in connection with the submission of a bankruptcy plan

Attach to any settlement offer a description of any material changes that relate to acceptance of the offer (e.g., a change in your estimate of success or timing). When there are no such changes since your last status report, so state.

Do not prepare a detailed analysis of the settlement offer unless specifically requested to do so. Your recommendation(s) will be an important part of the decision-making process, but the FDIC retains the authority to accept or reject a settlement offer.

Appeals

You must promptly notify your Oversight Attorney of any adverse ruling so that a decision can be made regarding appeal. Although you are expected to take all steps necessary to protect the interests and preserve appeal rights of the FDIC, pending a decision whether to appeal, no appeal shall be taken without the prior approval of the Legal Division.

5.5 Criminal Referrals

The Legal Division has a responsibility to notify and, where appropriate, assist law enforcement officials including the Office of Inspector General in investigating conduct that may constitute a violation of criminal statutes. You must immediately forward any information that indicates possible criminal behavior to your Oversight Attorney. Your Oversight Attorney may either file a Suspicious Activity Report form with your assistance, or instruct you to do so under Legal Division guidelines.

The FDIC does not have authority or responsibility for instituting, conducting, or disposing of criminal proceedings. As a matter of policy, the settlement of civil litigation on behalf of the FDIC may not, expressly or by implication, extend to the disposition of any criminal charges or recommendations with respect to such charges, or to the disposition of any potential criminal or civil liability for fraud against the FDIC or the United States. Furthermore, in conducting civil litigation, including settlement negotiations, under no circumstances may you agree to withhold from law enforcement authorities any information relating to a possible criminal violation or investigation.

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Outside Counsel Deskbook

Case Plan & Budget

6.1 Budget Package

When you begin work on a legal matter, you must prepare a plan (the "Case Plan") explaining how you anticipate accomplishing the work for which you have been retained, along with a case/matter budget (the "Budget") showing the anticipated cost of legal representation

The Case Plan and Budget constitute the "Budget Package" and must be submitted together. The Case Plan summarizes the strategy for achieving satisfactory resolution of a matter, while the information provided in the Budget controls costs and the payment of invoices. Except in a case of extreme urgency, the FDIC must approve the Budget before you begin working on the legal matter.

NOTE *The Budget must be approved by the FDIC before you can be paid for a legal matter*

The FDIC uses on an on-going basis the cost estimates and other information provided in your Budget to assess cost-effectiveness and measure progress. The Legal Division recognizes that estimates may be affected by changed circumstances, but, because the estimates are used in making business decisions, they must be as accurate as possible.

If you need to later amend your approved Budget, you must submit an Amended Budget Package (see [Section 6.6](#)) Refer to the relevant [Budget forms](#)

6.2 Case Plan

Upon commencement of a legal matter, you should discuss the matter with your Oversight Attorney. Then prepare a Case Plan that sets forth the major steps you will take to accomplish asset recovery, or successful defense or prosecution of a case. For litigation matters, the Case Plan outlines the anticipated course of action based on the assumption that the case will go to trial. It also proposes a plan for settlement, unless settlement is clearly inappropriate.

If you are handling a number of cases that are routine and involve similar issues or approaches, you may develop and submit a standardized Case Plan applicable for all such cases. When appropriate, note factors that differ between cases in the Case Plan. The decision to submit a standardized Case Plan will be made in conjunction with your Oversight Attorney.

6.3 Budget

The Budget translates the Case Plan into financial expectations. The Budget should

- Conform to the Case Plan, and
- Estimate the total cost of fees and expenses

Budget Forms

There are two types of [Budget forms](#), each corresponding to a specific legal matter type, as follows

- Litigation
- Non-Litigation

NOTE *Make sure the Budget conforms to the Case Plan for the legal matter*

Completing the Budget Form

Following are the instructions for completing a Budget form

- 1 Select the Budget form appropriate for your legal matter
- 2 Fill out all requested information on the Budget form
- 3 In particular, indicate in the appropriate box whether you are billing at an hourly rate, fixed fee, or contingent fee
- 4 Refer to the following table to determine information required for the type of billing you entered

Rate	Information Required
Hourly	<ul style="list-style-type: none"> • Complete the budget sections in which legal fees and expenses are expected
Fixed Fee	<ul style="list-style-type: none"> • Record the fixed fee as a total without further itemization • Submit the estimated completion date and allowable related expenses
Contingent Fee	<ul style="list-style-type: none"> • Record the contingent fee based on the percentage figure to be used in the contingent fee calculation and the estimated recovery value (or other amount) upon which the percentage figure will be calculated • Submit the estimated completion date and expenses

- 5 If appropriate, calculate the total estimated number of hours for all service providers
- 6 Sign and date the Budget

6.4 Budget Package Submission

Once you have completed the Budget Package, you must submit it to the FDIC for approval. The following steps outline the submission and approval process

- 1 Submit the Budget Package as instructed in your referral letter. This package consists of the Case Plan and Budget form

NOTE *If the Budget is in excess of \$100,000, ensure that you are in compliance with the Byrd Amendment by submitting the Byrd Amendment Certification - Word or Disclosure form - PDF with your Budget Package*

- 2 Your Oversight Attorney reviews the Budget Package. If it is satisfactory, your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority
- 3 The Legal Division will notify you when the Budget Package is approved

6.5 Amended Budget Package

If the approved Budget is not sufficient to complete a case or matter, you must submit an amended Budget Package. You should do this as soon as you anticipate that the approved Budget is not likely to be sufficient. Do not wait until after you have exceeded the approved Budget.

Written approval from the Legal Division is required for any increase in the approved Budget. Make sure the amendment has been approved before you exceed the Budget. The Legal Division allows exceptions to this policy only when extraordinary circumstances arise.

NOTE: Failure to obtain written FDIC approval for an Amended Budget will be deemed a serious breach of your duty to the FDIC and may result in non-payment or disallowance of fees or expenses exceeding authorized amounts. You must report to your Oversight Attorney immediately any anticipated Budget changes.

An Amended Budget Package contains

- Amended Case Plan, or explanatory narrative
- Amended Budget form

NOTE: If the Amended Budget exceeds \$100,000, make sure that you are in compliance with the Byrd Amendment. If the previous Budget exceeded \$100,000, it is not necessary to submit another Byrd Amendment Certification.

Completing the Amended Budget Package

Following are the instructions for completing an amended Budget Package

- 1 Prepare a separate narrative explaining the reasons for the amendment
- 2 If necessary, prepare an amended Case Plan that provides detail commensurate with the significance of the legal matter. For Litigation and PLS matters the amended Case Plan should summarize revised strategy and project the schedule for preparing and trying the case, including all expected litigation events
- 3 Select the Amended Budget form appropriate to your legal matter
- 4 Fill out all requested information on the Amended Budget form, in a manner similar to the original Budget form
- 5 Mark the appropriate box if you have submitted a previous amended budget
- 6 Use the most recent approved figures in the column for "Current Budget"
- 7 Sign and date the Amended Budget

6.6 Amended Budget Package Submission

Once you have completed the Amended Budget Package, you must submit it to the FDIC for approval. The following steps outline the submission and approval process:

- 1 Submit the Amended Budget Package in the same manner as your original Budget Package, as instructed in your referral letter. This package consists of the amended Case Plan and Amended Budget Form. Also include the Byrd Amendment Certification - Word or Disclosure form - PDF if fees and expenses now exceed \$100,000
- 2 Your Oversight Attorney reviews the Amended Budget Package. If it is satisfactory your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority
- 3 The Legal Division will notify you when the Amended Budget Package is approved

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Outside Counsel Deskbook

Invoice Package

7.1 Invoice Package

This chapter covers the procedures for completing an Invoice Package and submitting it to the FDIC

Complete a separate Invoice Package for each matter you have been assigned. The FDIC assigns each matter a different matter number. Therefore, each matter should have its own invoice. Each matter is charged to a different account and is often supervised by a different Oversight Attorney.

The Invoice Package consists of the following:

- [FDIC Legal Invoice Fee & Expenses form - Word 79k \(Word Help\)](#),
- Legal invoice (generated from your law firm's accounts receivable system),
- Necessary receipts, and
- Other supporting documentation (e.g., [Law Firm Travel Vouchers](#))

As discussed in [Chapter 6 \(Case Plan and Budget\)](#), you must have an approved Budget from the FDIC before you can be paid. An approved Budget gives you the "all clear" to submit an Invoice Package for payment of your services.

7.2 Invoice Package Submission

When

You should submit Invoice Packages on a monthly basis unless the amount (fees and expenses) to be invoiced is less than \$500. If the amount (fees and expenses) is less than \$500, you should submit Invoice Packages on a quarterly basis, unless doing so would cause undue hardship to your firm.

You should submit Invoice Packages for fees and expenses within 30 days of the last day in your billing period, except as noted above.

The Legal Division recognizes that firms may experience delays in receiving supporting documentation for expenses included in your Invoice Package to the FDIC. Therefore, you should submit Invoice Packages for such expenses within 60 days of the last date in your billing period.

At the conclusion or termination of the matter, you should submit your final Invoice Package for fees and expenses within 90 days of the matter's conclusion or termination. Refer to [Chapter 8](#) and [Chapter 9](#).

NOTE You may not bill the FDIC more than once per month. You also may not bill for overlapping service periods (e.g., May 1 through May 31 and then May 15 through June 15).

Failure to submit invoices in a timely manner as set forth above may significantly delay the FDIC's invoice processing and payment.

ABSENT EXTRAORDINARY CIRCUMSTANCES, THE FDIC WILL NOT PAY INVOICES SUBMITTED OVER ONE YEAR FROM THE DATE THAT SERVICES ARE RENDERED.

Where

The distribution and mailing instructions are unique to the Legal Division office or section supervising the matter. See your referral letter or contact your Oversight Attorney for instructions.

7.3 Billable Fees and Expenses

You may bill the FDIC reasonable charges for fees and expenses in accordance with the following guidelines:

Fees

You may bill the FDIC reasonable fees at approved LSA rates or other billing arrangements approved by FDIC in writing for:

- Legal work on matters as approved, and
- Travel time (when no substantive FDIC work is performed) at 50% of approved LSA rate

NOTE The FDIC requires law firms to reduce the hourly rate charged by 50% while an attorney is traveling unless legal work is being performed for the FDIC. The FDIC does not pay for First Class airfares or luxury hotel accommodations. The FDIC will pay only for air travel at coach rates, and accommodations at the lower of the government or corporate discount rates. Travel-related expenses must be incurred in a prudent manner and in accordance with the guidelines set forth in the Deskbook.

Compensation cannot be based upon a contingent fee arrangement unless specifically approved in writing. Absent express Legal Division permission, experts and other professional service providers may only be compensated for fees and expenses in accordance with the requirements of this Deskbook. The Legal Division considers your oversight of experts and other professional service providers an important duty under your legal referral.

Expenses

You may bill the FDIC reasonable charges for the following expenses. Requirements for submitting copies of receipts are indicated below. These requirements do not alter your duty to maintain original receipts and other supporting documentation for all expenses for audit purposes:

- Itemized in-house copy charges (no more than \$ 08 per page, no receipts necessary, but indicate total number of copies)
- Itemized fax charges (telephone long distance charge (line charge) is the only acceptable charge, receipts not necessary)
- Itemized long distance telephone charges (receipts not necessary)
- Itemized overnight delivery (receipts necessary) Itemization should include name of person to whom the delivery was sent
- Itemized electronic research (receipts and/or invoices necessary) Itemization should include person's name who is performing the research. In addition, the FDIC Research Bank should be consulted before any legal research is performed and it should be noted on the invoice that you have done so.

Please note Prior approval by the Oversight Attorney is required for electronic

research

- Itemized extraordinary postage (i.e., bulk or certified mail, receipts necessary)
- Expert witnesses and other professional service providers (invoices for fees and receipts for expenses necessary)
- Investigators (invoices for fees and receipts for expenses necessary)
- Court reporters (invoices necessary)
- Outside photocopying (receipts and/or invoices necessary)
- Publication notices (receipts and/or invoices necessary)
- Other Subcontractors, if approved (receipts and/or invoices necessary)
- Filing Fees (receipts and/or invoices necessary) Please note that outside counsel should not bill for federal court fees when filing on behalf of the FDIC
- Other case-specific (non-overhead) expenses (receipts and/or invoices necessary) Approval should be documented in the case file
- Allowable travel expenses (*refer to Section 7.7 for submission and receipt requirements*)

NOTE *State and local taxes on FDIC allowable expenses will be reimbursed*

7.4 Non-Billable Fees and Expenses

You may **not** bill the FDIC for the following fees and expenses

Non-Billable Fees

- Services of billable individuals who have not been included on the FDIC approved rate schedule attached to your LSA
- Excessive number of attorneys performing services in a matter
- Invoice preparation, review, or for corrections to the invoice required by the FDIC oversight attorney or legal information technician
- Secretarial or clerical overtime that has not been approved by your Oversight Attorney
- Hourly fees for time spent photocopying, sending facsimiles, etc
- Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status
- Excessive time spent in "file review"
- Excessive time spent in "review and revision" of documents that you prepare
- Educational or development costs for you to become generally familiar with statutory and case law affecting the FDIC
- Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers
- Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney

Non-Billable Expenses

- Ordinary postage
- Charges related to word processing
- Charges other than "actual time" charges for electronic research (e.g., Westlaw or Lexis) The FDIC Research Bank should be consulted before

- any legal research is performed
- In-house photocopying charges at more than \$0.08 per copy
- Clerical time for photocopying, sending facsimiles, filing etc
- Excessive/unnecessary overnight mail charges
- Meals, unless you are on approved travel
- Daily commuting expenses
- Sales tax (except for lodging) or surcharges imposed by utilities or phone services
- Tax on services
- Any costs relating to filing fees in United States District Courts or Courts of Appeal which the FDIC is not required to pay (pursuant to 12 U.S.C. 1819(b)(4))
- Cell phone roaming charges
- A service that is customarily included in the normal overhead or administrative expense of running a law firm (e.g., rent, electricity, local telephone charges, HVAC, bill preparation)
- Routine budget preparation

7.5 Over Budget Invoices

If the full payment of the Invoice Package causes the legal matter to exceed the grand total for all phases of the approved Budget, the FDIC will notify you. The Invoice Package cannot be paid until an Amended Budget is submitted and approved. Refer to Chapter 6 for further information.

NOTE: *The Invoice Package will be returned to you with a notice that an approved Amended Budget is required before the Invoice Package can be properly resubmitted for payment.*

7.6 Law Firm Invoice Format

Law firm invoice format requirements are discussed below.

Fees

Use the following format when totaling the hours and charges for all legal services.

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/11/04	Jfb	Draft Motion to Dismiss Complaint	\$120.00	5 hrs	\$600.00

Use the following format for recapitulation of the total services billed on your statement.

Service By	Title	Hours	Hourly Rate	Total
John Brown	Partner	16.10	\$150.00	2,145.00
Jane Green	Associate	31.50	110.00	3,465.00
Brian White	Paralegal	10.00	45.00	450.00

Block Billing of Services

Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. "Block billing" of fees is not acceptable, even if the same individual performed the activities, except for multiple, related activities for which only a small amount of time (no more than 30 minutes) is expended, as in the following example:

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/18/04	RJG	Phone conference with E White re briefing schedule, draft letter to E White re same	\$120 00	20 hrs	\$24 00

Description of Fees

The description of services or activity should be brief and informative

Not Acceptable	Acceptable
"Research"	"Legal research on statute of limitations issues "
"Telephone calls"	"Telephone calls to J James and M Smith re motion to dismiss "

Time Increments

Billing in increments of greater than 0.1 billing hour (6 minutes) is unacceptable

Expenses

Use the following format for expenses

- Copy charges (unit cost multiplied by unit amount)
- Fax charges (date, phone number, and amount), telephone long distance charge (line charge) is the only acceptable charge
- Long distance telephone charges (date, phone number, and amount)
- Overnight delivery (date, amount and name to whom delivery was sent)
- Electronic research (date, amount and name of person performing research)
- Extraordinary postage (i.e., bulk or certified mail) (date and amount)

Claims for travel-related expenses must be made using the FDIC's Law Firm Travel Voucher - Word 118k (Word Help) (see also the sample travel voucher)

Example of Itemized Expenses

Expense	Amount
Photocopy (46@ 08/pp)	\$3 68
Faxes 02/28/05 (617-261-9192)	3 26
Telephone 02/02/05 (617-262-8119)	6 78
Overnight Delivery 02/15/05	15 00
02/19/05	6 75
Electronic Research 02/2705	54 20
- Westlaw	
Extraordinary Postage 02/1905	2 75
- Certified	
J Smith 02/01/05 - 02/25/05	10,500 00
- Expert Witness	
Acme Reporting	425 00
Panic Copying	230 00
Travel for J Cox 02/5-02/6	780 00
Washington DC to Settlement Conference	

Boston, MA	
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7.7 Travel Reimbursement Guidelines

The following guidelines are provided to assist in compliance with requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement regulations

Eligibility for Reimbursement

To be entitled to travel reimbursement, you must be on a temporary assignment that is at least 50 miles in distance from either your office or residence. If a temporary assignment concludes during the workday and is located within 100 miles of your office or residence, you are expected to return to your residence, rather than remain at the temporary location overnight.

Travel Authorization

You must ensure that all travel on behalf of the FDIC is necessary and approved by the Oversight Attorney.

Air Travel

Air travel should be in coach class only, unless you bear the cost of the difference between coach and business or first class. Travel should be planned as far in advance as possible to take advantage of discounted fares, especially if reasonable certainty exists that the event will take place. If a restricted fare is booked and you require a change, a reasonable exchange fee may be claimed. Special approval is required for international air travel.

Rental Cars

No car larger than a mid-size should be rented, unless there are three or more passengers or a larger vehicle is necessary to transport equipment, files, etc. Deviations from standard policy should be documented. Original receipts must support claims for rental car gasoline. The FDIC will not reimburse you for Personal Accident Insurance (PAI) or Personal Effects Coverage (PEC). The cost of Collision Damage Waiver (CDW) coverage is allowed if you do not have insurance coverage for collision damage.

Lodging

You should make use of government rates whenever possible. Any hotel expenses considered excessive or unreasonable will not be reimbursed.

Subsistence

On overnight travel status you may only be reimbursed on a per diem basis. The current FDIC prorated per diem rates allowable are listed below. The current FDIC per diem rates allowable are listed in Section 16.0 of the Contractor Travel Reimbursement Guidelines. Specific per diem rates for different localities may be found on the General Services Administration (GSA) web site. Where the information contained on the GSA web site and FDIC Guidelines differs, the GSA web site controls. When you are on per diem, incidental expenses such as laundry and cleaning are considered to be covered by the per diem.

Per Diem for Overnight Travel

If travel extends into more than one calendar day, prorated per diem for partial days is required. One-fourth of the per diem allowance is payable for each quarter-day or fraction thereof.

Departing If you leave your residence/office between:	Prorated Per Diem Rates
--	--------------------------------

12 Midnight to 5 59AM	100%
6 00 AM to 11 59 AM	75%
12 Noon to 5 59 PM	50%
6 00 PM to 11 59 PM	25%

Returning If you leave your residence/office between:	Prorated Per Diem Rates
12 Midnight to 5 59AM	25%
6 00 AM to 11 59 AM	50%
12 Noon to 5 59 PM	75%
6 00 PM to 11 59 PM	100%

If you depart from and/or return directly to your residence, per diem is allowed from the time of departure from your residence until the time of return to your residence. If departure is from and/or return is to your office, per diem is allowed from the time of departure from your official station until the time of return to your official station. Outside Counsel must provide start and return times with their supporting travel documentation to demonstrate the number of quarters of the per diem allowance they are entitled to receive.

Miscellaneous Meal Expense

If you are in non-overnight travel status and are away from your residence for at least 11 consecutive hours excluding mealtime, you may be reimbursed on an actual expense incurred basis with the meal cost limited to a \$10.00 charge (receipt required) or \$6.00 without a receipt.

Long Distance Personal Calls

While on an overnight travel assignment, you may claim the actual amount incurred, not to exceed \$3 per day, for personal long distance calls. This is in addition to per diem, if applicable. Itemize your calls on the Law Firm Travel Voucher.

Use of Privately-Owned Vehicle

You may be reimbursed for use of your privately-owned vehicle while on FDIC-related business. The maximum reimbursement rate will be the rate stipulated by the IRS.

If you choose to use your vehicle in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or mileage reimbursement and the additional per diem, if any.

NOTE: *FDIC does not insure privately-owned vehicles for liability.*

Taxicabs

The use of taxicabs is permitted while you are on official travel for FDIC. Reimbursement for taxicab fares (plus the customary 15% tip) will be made only if an appropriate receipt is submitted. Taxi hire is appropriate when

- Public transportation, airport limousine service, and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances,

- Traveling between transportation terminals and your residence, hotel or office while on official travel status, or for
- Traveling from your residence to your office to depart on assignment requiring at least one night's lodging, and from your office to your residence on the day you return from that trip

Taxi fares for trips used to obtain meals will not be reimbursed.

Non-Reimbursable Travel Expenses

Examples of expenses that will **not** be reimbursed include the following

- Alcoholic beverages, entertainment,
- Laundry, dry cleaning and pressing (covered by per diem reimbursement),
- Travel insurance,
- Parking fines,
- Gratuities and tips paid to service staff inside the lodging facility (covered by per diem reimbursement)
- Cost of travel for spouses, other family members, and friends is **not** allowable under any circumstances

Travelers will **not** be reimbursed for excess costs caused by

- An indirect route as a matter of personal preference,
- Premature departure for personal reasons from a temporary location, or
- Extending a stay for personal reasons

Law Firm Travel Voucher Completion

After completion of travel, a Law Firm Travel Voucher must be submitted with the Invoice Package for reimbursement. Indicate the purpose of travel on the first line. Dates and times of each departure from residence or office, arrival at the place of temporary assignment, and arrival at the office or residence must be shown on the Law Firm Travel Voucher - Word 118k (Word Help) (see also the sample Travel Voucher)

Receipts

Except for per diem expenses, you must submit valid original receipts with the Law Firm Travel Voucher for all travel expenditures regardless of cost. If a receipt is not normally provided for the expense (bus or subway token, etc.) the certification signed by the traveler on the Law Firm Travel Voucher will justify the expense.

Receipts submitted with the Law Firm Travel Voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. If an electronic ticket is used, the boarding passes for each flight must be submitted with the Law Firm Travel Voucher.

Penalties

WARNING: The penalty for submitting a Law Firm Travel Voucher that knowingly falsifies any item in the claim can be three times the amount of the claim plus a civil money penalty of \$10,000 under the False Claims Act. 31 U.S.C. 3729. Also, false statements may be criminally prosecuted under 18 U.S.C. 1001. The penalty can be up to 5 years in jail. A corporation that violates 18 U.S.C. 1001 can be fined up to \$500,000. 18 U.S.C. 3571.

7.8 LIF&E Form

The following provides guidance when completing the LIF&E form - Word 79k (Word Help)

- Each invoice must have a number unique to the law firm or law firm office that is submitting the invoice

NOTE *If you are submitting multiple Invoice Packages, make sure you have a separate LIF&E form for each Invoice Package*

- The invoice number can be no longer than 20 characters. Omit any dashes, slashes, spaces, leading zeros, or other special characters
- The law firm and financial institution involved with the legal matter must be the same as identified in the referral letter
- The billing period should be monthly. For example FROM 12/01/05 THROUGH 12/30/05
- The billing period should be quarterly when monthly fees and expenses are less than \$500. For example FROM 01/01/05 THROUGH 03/31/05
- If there are expenses incurred for anything other than the present billing period or the immediately preceding billing period, ensure that the expenses have not been previously reimbursed
- **Sign at the bottom to certify that the LIF&E form is true and correct. The LIF&E form must have an original signature.**

7.9 FDIC Invoice Package Review

The Invoice Package should be submitted in a timely manner (*refer to Section 7.2*) and as directed in your referral letter or by your Oversight Attorney. Upon receipt, the FDIC Legal Information Technician reviews the package and does one of two things

- Forwards it to your Oversight Attorney for review and/or approval, or
- Rejects it. If your Invoice Package is rejected, your Oversight Attorney or Legal Information Technician will notify you of the deficiencies to be corrected.

The Oversight Attorney performs a substantive review of your invoice. If any amounts are disallowed, you will be notified at the time of payment, such information appears on the check stub or EFT remittance form.

NOTE: *FDIC invoice processing time is a minimum of thirty (30) days after receipt of a correct or proper Invoice Package. Payment is generally not made in less than thirty (30) days.*

The FDIC is required by statute to make payments by electronic funds transfer (wire transfer) absent a waiver.

7.10 Reconsideration of Disallowances

You must submit all requests for reconsideration of disallowances within 90 days from receipt of notice of disallowance. The request must include matter number, invoice number, and the amount disputed, along with justification for reconsideration (e.g., copies of missing documentation, narrative rationale).

NOTE: *The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in sanctions. Under no circumstances may Outside Counsel attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment for services rendered.*

7.11 Audit and Records Retention

Outside Counsel must permit the FDIC, the FDIC Office of Inspector General, the FDIC Legal Division's Internal Review Unit, and the General Accounting Office, or their representatives, to conduct audits or reviews of your FDIC billings, including previously paid Invoice Packages

For purposes of subsequent audits, Outside Counsel must retain the following

- Copies of all Invoice Packages (*refer to Section 7.1*),
- Original underlying support documentation not submitted with the Invoice Package, and
- Original time sheets and time and expense adjustment records. Example of adjustment records includes documentation explaining differences between time sheet hours and invoice hours for billable individuals

See the [Electronic Billing Guidelines](#) for recording requirements. The FDIC reserves the right to obtain additional information upon review of any itemized fee bill or support documentation

7.12 Frequently Asked Questions

Below you will find answers to questions often raised by Outside Counsel when submitting Invoice Packages

May I have expert witnesses hired by my firm call you when they have questions about their payment?

No. Any expert or other entity hired or retained by your firm is a subcontractor and should address all payment questions to you. Their invoices are included as expenses in your Invoice Package to the FDIC. The FDIC will not pay them directly.

When should I submit an Invoice Package?

On a monthly basis, if the total equals \$500.00 or more. If your total is less than \$500.00, submit your Invoice Packages quarterly, unless this causes undue hardship.

May I bill for clerical or secretarial overtime?

No, unless such overtime is requested by the Legal Division or occasioned by an emergency situation created by the FDIC. In any case, the Oversight Attorney assigned to your matter must approve clerical or secretarial overtime.

I know I may bill the FDIC for extraordinary postage (e.g. bulk or certified mail). May I also charge for ordinary postage?

No.

What common mistakes should I avoid when submitting my Invoice Package?

Make sure you use a different invoice number for each Invoice Package you submit.

Ensure the totals on your Invoice Package equal the totals on the LIF&E form.

Do not forget to submit all necessary receipts.

Make sure your "billing from" and "billing through" dates do not overlap. For example, if an Invoice Package covers the period from January 2 to January 16, a subsequent Invoice Package should not cover the period from January 10 to January 29.

Be sure to itemize attorney and non-attorney fees separately

Our firm charges \$0.10 per page for in-house photocopying. May I bill the FDIC for this amount?

No, the maximum charge is \$0.08 per page

What information do I need to include regarding fax and phone charges?

You need to include the date, phone number and charge for each call. The bill from the carrier must be retained for three years after final payment under the legal referral for audit purposes.

What happens if there is something wrong with my Invoice Package?

An FDIC Legal Information Technician will notify you. If certain fees and expenses are disallowed, you will be notified on your check stub or EFT remittance form.

NOTE: *Where the provisions of the Guidelines and Legal Division policies are contrary, the Legal Division policies and the Deskbook control.*

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Outside Counsel Deskbook

Legal Matter Closeout

8.1 Final Invoice Package

At the conclusion of a matter, you should submit your final Invoice Package within 90 days of conclusion. It is important that you note on the invoice and the LIF&E form that this is a final Invoice Package. Refer to [Chapter 7](#) for procedures for submitting your Invoice Package.

8.2 Forwarding Documents to FDIC

At the conclusion of a matter, or group of related matters, the FDIC will take custody of all records related to the matter(s), including attorney work product, unless you, as FDIC outside counsel, want to continue to preserve the records for your own purposes (i.e., state bar requirements, malpractice insurance requirements, firm's business practices, etc.). Note that records such as time sheets, receipts, etc., that must be kept for audit purposes pursuant to paragraphs 1.7 and 7.11 are your firm's property and should not be sent to the FDIC with records related to the underlying matter.

If, at the conclusion of the matter(s), you have no further interest in preserving the records for your own purposes, the FDIC will pay for shipping and permanent withdrawal fees (if the files are in the possession of a private records storage vendor) to transfer the files. All outstanding fees related to the transfer of these records, including permanent withdrawal fees, must be submitted with the final invoice package.

If, however, you have a continuing need to preserve the records for your own purposes after the matter has been concluded, you will inform your oversight attorney in writing of that decision with a list of records at issue, and, if the oversight attorney agrees, you may continue to preserve the records at your own cost. You will be responsible for all storage costs during the time that you preserve the records for your own purposes. The oversight attorney cannot commit to continue to pay for storage or permanent withdrawal fees after the matter has been concluded and the final invoice has been submitted. While the records are being preserved for your own purposes, the records shall not be intermingled with non-related matters pertaining to other FDIC assignments or other clients. The segregation of these records will facilitate the destruction or transfer of the files at a future point.

When you no longer need the records for your own purposes you must contact the FDIC in writing to determine whether the records may be destroyed. Inquiries are to be sent to the Legal Services Unit, Attn: Counsel John C. Binkley, 550 17th Street, NW, Room H-3001, Washington, D.C. 20429-9990 (Phone (202) 736-0169), with a list of records that are at issue. The records may not be destroyed without the written permission of the Legal Services Unit. If you receive written permission to destroy the records, it will be at your own expense. If the FDIC cannot authorize the destruction of the records, the FDIC will take custody of the records. The FDIC will pay for shipping the records to the FDIC, but you will be responsible for any permanent withdrawal fees related to the records as well as outstanding storage fees.

When requested by the FDIC upon completion of the legal matter, you must return any FDIC property and materials (e.g., original documents from a financial institution and computer software media, documentation and licenses) and forward all substantive legal work product not previously submitted. Failure to do so may delay or prevent payment of your final invoice.

NOTE For purposes of subsequent audit, Outside Counsel must retain certain documentation. Refer to [Chapter 1, Section 1.7](#) and [Chapter 7, Section 7.11](#). Your failure to maintain required

documentation may cause the FDIC to disallow previously paid fees and expenses.

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Outside Counsel Deskbook

Post-Representation Responsibilities

9.1 Responsibilities as Former Outside Counsel

This chapter identifies some of the responsibilities that continue after your representation of the FDIC concludes. The FDIC recognizes that as a lawyer you are also subject to requirements imposed by the state in which you practice.

9.2 Conflicts of Interest and Confidentiality

As former FDIC outside counsel, you may not, without a written waiver from the FDIC, represent another client against the FDIC in a matter substantially related to any matter in which you previously represented the FDIC. You are also expected to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation.

When in doubt about the existence of a conflict, you should nevertheless disclose the matter to the FDIC and seek a waiver. If you have questions concerning conflicts, please contact the Legal Services Unit in Washington, DC at (877) 275-3342.

9.3 File Retention

As former FDIC counsel, if you decide to retain the files related to the legal matter(s) for which you represented the FDIC, for your own purposes as described in paragraph 8.2, you have an obligation to preserve such files until the files are either returned to the FDIC or destroyed. Those files may not be destroyed without the express permission of the FDIC as described in [Chapter 8, Section 2](#).

9.4 Contacts with the Public and Media

All restrictions concerning public and media contacts applicable during your representation of the FDIC continue after your representation concludes. These restrictions are discussed in [Chapter 1, Section 1.10](#).

9.5 Identifying FDIC as a Former Client

You may list FDIC as a former client in published materials provided you comply with the guidance discussed in [Chapter 1, Section 1.2](#).

9.6 Compliance with Subpoenas and Other Court Orders

If you are served with a subpoena, court order or other legal process relating to your representation of the FDIC, you must immediately notify the FDIC's General Counsel, and may not disclose FDIC records or provide testimony without authorization from the FDIC.

This requirement and the follow-up steps are discussed in FDIC regulations at 12 C.F.R. §§ 309.7(b) and (c).

You agree to cooperate with the FDIC, if the Legal Division decides to appeal or challenge the subpoena or order. Under no circumstances should it be construed that FDIC will represent you in this matter or reimburse you for any legal fees or other expenses you may incur in complying with this requirement. However, FDIC will consider requests for reimbursement on a case-by-case basis.

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Outside Counsel Deskbook

Foreign Law Firms

10.1 Definition

The FDIC occasionally requires the retention of a law firm located and operating in a country other than the United States of America ("US"). For purposes of this Deskbook, a "foreign law firm" shall be defined as any law firm retained by the FDIC that meets both of the following criteria

- 1 The law firm does not operate any office location within the US, **and**
- 2 The law firm is not governed by or subject to the US Internal Revenue Service, requiring issuance of a Federal taxpayer identification number for tax purposes

10.2 Deskbook Compliance

A foreign law firm is required to adhere to many of the same requirements of this Deskbook as US firms, however, the FDIC recognizes that some Deskbook provisions, such as laws and regulations that are unique to the US, will not apply to a foreign law firm. Therefore, the specific requirements applicable to a foreign law firm are set out in this chapter, including references to other applicable portions of the Deskbook. It is important that the principle members of a foreign law firm, including the accounting department, understand and comply with all applicable policies, procedures and forms as specified herein.

10.3 Application Requirements

FDIC requires all correspondence from a foreign law firm to be in English. Prior to entering into a Legal Services Agreement, the FDIC requires the foreign law firm to submit the following items:

- 1 A firm brochure or a narrative statement about the firm, including information regarding the areas of law in which the firm practices and highlighting areas of expertise
- 2 A statement acknowledging the requirements of FDIC's policies and procedures governing outside counsel conflicts of interest and completion of the related [Representations and Certifications form - Word](#)

10.4 Legal Services Agreement

A foreign [Legal Services Agreement - Word 52k \(Word Help\)](#) (LSA) is an agreement between a foreign firm and the FDIC that contains terms and conditions applicable to legal referrals and is incorporated in all referral letters. The LSA and any referral letter incorporate applicable parts of the Deskbook, as it may be amended from time to time.

Incorporated in and attached to the LSA is an [hourly rate schedule - Word 52k \(Word Help\)](#) listing each attorney and paraprofessional assigned to work on FDIC matters (approved billable individual).

A foreign law firm is required to complete the following information on the Hourly Rate Schedule form for each approved billable individual:

- Full name
- Position or title within the firm
- Years in practice

- Standard hourly rate (in US currency)
- Percent (%) discount
- Proposed FDIC hourly rate (in US currency)

The following fields of the Hourly Rate Schedule form **are not** required for foreign law firms

- Federal Tax Identification Number
- State licenses column
- Minority status column

The LSA and completed Hourly Rate Schedule form must be signed by an authorized representative of the foreign law firm

An LSA is effective once both the LSA and the Hourly Rate Schedule have been signed by FDIC delegated authority. The LSA is effective on the date specified in the LSA and the term is two years from the effective date unless the Legal Division elects to terminate or extend it prior to its expiration. FDIC reserves the right to terminate the LSA without cause or advance notice. Absent compelling reasons, no increase in hourly rates incorporated in the LSA will be permitted during its term.

If, at the end of the LSA term, the foreign law firm is working on a legal referral and the LSA is not renewed, the LSA will continue for the sole purpose of completing existing work under the same terms and conditions until the earliest of

- All work on outstanding legal referrals is complete,
- A new LSA is executed, or
- FDIC exercises its right to terminate the LSA

Continuation of the LSA is not the same as renewal of the LSA. Continuation does not permit a foreign law firm to receive any new referrals.

10.5 Electronic Funds Transfer Payments

The FDIC, in compliance with US regulations, makes payments to vendors, including any foreign law firm that has an account with a US financial institution, by means of electronic funds transfer (EFT). Payments via EFT allow faster access to funds and payment information, but can only be used with a US bank account. If a foreign law firm has an account with a US financial institution, the Legal Division requests completion and submission of the [Payee Information for Automatic Deposit of Payment form - Word 47k \(Word Help\)](#). Otherwise, payments to a foreign law firm will be made via mailed check.

10.6 LSA Amendment

An amendment to the LSA may be necessary when there has been a change in the information originally submitted in the application package. It is the responsibility of the foreign law firm to inform the FDIC of any new or changed information. If the LSA information is not current, a foreign law firm may not be able to perform legal services for the FDIC. Additionally, payment of invoices may be delayed if information is not up-to-date. This information includes, but is not limited to, structural changes of the firm, as well as adding or removing billable individuals.

The following fields of the LSA Amendment form **are not** required for foreign law firms

- Federal Tax Identification Number
- State licenses column
- Minority status column

The completed LSA Amendment form must include the effective date of the amendment and be signed by an authorized representative of the foreign law firm. The original LSA Amendment form should be submitted to the FDIC office or section that issued the LSA. Once a request to amend the LSA has been approved, a copy of the LSA Amendment form, approved and signed by FDIC delegated authority, will be sent to the foreign law firm. A foreign law firm may not bill the FDIC for services of any individual unless and until the

individual has been approved and included on the Hourly Rate Schedule form or the LSA Amendment form

10.7 Legal Referral

When the Legal Division retains a foreign law firm to provide services for a particular case or matter, a legal referral will be made. A legal referral may encompass one or more "legal matters". For example, a legal referral may encompass litigation of a particular case, assistance with a subsequent appeal and/or a related bankruptcy case.

When a legal referral is made, a referral letter will be sent to the foreign law firm. The referral letter will identify the specific services requested and the terms and conditions of the legal referral. The referral letter incorporates several documents, including the LSA, applicable portions of the Deskbook, and the case plan and budget(s), which are required to be submitted by the foreign law firm and approved by the Legal Division. The referral letter, as well as the incorporated documents, may subsequently be amended or modified by the Legal Division.

At the time a legal referral is made, a foreign law firm must confirm that no material changes have occurred that affect representations and conflicts certifications contained in the application package originally submitted to the Legal Division by the foreign law firm.

10.8 Invoice Package

The Legal Division has specific policies and procedures relating to submission, processing and payment of legal invoices. A foreign law firm is required to adhere to the requirements for completing an invoice package and submitting it to the FDIC as set out in Chapter 7 of the Deskbook. In addition to the requirements identified in Chapter 7, any invoices submitted by a foreign law firm must be in English and U.S. dollars, calculated at the exchange rate at the time the services are rendered.

It is important that the principal members of a foreign law firm, particularly the accounting department, understand and adhere to the required policies, procedures and forms relating to submission of an invoice package.

10.9 Other Applicable Deskbook Chapters

In addition to the information specified in this chapter, the following *Deskbook* chapters are also applicable to a foreign law firm:

[Chapter 1](#) – Representing the FDIC

[Chapter 2](#) – Conflicts of Interest

[Chapter 5](#) – Case Management

[Chapter 6](#) – Case Plan and Budget

[Chapter 7](#) – Invoice Package

[Chapter 8](#) – Legal Matter Closeout

[Chapter 9](#) – Post-Representation Responsibilities

10.10 Value Added Tax (VAT)

For issues related to the Value Added Tax (VAT) please contact the Legal Services Unit (LSU) at 1-877-275-3342.

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Outside Counsel Deskbook

Appendix A - Contacts

Appendix A provides a list of FDIC offices, which will be able to answer questions or provide additional information

FDIC Outside Counsel Contacts

For inquiries concerning LSA Applications, List of Counsel Available, Equal Employment Opportunity and Diversity, Conflicts of Interest, Billing, Records Retention, etc

FDIC Legal Division:

Attn Legal Services Unit
550 17th Street NW, Room H-3007
Washington, D C 20429-9990
(877) 275-3342
(202) 736-0079
(800) 925-4618 (TDD)
(202) 736-0012 (fax)

FDIC Legal Division:

Attn Outside Counsel Coordinator
1910 Pacific Avenue
Dallas, Texas 75201
(972) 761-8429
(800) 568-9161
(972) 455-7094 (fax)

Legal Research Bank:

FDIC Legal Division
Attn Legal Research Bank
550 17th Street, NW, Room H-3119
Washington, D C 20429-9990
(202) 736-0246

Media Inquiries:

FDIC Office of Public Affairs
550 17th Street, NW
Washington, D C 20429-9990
(877) 275-3342

Equal Employment Opportunity and Diversity:

FDIC Office of Diversity and Economic Opportunity – MWOLF Program

FDIC Legal Division
Attn Legal Services Unit
550 17th Street, NW, Room H-3011
Washington, D C 20429-9990
(877) 275-3342
(202) 736-0122
(800) 925-4618 (TDD)
(202) 736-0382 (fax)

Ethics:

FDIC Legal Division
Attn Ethics Section
550 17th Street, NW
Washington, D C 20429-9990
(877) 275-3342

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Outside Counsel Deskbook

Appendix B - Statutory Compliance

Appendix B provides a list of certain provisions of federal law with which Outside Counsel must comply

Acts of October 23, 1989 (Byrd Amendment) as amended **31 U.S.C. § 1352**

Prohibits federal government contractors from using monies received from federal contracts, grants, loans or cooperative agreements to lobby Congress or the Executive Branch in order to influence the award, extension or modification of a contract, grant or financial transaction. *The Implementation Statement and certification and disclosure forms can be found in [Byrd Amendment](#)*

Age Discrimination in Employment Act **29 U.S.C. §§ 621-634**

Prohibits employers from discriminating on the basis of age

Americans with Disabilities Act **42 U.S.C. §§ 12101-12117**

Prohibits discrimination in employment based on a physical or mental handicap

Anti-Kickback Act of 1986 **41 U.S.C. §§ 51-58**

Prohibits the solicitation, payment and inclusion in contract price of kickbacks related to a federal contract

Assignment of Claims Act of 1940 **41 U.S.C. § 15; 31 U.S.C. § 3727**

Controls the assignment of federal contract claims

Civil Rights Act of 1964, as amended **42 U.S.C. §§ 2000e et seq.**

Prohibits employers from discriminating in hiring, discharging, compensation, or terms, conditions, and privileges of employment based on race, color, religion, sex or national origin

Conspiracy to Defraud the Government **18 U.S.C. § 286**

Identifies penalties for conspiracy to defraud

Minimum Standards of Integrity and Fitness for an FDIC Contractor

(Contractor Conflicts of Interest)
12 C.F.R. Part 366

Implements the requirements of 12 U S C §§ 1822(f)(3) and (4) Refer to Conflicts of Interest

Debt Collection Act
31 U.S.C. § 3701 (b)(1)(C)

Establishes the authority for the collection of monies owed the FDIC

Debt Collection Improvement Act of 1996
31 U.S.C. § 3332

Requires all federal payments, including vendor payments and expense reimbursements, be made by electronic funds transfer (EFT)

Drug-Free Workplace Act of 1988
41 U.S.C. §§ 701-707

Requires drug-free workplace

False Claims Act of 1863
31 U.S.C. § 3729

Identifies penalties for knowingly presenting false claims

False, Fictitious or Fraudulent Claims
18 U.S.C. § 287

Identifies penalties for making or presenting false, fictitious or fraudulent claims

False Statements or Entries
18 U.S.C. § 1001

Identifies penalties for making false statements or entries

Federal Property and Administrative Services Act of 1949
41 U.S.C. §§ 254(a) and 254d

Prohibits payment of contingent fees in federal contracts (§ 254(a)) and requires retention of contractor records and authorizes examination and audit of contractor records (§ 254d)

Financial Institutions Reform, Recovery, and Enforcement Act of 1989
12 U.S.C. § 1833e(c)

Requires establishment of Minority Outreach Program

Forfeiture of Fraudulent Claims
28 U.S.C. § 2514

Identifies penalties for participation in fraudulent claims

Inspector General Act of 1978 as amended
5 U.S.C. app. §§ 1-12

Establishes and identifies the authority of the office of inspector general.

Interests of Members of Congress
41 U.S.C. § 22

Prohibits participation by members of Congress in government contracts

Internal Revenue Code
26 U.S.C. §§ 6041, 6041A, 6050M

Taxpayer Identification Number (TIN) and returns relating to persons receiving contracts from federal executive agencies

International Air Transportation Competition Act of 1979
49 U.S.C. § 40118

Regulates use of federal funds for air transportation

Obstruction of Federal Audit
18 U.S.C. § 1516

Identifies penalties for obstructing a federal audit

Rehabilitation Act of 1973
29 U.S.C. § 793

Employment under federal contracts for disabled workers

Service of Process
12 C.F.R. §§ 309.7 (b) – (c)

Identifies FDIC's notification and authorization requirements

Vietnam Era Veterans' Readjustment Assistance Act of 1974
38 U.S.C. § 4212

Veterans' employment emphasis under federal contracts

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Outside Counsel Deskbook

Appendix C - Electronic Billing / Timekeeping

NOTE: You are required to retain copies of all invoice packages and original underlying support documentation, including time sheets and time and expense adjustment records, for three years after final payment under the legal referral (*Refer to Chapter 1 and Chapter 7*)

February 15, 1998

Electronic Billing Guidelines

The FDIC Legal Division is establishing electronic billing guidelines for FDIC outside counsel, consistent with the FDIC Office of Inspector General's audit requirements and the capabilities of commercially available time, billing and accounting software systems increasingly utilized by law firms. These guidelines are effective for legal fees incurred on or after February 15, 1998, and are incorporated in the *FDIC Outside Counsel Deskbook (Deskbook)*.

The guidelines were developed as a result of a joint project of the FDIC's Legal Division and Office of Inspector General (OIG) under the auspices of the FDIC's Audit Committee. As many of you are aware, the OIG conducts audits of fees billed by law firms retained by the FDIC. To facilitate such audit activities, the current Deskbook requires outside counsel to retain copies of all FDIC-related bills and original underlying support documentation, including time sheets and time and expense adjustment records, for at least three years after final payment. On occasion, law firms have maintained that their original time sheet data was available in an electronically archived format. In many instances, however, the OIG determined that the electronic systems in place did not contain adequate internal controls or audit trails to ensure the integrity of the data for audit purposes.

Guidelines

The Legal Division has concluded that time billing and accounting software available to the legal profession is able to provide basic internal control features that are consistent with generally accepted auditing standards. Controls deemed to be critical include the following:

- (1) unique identifiers (user identification) and/or passwords for each user of the system,
- (2) an access profile for controlling user access to each application,
- (3) identification of the individual who entered, changed or deleted data,
- (4) an audit trail that identifies dates of entry, change, or deletion,
- (5) information that shows the extent of the change or the reason for the deletion, and
- (6) provisions for a user identification code or other certification when the information

entered is approved and forwarded for processing of the final fee bill

These critical internal controls are present in varying degrees in available software packages and formats, but particular weaknesses may exist regarding items (3) and (4) above. To address these weaknesses and weaknesses created where otherwise adequate internal controls provided in the software are modified or not implemented, firms may need to consider appropriate upgrading, supplementation or modification of the software or maintenance of alternative manual documentation as backup, in order to minimize or avoid significant questioned fees and costs. The Legal Division reserves the right, should there be substantial questioned costs raised on audit based on deficiencies identified in a firm's electronic billing system, to impose additional documentation requirements to correct these deficiencies. These may include, without limitation, requirements to add specific internal controls through upgrades, supplemental programs, program modifications, or maintenance of alternative manual documentation as backup. Regardless of the software used, any OIG audit will include a separate evaluation of the firm's software and implementation of internal controls to assess the reliability of the electronic data recorded by the law firm.

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**FORMS & RELATED
LINKS**

ALTERNATIVE
DISPUTE
RESOLUTION/BINDING
ARBITRATION



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 5310 1

CONTACT

James T. Lantelme

TELEPHONE NUMBER

(202) 736-0120

DATE

June 5, 2001

DATE OF CANCELLATION (*Bulletins Only*)

TO: All Divisions and Offices

FROM: William F. Kroener, III
General Counsel

SUBJECT: Binding Arbitration

1. Purpose To implement the FDIC's Arbitration Policy, 66 Federal Register 18632 (2001), and provide uniform guidance and controls regarding the use of binding arbitration by the FDIC. The guidance and controls within this directive are critical given the limited rights to appeal a binding arbitration award.

2. Scope

a. The provisions outlined in this directive apply to the FDIC in all capacities and to all Divisions and Offices seeking to use binding arbitration. Additionally, the provisions of this directive shall apply to Federal court-based arbitration programs. Binding arbitration may be used to resolve disputes in a number of situations where it is more practical, cost-effective, or efficient than litigation or other consensual methods of Alternative Dispute Resolution such as negotiation or mediation.

b. This directive will not be construed as requiring the FDIC to participate in binding arbitration. This directive does not address the use of binding arbitration in workplace disputes concerning management and employees; EEO complaints or any other labor and employment disputes (including disputes subject to arbitration proceedings under 5 U.S.C. § 7121); state court-based arbitration programs; contracts or leases entered into by a depository institution prior to the appointment of the FDIC as conservator or receiver, or any of the FDIC's regulatory, compliance or enforcement activities.

3. Authority The FDIC may enter into binding arbitration pursuant to the Administrative Dispute Resolution Act of 1996 (5 U.S.C. §§ 571-583) and the Alternative Dispute Resolution Act of 1998 (28 U.S.C. §§651-658). This directive does not supplant or

**Authority
(cont'd)**

supercede any applicable FDIC delegations of authority with respect to the compromise or settlement of claims or disputes.

4. Action

This directive should be reviewed by employees in Divisions and Offices who are considering using binding arbitration, and it will be posted and maintained on the FDIC Website for future reference. All Divisions and Offices affected by this directive should update their operating manuals accordingly.

5. Definitions

Terms used in this directive are defined below:

a. **Alternative Dispute Resolution ("ADR")**. A generic term that encompasses a wide range of practices (binding or non-binding) for managing and resolving disputes other than through litigation or administrative adjudication. Binding arbitration is a form of ADR.

b. **Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§571-583 ("ADRA")**. The ADRA authorizes the voluntary use of binding arbitration by Federal agencies in administrative matters, pursuant to certain restrictions set forth in the Act. These restrictions are set forth in paragraphs 7. and 8. of this directive.

c. **Federal Arbitration Act, 9 U.S.C. §§ 1-14 ("FAA")**. This statute provides for the enforcement in Federal court of agreements to arbitrate and arbitration awards. The FAA is procedural, not substantive, in nature and creates no independent basis for Federal subject matter jurisdiction.

d. **Binding Arbitration**. A dispute resolution process similar to litigation where the parties agree to use a privately selected neutral decision-maker to hear their dispute and resolve it by rendering a final and binding award. Like litigation, arbitration is an adversarial, adjudicative process designed to resolve specific issues determined by the parties. Arbitration differs from litigation in that it does not require conformity with legal rules of evidence and procedure, allows flexibility in timing and choice of decision-makers, is non-public, and results in awards which have no precedential value in other disputes. There are very limited rights of appeal from a binding arbitration award.

e. **Court-Based Arbitration**. An arbitration procedure annexed to a court proceeding and ordered or required by the court. Federal court-based arbitration programs are operated pursuant to the Alternative Dispute Resolution Act of 1998 (28 U.S.C. §§ 651-658).

Definitions (cont'd)

f. **Evaluation.** Usually a non-binding, outcome-determinative process in which a third-party neutral provides an advisory opinion to the parties as to the merits of the dispute, including an opinion as to the strengths and weaknesses of each party's case.

g. **Mediation.** A non-binding, voluntary process involving the use of a third-party neutral who assists the disputants in attempting to resolve their disputes. Unlike arbitrators, mediators have no decision-making authority and cannot impose an award on the parties.

h. **Negotiation.** The primary form of dispute resolution in which the parties communicate or bargain to settle a dispute with no assistance from a third-party neutral.

i. **Pre-Dispute Agreements to Arbitrate.** Agreements in which the parties may agree at the time a contract is entered into to submit a dispute arising from the contract to binding arbitration. The agreements typically set forth the arbitration procedures that will be followed if a dispute arises.

j. **Post-Dispute Agreements to Arbitrate.** Agreements to arbitrate entered into after a dispute has arisen and where no previous contractual dispute resolution mechanism was provided.

6. Background of FDIC ADR Program

The FDIC ADR Program is an organization-wide effort implementing ADR processes such as negotiation, mediation, evaluation, and arbitration (when authorized and when appropriate) for resolving disputes (see FDIC ADR Policy at 62 Federal Register 66370). This directive reiterates the FDIC's commitment and full support for using ADR and sets forth a framework for continuing and expanding the use of ADR by providing for the use of binding arbitration in appropriate cases as a means of dispute resolution. Although the FDIC encourages non-binding, consensual forms of ADR, the FDIC views the use of binding arbitration in appropriate circumstances as an additional ADR technique to accomplish its business in an efficient, economical, and productive manner.

7. Requirements for Use of Binding Arbitration

To use binding arbitration, the following statutory requirements must be met:

a. All agreements to arbitrate disputes must be in writing and must specify the subject matter to be submitted to the arbitrator for decision (5 U.S.C. § 575(a)(2));

**Requirements
for Use of
Binding
Arbitration
(cont'd)**

- b. All agreements to arbitrate must include a maximum award amount that may be granted by the arbitrator (5 U.S.C. § 575(a)(2));
 - c. Any officer or employee of the FDIC offering to use binding arbitration in resolution of a dispute must have either the authority to enter into a settlement concerning the matter, or the specific authority to consent to binding arbitration on behalf of the FDIC (5 U.S.C. § 575(b)(1) and (2));
 - d. There may be no requirement that anyone consent to binding arbitration as a condition to contracting with the FDIC (5 U.S.C. § 575(a)(3)); and
 - e. The agreement to use binding arbitration must be voluntary on the part of all parties (5 U.S.C. § 575(a)(1)).
-

**8. Restrictions on
Use of Binding
Arbitration**

- a. Binding forms of ADR such as arbitration shall not be used (except in exceptional circumstances) if the dispute:
 - (1) Requires an authoritative determination as precedent for other cases;
 - (2) Involves a significant question of government policy;
 - (3) Significantly impacts persons who are not parties to the proceedings;
 - (4) Requires a public record of the proceedings,
 - (5) Must be monitored on an on-going basis by a court or an administrative body to ensure compliance; and
 - (6) Must be adjudicated to establish a body of law.
- b. In addition to these considerations, this directive places the following limits on the use of binding arbitration at the FDIC, absent waiver by delegated authority:
 - (1) All agreements to arbitrate shall explicitly exclude any award of punitive, consequential, special or exemplary damages by the arbitrator.
 - (2) All agreements to arbitrate shall explicitly state that the parties to the arbitration proceedings must each bear their respective arbitration costs, including all attorneys fees and expenses. The agreement to arbitrate shall explicitly exclude any award of attorneys' fees or arbitration costs by the arbitrator.

Restrictions on Use of Binding Arbitration (cont'd)

(3) No arbitrator can serve as counsel, advisor, witness or representative to any party to the arbitration proceedings. Potential conflicts of interest of arbitrators selected pursuant to this directive must be reviewed by the Legal Division's Conflicts Committee. The Conflicts Committee will grant or deny, in writing, waivers of arbitrator conflicts in appropriate circumstances.

9. Exclusions

The provisions of this directive do not apply to the following

- a. **State Court Arbitration Programs.** The FDIC should carefully consider whether to engage in binding arbitration in state court. In the rare situation where the FDIC in either a receiver or conservator capacity is in state court and the court arbitration program is either mandatory or binding, careful assessment of the case and options to arbitration (including removal of the case to Federal jurisdiction) is recommended.
 - b. **Labor and Employment Arbitration.** Conflicts that arise during the course of employment, such as wrongful termination, sexual harassment, and discrimination based on race, color, religion, sex, national origin, age, and disability, union grievances and collective bargaining agreement disputes may be candidates for arbitration. However, the arbitration of these disputes is covered by specific labor statutes, regulations, and FDIC policies and procedures. Questions concerning labor and employment arbitration should be directed to the Corporate Affairs Section, Legal Division.
 - c. **Arbitration Clauses in Contracts Entered into by Depository Institutions Prior to Failure.** Contracts entered into by depository institutions prior to the appointment of the FDIC as conservator or receiver are not subject to the provisions of this directive. For those situations, the Legal Division should be consulted to assist in determining whether it is in the best interests of the conservatorship or receivership to repudiate or to perform under the contract.
 - d. **FDIC's Regulatory, Compliance and Enforcement Activities.** The policy and this directive are not intended to authorize the FDIC's use of binding arbitration in connection with its regulatory, compliance, and enforcement activities.
-

10. Delegations of Authority

The decision to use binding arbitration, whether pre- or post-dispute (see paragraph 11 , below), is similar to decisions to contract, to initiate litigation, or to settle or compromise a

Delegations of Authority (cont'd)

dispute. Each of these decisions requires the written approval of one or more officers of the FDIC with the necessary delegated authority. The FDIC's practice is to treat binding arbitration as either the compromise of a claim or the settlement of litigation, with approvals required at the appropriate level for both the compromise or settlement activity and for the dollar amount. Authority to determine the maximum award amount for any given arbitration is reflected in the expenditure and/or compromise and settlement delegations.

11. Pre- and Post- Dispute Agreements to Arbitrate

a. Form of Agreement:

(1) Binding arbitration is a complete dispute resolution mechanism which has few, if any, rights of appeal. It is imperative that any arbitration provisions for use by the FDIC (whether in a pre- or post-dispute agreement) be carefully drafted and reviewed to ensure that all pertinent arbitration issues have been addressed for the particular transaction.

(2) The Legal Division has developed standard or model arbitration provisions and clauses that may be used for form contracts and which may be tailored to suit the needs of particular situations. Divisions and Offices of the FDIC considering the use of binding arbitration shall use the forms and language provided by the Legal Division. **Any language intended to invoke the use of binding arbitration where the FDIC is a party must be reviewed and approved by the Legal Division.**

b. Case Approval for Binding Arbitration Provisions:

(1) Pre-Dispute Agreements:

(a) The FDIC is a party to a wide range of contracts and agreements in all its capacities. FDIC pre-dispute clauses to arbitrate arise in agreements or contracts where the FDIC has agreed to binding arbitration as a dispute resolution mechanism. The FDIC recognizes that the optimal time for determining contract dispute resolution provisions is often at the inception or drafting of the contract.

(b) Binding arbitration clauses may be drafted to be **voluntarily** invoked as agreed to by the parties when a dispute arises during performance of the contract. The decision to invoke voluntary binding arbitration clauses must be reviewed and approved by the Legal Division in accordance with this directive. Binding arbitration clauses

**Pre- and
Post-Dispute
Agreements
to Arbitrate
(cont'd)**

may also be written to **require** the parties, starting from the time the contract is executed, to resolve any disputes that may arise through binding arbitration. Clauses requiring the use of binding arbitration to resolve any disputes between the parties must be prepared in accordance with the procedures set forth in this directive and applicable Delegations of Authority.

(c) Binding arbitration clauses in contracts intended to be used by the FDIC in any capacity must be accompanied by a case requesting authority for approval to engage in binding arbitration. The case recommending the use of such arbitration clauses must contain the following information:

1. The nature or substance of the transaction where the arbitration provision is intended to be used;
2. The nature of disputes intended to be resolved by the provision;
3. Potential dollar amounts in controversy or at risk (maximum award amount);
4. Whether other forms of ADR have been or will be used;
5. The advantages or benefits for the transaction of using binding arbitration; and
6. A draft arbitration clause or agreement proposed to be used in the transaction.

(2) Post-Dispute Agreements:

FDIC post-dispute agreements to arbitrate typically arise from newly arising or ongoing claims, disputes, or litigation. The FDIC shall consider arbitration in the post-dispute context on a case-by-case basis. The decision to use binding arbitration should be in accordance with the existing corporate procedures for requesting the authority to settle or compromise a case. The case memorandum requesting authority to enter into a post-dispute agreement is similar to the pre-dispute case approval authority in subparagraph 11.b.(1), above, and shall contain:

- (a) The nature or substance of the transaction where the dispute arose,

**Pre- and
Post-Dispute
Agreements
to Arbitrate
(cont'd)**

(b) If in litigation, a description of the case and the status of the litigation;

(c) Potential dollar amounts in controversy or at risk (maximum award amount);

(d) The advantages or benefits to the FDIC and the transaction of using binding arbitration versus the use of litigation (this statement should include a discussion on the ability to withdraw from the litigation, to pursue settlement, establish precedent, have open records, and pursue an appeal);

(e) Estimated costs to the FDIC in arbitrating the matter, including arbitrator costs, FDIC personnel costs, outside counsel costs, and case administration compared with the costs to litigate;

(f) Whether other forms of ADR have been or will be used; and

(g) A draft arbitration agreement proposed to be used in the transaction.

c. Summaries:

In all pre- and post-dispute agreements where binding arbitration is used, the responsible FDIC Division or Office must, at the cessation of arbitration proceedings, complete a summary. This summary shall be an assessment of the use of arbitration and shall:

(1) Indicate the final costs of the arbitration;

(2) Reflect the total amount awarded by the arbitrator;

(3) Show the date of the decision;

(4) Estimate the costs to the FDIC had it litigated the matter; and

(5) Include the arbitrator's summary of decision and award and an evaluation of the arbitrator's performance.

This summary shall be forwarded to the ADR Unit of the Legal Division and the Division or Office Director or his designee participating in the arbitration proceeding.

12. Responsibilities

a. All **Divisions and Offices** considering the use of binding arbitration shall:

- (1) Identify subject areas and transactions where arbitration may be appropriate to resolve disputes;
- (2) Develop plans and strategies for the implementation of binding arbitration in general and this directive specifically in identified subject areas; and
- (3) Work with the Legal Division to identify legal issues that may affect the substantive transaction/subject area and the implementation of the use of binding arbitration.

b. The **Legal Division** shall:

- (1) Provide consultation and assistance in the development of each case for use of binding arbitration in pre- and post-dispute agreements;
- (2) Review and concur in each case of binding arbitration;
- (3) At the request of a Division or Office, address legal issues that may occur if arbitration is used to resolve disputes arising in a transaction;
- (4) Provide a requesting Division or Office with standard forms (model agreements, clauses, and the like) to use binding arbitration where approved;
- (5) Assist in arbitration design;
- (6) Assist in selection of arbitrators when requested; and
- (7) Assist in the enforcement of arbitration agreements or awards pursuant to the terms of the Federal Arbitration Act.

Note: For purposes of this directive, references to the Legal Division shall, in the case of the Office of Inspector General, be deemed to be references to the Office of Counsel to the Inspector General

13. Contact

Questions regarding this directive should be directed to the ADR Unit of the Legal Division in Washington.

14. Effective Date

The provisions of this directive are effective immediately.





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FDIC Federal Register Citations

[Federal Register April 10, 2001 (Volume 66, Number 69)]
 [Notices]
 [Page 18632-18633]
 From the Federal Register Online via GPO Access [was access gpo gov]
 [DOCID fr10ap01-88]

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FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Binding Arbitration

AGENCY Federal Deposit Insurance Corporation (FDIC)

ACTION Final statement of policy

SUMMARY This FDIC Statement of Policy addresses the Corporation's use of binding arbitration and complies with the requirements of the Administrative Dispute Resolution Act of 1996, Pub L 104-320. This policy statement reaffirms and supplements the FDIC's existing policy (62 FR 66370) to use all forms of Alternative Dispute Resolution for resolving appropriate disputes in a timely and cost efficient manner.

EFFECTIVE DATE. March 26, 2001

FOR FURTHER INFORMATION CONTACT: Mark G. Flanigan, Counsel (202) 898-6865, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Rm 5082, Washington, DC 20429

SUPPLEMENTARY INFORMATION. The Board of Directors of the FDIC has adopted a Statement of Policy regarding binding arbitration. The text of the Policy Statement follows:

Statement of Policy on the Use of Binding Arbitration

The Federal Deposit Insurance Corporation (FDIC) has long been and continues to be a strong advocate for the use of various forms of Alternative Dispute Resolution (ADR) for resolving appropriate disputes in a more timely, less costly manner than litigation. The FDIC's ADR program is an organization-wide effort implementing the spectrum of ADR processes including negotiation, facilitation, mediation, evaluation and advisory ADR in internal and external conflict management and dispute resolution. This policy statement reiterates the FDIC's commitment and full support for using ADR in appropriate instances and sets forth a framework for the continuing and expanding use of ADR by

providing for the use of binding arbitration as a means of dispute resolution

Arbitration is a private, informal process by which parties agree, in writing, to submit their disputes to one or more impartial persons authorized to resolve the controversy by rendering a final and binding decision or award with limited rights of appeal. The final and binding nature of the decision distinguishes arbitration from mediation and other non-binding forms of ADR. Potential benefits of arbitration are its greater flexibility, potential for limited discovery and streamlined hearing processes, use of panels of trained and subject-area expert arbitrators, and restricted judicial review rights.

Although the FDIC encourages non-binding, consensual forms of ADR, the Corporation views the use of binding arbitration in appropriate circumstances as an additional ADR technique to accomplish its business in an efficient, economical and productive manner. The Corporation will consider using non-binding ADR to resolve disputes prior to engaging in binding arbitration.

Scope

This Policy Statement applies to disputes arising with the FDIC in all its capacities and complies with the

[[Page 18633]]

arbitration provisions of the Administrative Dispute Resolution Act of 1996. This Policy also applies to federal court-based arbitration programs under the Alternative Dispute Resolution Act of 1998. Offices and Divisions considering the use of binding arbitration should refer to this Policy and the separate Directive on use of Binding Arbitration. The use of binding arbitration in state court-based arbitration programs, employment/labor arbitration, contracts or leases entered into by a depository institution prior to the appointment of the FDIC as conservator or receiver, or in connection with any other of the FDIC's regulatory, compliance and enforcement activities, is not the subject of this Policy Statement.

Background

The Administrative Dispute Resolution Act of 1990 ("ADRA"), 5 U.S.C. 571-583, was amended in 1996. The 1996 amendments made significant changes in the provisions found in the ADRA of 1990, and specifically authorized federal agencies to voluntarily use binding arbitration without the former qualifying provisions that allowed the head of an agency to vacate an arbitration award. The 1996 ADRA amendments authorize an agency to use binding arbitration, in its discretion, and in appropriate cases. However, the ADRA amendments establish certain requirements an agency must meet before arbitrating disputes.

ADRA Requirements

Before engaging in binding arbitration, an agency must

Issue guidance, in consultation with the Attorney General, on the appropriate use of binding arbitration (5 U.S.C. 575(c)),

Require that all agreements to arbitrate disputes be in writing and specify the subject matter to be submitted to the arbitrator for decision (5 U.S.C. 575(a)(2)),

Include in the arbitration agreement the maximum award amount that may be granted by the arbitrator (5 U.S.C. 575(a)(2)),

Require any officer or employee of the agency offering to use arbitration in resolution of a dispute to have either the authority to enter into a settlement concerning the matter, or the specific authority to consent to arbitration on behalf of the agency (5 U.S.C. 575(b)(1) and (2)); and

Not require anyone to consent to binding arbitration as a condition to contracting with the agency (5 U.S.C. 575(a)(3))

Finally, the use of binding arbitration must be voluntary on the part of all parties (5 U.S.C. 575(a)(1))

Aside from the foregoing, the 1996 ADRA amendments provide that an agency shall consider not using a dispute resolution proceeding such as binding arbitration if the dispute

Requires an authoritative determination as precedent for other cases,

Involves a significant question of government policy,

Significantly impacts persons who are not parties to the proceedings,

Requires a public record of the proceedings,

Must be monitored on an on-going basis by a court or an administrative body to ensure compliance,

Must be adjudicated to establish a body of law

Purpose and Intended Uses

The FDIC may use binding arbitration to resolve disputes in a number of situations where it is more practical, cost-effective, or efficient than litigation or other consensual methods of ADR such as negotiation or mediation. The FDIC may agree to use binding arbitration in Corporation contracts (before an actual dispute arises), subject to the required approval and authority. Complex commercial/business transactions, construction contracts, insurance agreements, asset sales, real estate sales, leasing, and securities and securitizations are examples of substantive areas where binding arbitration may be used to resolve disputes. The FDIC may also agree to enter into binding arbitration after a dispute has arisen, and where no previous contractual dispute resolution mechanism exists.

Directive

The Legal Division is simultaneously issuing a directive providing further guidance to employees on the Corporation's use of binding arbitration. This directive will provide the following information:

Considerations in rendering a decision to use binding arbitration,

Circumstances where the Corporation will not use binding arbitration,

Considerations relating to the nature and extent of damages,

Responsibility for costs associated with arbitration,

Arbitrator selection criteria, and

Arbitration case preparation, processing and review procedures

It is the responsibility of all FDIC employees to practice and promote cost-effective dispute resolution in FDIC programs and in corporate operations. All officers and employees of Divisions and Offices of the FDIC considering the use of binding arbitration are hereby directed to take the necessary steps to implement this policy to promote effective and appropriate use of binding arbitration.

By order of the Board of Directors

Dated at Washington, DC, this 26th day of March, 2001.

Federal Deposit Insurance Corporation
Robert E. Feldman,
Executive Secretary
[FR Doc 01-8752 Filed 4-9-01, 8 45 am]
BILLING CODE 6714-01-P

Last Updated 04/10/2001

regs@fdic.gov

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BUDGET FORMS

Federal Deposit Insurance Corporation
LITIGATION BUDGET

INSTRUCTIONS: Please complete all requested information.

Matter Number		Matter Caption	
Institution Number	Institution Name	Institution Type <input type="checkbox"/> Bank <input type="checkbox"/> Thrift	Firm Name

PART I – LITIGATION BUDGET INFORMATION

Attorneys' Fees <input type="checkbox"/> Hourly Rate: \$ _____ <input type="checkbox"/> Fixed Fee: \$ _____ <input type="checkbox"/> TOA Fee: \$ _____ <input type="checkbox"/> Contingent Fee. _____ % of \$ _____	Estimated Recovery Value. \$ _____ Estimated Judgement Amount: \$ _____ Estimated Judgement Probability _____ %						
Estimated Hours For Completion: _____ Estimated Completion Date (MM/DD/YYYY): _____	<table border="1"> <thead> <tr> <th>Fees</th> <th>Expenses</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Fees	Expenses	Total			
Fees	Expenses	Total					

PART II – LAW FIRM BUDGET ACKNOWLEDGMENT

I acknowledge that the budget information contained herein is correct to the best of my knowledge and written approval of the Legal Division is required for any increase in the total budget amount.

Authorized Law Firm Delegate's Signature	Date (MM/DD/YYYY)
Name and Title of Authorized Law Firm Delegate (Please type or print)	
Telephone Number (Include area code)	FAX Number (Include area code)
PART III – BUDGET AUTHORIZATION FOR OUTSIDE COUNSEL TO PROCEED	
FDIC Attorney (Recommending approval of budget)	Date Budget Approved (MM/DD/YYYY)
Signature of Delegated Authority	Date Budget Approved (MM/DD/YYYY)

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room MB 3082, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20503.

Federal Deposit Insurance Corporation
AMENDED LITIGATION BUDGET

INSTRUCTIONS: An amended budget amount is a cumulative total of all past amounts incurred plus future amounts necessary for completion of a matter. An amended budget worksheet must also be completed prior to amended budget approval (1) if the original budget required a worksheet, or (2) if directed by an FDIC Attorney.

Matter Number			Matter Caption	
Institution Number	Institution Name	Institution Type <input type="checkbox"/> Bank <input type="checkbox"/> Thrift	Firm Name	
<input type="checkbox"/> 1st Amended Budget		<input type="checkbox"/> 2nd Amended Budget		<input type="checkbox"/> 3rd Amended Budget

PART I - AMENDED LITIGATION BUDGET INFORMATION

Attorneys' Fees <input type="checkbox"/> Hourly Rate: _____ <input type="checkbox"/> Fixed Fee \$ _____ <input type="checkbox"/> TOA Fee \$ _____ <input type="checkbox"/> Contingent Fee: _____ % of \$ _____		Estimated Recovery Value \$ _____ Estimated Judgement Amount: \$ _____ Estimated Judgement Probability: _____ %													
Estimated Hours for Completion. _____	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">Last Approved Budget</th> <th colspan="2">Amended Budget</th> </tr> <tr> <th>Fees</th> <th>Expenses</th> <th>Fees</th> <th>Expenses</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>		Last Approved Budget		Amended Budget		Fees	Expenses	Fees	Expenses					Estimated Completion Date (MM/DD/YYYY): _____
Last Approved Budget		Amended Budget													
Fees	Expenses	Fees	Expenses												
Total Fees and Expenses															

PART II - LAW FIRM AMENDED BUDGET ACKNOWLEDGMENT

I acknowledge that the budget information contained herein is correct to the best of my knowledge and prior written approval of the Legal Division is required for any increase in the total budget amount.

Authorized Law Firm Delegate's Signature	Date (MM/DD/YYYY)
Name and Title of Authorized Law Firm Delegate (Please type or print)	
Telephone Number (Include area code)	FAX Number (Include area code)

PART III - AMENDED BUDGET APPROVAL

FDIC Attorney Recommending approval of amended budget	Date (MM/DD/YYYY)
The amended budget has been reviewed and is approved.	
Signature of Delegated Authority	Date (MM/DD/YYYY)

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room MB 3082, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20503

Federal Deposit Insurance Corporation
NON-LITIGATION BUDGET FORM

INSTRUCTIONS Please provide all information requested

Matter Number		Matter Caption	
Institution Number	Institution Name	Institution Type <input type="checkbox"/> Bank <input type="checkbox"/> Thrift	Firm Name

PART I - NON-LITIGATION BUDGET INFORMATION

Attorneys' Fees. <input type="checkbox"/> Hourly Rate \$ _____ <input type="checkbox"/> Fixed Fee. \$ _____ <input type="checkbox"/> TOA Fee. \$ _____ <input type="checkbox"/> Contingent Fee. _____ % of \$ _____	Estimated Recovery Value \$ _____
---	--------------------------------------

Specify Nature of Non-Litigation work to be Performed (Attach additional sheet(s) as necessary.)

Estimated Hours for Completion. _____	Fees	Expenses	Total
Estimated Completion Date (MM/DD/YYYY) _____			

PART II - LAW FIRM BUDGET ACKNOWLEDGMENT

I acknowledge that the budget information contained herein is correct to the best of my knowledge and written approval of the Legal Division is required for any increase in the total budget amount

Authorized Law Firm Delegate's Signature	Date (MM/DD/YYYY)
--	-------------------

Name and Title of Authorized Law Firm Delegate (Please type or print)

Telephone Number (Include area code)	FAX (Include area code)
--------------------------------------	-------------------------

PART III - BUDGET AUTHORIZATION FOR OUTSIDE COUNSEL TO PROCEED

FDIC Attorney (Recommending approval of budget)	Date Budget Approved (MM/DD/YYYY)
Signature of Delegated Authority	Date Budget Approved (MM/DD/YYYY)

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room MB 3082, Federal Deposit Insurance Corporation, 550 17th Street, N W , Washington, DC 20503

Federal Deposit Insurance Corporation

AMENDED NON-LITIGATION BUDGET

INSTRUCTIONS: An amended budget amount is a cumulative total of all past amounts incurred plus future amounts necessary for completion of a matter. An amended budget worksheet must also be completed prior to Amended Budget approval (1) if the original budget required a worksheet or (2) if directed by an FDIC Attorney.

Matter Number		Matter Caption	
Institution Number	Institution Name	Institution Type <input type="checkbox"/> Bank <input type="checkbox"/> Thrift	Firm Name
<input type="checkbox"/> 1st Amended Budget		<input type="checkbox"/> 2nd Amended Budget	
		<input type="checkbox"/> 3rd Amended Budget	

PART I - AMENDED NON-LITIGATION BUDGET INFORMATION

Attorneys' Fees: <input type="checkbox"/> Hourly Rate \$ _____ <input type="checkbox"/> Fixed Fee \$ _____ <input type="checkbox"/> TOA Fee: \$ _____ <input type="checkbox"/> Contingent Fee _____ % of \$ _____	Estimated Recovery Value \$ _____
---	--------------------------------------

Specify Nature of Non-Litigation work to be Performed: *(Attach additional sheet(s) as necessary.)*

Estimated Hours for Completion: _____ Estimated Completion Date (MM/DD/YYYY): _____	Last Approved Budget		Amended Budget	
	Fees	Expenses	Fees	Expenses
Total Fees and Expenses				

PART II - LAW FIRM AMENDED ACKNOWLEDGMENT

I acknowledge that the budget information contained herein is correct to the best of my knowledge and prior written approval of the Legal Division is required for any increase in the total budget amount.

Authorized Law Firm Delegate's Signature	Date (MM/DD/YYYY)
Name and Title of Authorized Law Firm Delegate <i>(Please type or print)</i>	

Telephone Number <i>(Include area code)</i>	FAX Number <i>(Include area code)</i>
---	---------------------------------------

PART III - AMENDED BUDGET APPROVAL

FDIC Attorney <i>(Recommending approval of amended budget)</i>	Date (MM/DD/YYYY)
The amended budget has been reviewed and is approved	
Signature of Delegated Authority	Date (MM/DD/YYYY)

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room MB 3082, Federal Deposit Insurance Corporation, 550 17th Street, N W , Washington, DC 20503

BYRD AMENDMENT



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Outside Counsel Deskbook

Byrd Amendment Implementation Statement

FDIC

Federal Deposit Insurance Corporation

Washington, DC 20429

Legal Division

TO: FDIC Outside Counsel

SUBJECT: Implementation of 31 U S C § 1352 Instructions for Completing Required Form(s)

In accordance with 31 U S C § 1352 (b) (the "Act" or "Byrd Amendment"), all firms that request or receive a "contract" to provide legal services to the FDIC on a matter for which the firm has been or is expected to be paid \$100,000 (fees and expenses) or more must complete and return the FDIC Certification Form 3700/04A (8-02) ("Certification Form"). On the Certification Form your firm certifies whether it has made any payment or has agreed to make any payment prohibited by the Act. Furthermore, if any such payment has or will be made, the firm shall also complete and submit the Disclosure of Lobbying Activities (Standard Form LLL) ("Disclosure Form"). Thus, the Certification Form is required whether or not your firm has engaged in any lobbying activities. The Disclosure Form should be filed only if your firm has engaged in lobbying activities.

Your firm is responsible for determining when the total fees (including expenses) for a legal matter exceed or are expected to exceed \$100,000. Furthermore, your firm is responsible for complying with 31 U S C § 1352 (b) when total fees (including expenses) for a legal matter were initially estimated to be less than \$100,000 and were subsequently amended to exceed \$100,000, or if you received \$100,000 or more for a legal matter.

If your firm **has not** previously filed a Certification Form and a Disclosure Form, if required, in accordance with 31 U S C § 1352 (b), then your firm must file the appropriate form(s) with the FDIC **within 20 days from the date of the engagement**. If your firm **has** previously filed a Certification Form and Disclosure Form, if required, please note that your firm has a continuing duty to update previously filed Certification Forms and Disclosure Forms, pursuant to 31 U S C. § 1352 (b)(4)(C). If we do not receive an amended Certification Form and Disclosure Form, if required, then we will assume that no event has occurred that has materially affected the accuracy of a previously filed Certification Form and Disclosure Form.

Completed forms should be returned to the FDIC Legal Division office that issued the specific referral or engagement. Please note that your firm is responsible for ensuring that the forms that you file with the FDIC are accurate. The Act provides that those "persons", i.e. firms, who fail to file the Certification Form or the Disclosure Form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure to disclose. 31 U S C § 1352 (c)(2)(A).

The Byrd Amendment, prohibits the use of appropriated funds by recipients of a "Federal contract" for purposes of influencing or attempting to influence federal officials in connection with a "Federal action," such as the awarding of a "Federal contract." The Act prohibits "contractors" from using appropriated funds for lobbying in connection with a contract, grant, loan or cooperative agreement with a Federal agency. Furthermore, the Act requires the "contractor" to disclose to the Federal agency involved its lobbying activities connected with such "contract," grant or loan when the "contract" amount exceeds \$100,000 regardless of whether the activities are funded with appropriated funds.

The Act requires that a recipient of a "Federal contract" in excess of \$100,000 must file with the agency certain certification and disclosure forms. Certification and disclosure forms must be filed with the agency in accordance with 31 U.S.C. § 1352 (b)(4)

(A) with each submission that requests an award of a federal contract, grant, loan, or cooperative agreement,

(B) upon the receipt of a federal contract, grant, loan, or cooperative agreement, and

(C) at the end of each calendar quarter in which any event occurs that "materially affects the accuracy of the information contained in any declaration previously filed "

Last Updated 05/20/2005

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FDIC Contractor Representations and Certifications

SUBMITTED BY:

Contractor Name

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average one-half hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, Washington, D C 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D C 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C.) § 1819, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in so examining the contractor's compliance.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications shall be executed by an official authorized to bind the offeror, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent statement may render the maker subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these representations and certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide immediate written notice to the Contracting Officer, if, at any time prior to contract award, the offeror learns that one or more of the representations or certifications was erroneous when submitted or has become erroneous by reason of changed circumstances.

1. MINORITY AND WOMEN-OWNED BUSINESS REPRESENTATIONS

a. It is, it is not, a minority-owned business concern. A minority-owned business concern is defined as a firm in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm which is principally owned by another business entity or a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more minorities does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more of the qualifying minority owner(s). The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control of management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

b. If a minority-owned business, please check the appropriate box below indicating racial/ethnic category.

- American Indian/Alaska Native Asian Black or African
 Hispanic or Latino Native Hawaiian or Other Pacific Islander

c. It is, it is not, a women-owned business. A women-owned business is defined as a firm in which at least 51% of the ownership and control is directly or unconditionally held by one or more women. A firm which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s) management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A women owner's unexercised right to cause a change in control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

d. If offeror is a minority or women-owned business, where did it hear about FDIC contracting opportunities?

- Convention/Procurement Fair Minority and/or Women's Organization Personal Contact
 Current Solicitation Other (Explain)

Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move mouse to the next field.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

2. SMALL DISADVANTAGED BUSINESS CONCERN CERTIFICATION

It is, it is not, a small disadvantaged business concern that has been certified as a small disadvantaged business concern by the Small Business Administration, or it has filed an application with the Small Business Administration to be certified as a small disadvantaged business concern. A small disadvantaged business concern that has applied for but not yet received Small Business Administration certification may be entitled to treatment as a small disadvantaged business concern where certification can be obtained before the contract is awarded.

3. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

a. The offer certifies that

- (1) The prices in this proposal have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer or (iii) the methods or factors used to calculate the prices offered,
- (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law, and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition

b. Each signature on the proposal is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the offeror's organization responsible within that organization for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to a (1) through a (3) above, or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a (1) through a.(3) above

Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move the mouse to the next field.

(insert full name of person(s) in the offeror's organization responsible or determining the prices offered in this proposal, and the title of his or her position in the offeror's organization),

(ii) As an authorized agent, certifies that the principals named in subdivision b (2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs a (1) through a (3) above, and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a (1) through a (3) above

c. A proposal will not be considered for award where a (1), a.(3) or b above has been deleted or modified. If the offeror deleted or modifies a (2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

4. CONTINGENT FEE REPRESENTATION

Not applicable to proposals below \$100,000 or for the acquisition of commercial items

The offeror represents that except for full-time bona fide employees working solely for the offeror, the offeror (a) has, has not, employed or retained any person or company to solicit or obtain this contract; and (b) has, has not, paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract. The offeror agrees to provide information relating to this Representation as requested by the Contracting Officer when either (a) or (b) herein is answered affirmatively. As used herein, "bona fide employee" means a person, employed by an offeror or contractor and subject to the offeror's or the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FDIC contracts, nor holds out as being able to obtain any FDIC contract or contracts through improper influence.

5. EQUAL OPPORTUNITY CERTIFICATION

a. Have you participated in any contractual agreement which contained the Equal Employment Opportunity provisions prescribed in Executive Order (E O) 11246?

Yes No

b. Were you required pursuant to the rules and regulations of Equal Employment Opportunity (41 CFR 60-1) to file a compliance report as the result of such contractual agreement?

Yes No

c. Did you file the necessary compliance report? (If "yes" answer questions d and e.)

Yes No

d. Name of agency requiring report _____

e. When was report filed? _____

f. Has any action been required of you to improve your compliance posture?

Yes No

g. Name and address of Government "Compliance Agency," if known

Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move the mouse to the next field

h. What is your current employment? _____

i. Have you prepared a written affirmative action compliance program?

Yes No

If "No," the reason for this is:

Offeror is an agency or instrumentality of state or local government

Offeror employs less than 50 persons

Offeror has not been awarded a Federal contract or subcontract since July 1, 1968.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

j. Data on subcontractors *(Use supplementary sheets where required.)*

NAME OF SUBCONTRACTORS AND ADDRESSES

	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

- (1) Previously held contracts subject to E O. 11246
 (2) Previously filed certificate of nonsegregated facilities
 (3) Previously filed compliance report.

6. DUPLICATION OF COST

The offeror represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

7. CLEAN AIR AND WATER CERTIFICATION

(Applicable if the offer exceeds \$100,000, or if the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C § 1857 c-8 (c) (1)), or the Federal Water Pollution Control Act (33 U S C § 1819 (c)) and is listed by the Environmental Protection Agency (EPA), or is not otherwise exempt.)

The offeror certifies as follows

- a Any facility to be utilized in the performance of this proposed contract has, has not, been listed on the EPA list of violating facilities
- b It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA list of violating facilities
- c It will include substantially this certification, including this paragraph c , in every nonexempt subcontract

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

8. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

Applicable to contracts exceeding \$100,000

a The offeror certifies that, to the best of its knowledge and belief, the following statements are true.

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement

Yes No

- (2) No nonappropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the solicitation associated with this certification.

Yes No

If the offeror has checked the "No" box at 9a. (2) above, indicating that any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities" (available upon request) to the Contracting Officer

- b The offeror certifies that it will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly
- c Submission of this certification and disclosure, and when required, a completed OMB Standard Form LLL is a prerequisite for making or entering into this contract imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under the contract provision entitled "Limitation on Payments to Influence Certain Federal Transactions" in the FDIC General Provisions, or who fails to file or amend the disclosure form to be filed or amended with this certification, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each failure

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

9. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposals. The offeror also agrees to notify the FDIC in writing, within 10 days, after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within the representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the offeror intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the FDIC's examination of the contractor's compliance with FDIC non-ethics contracting regulations.

SOLICITATION NUMBER		
NAME OF OFFEROR <i>(Please print or type)</i>		OFFEROR'S TAX IDENTIFICATION NUMBER (TIN)
TITLE		
NAME OF OFFEROR'S FIRM		OFFEROR'S TELEPHONE NUMBER ()
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure)

1. Type of Federal Action: <input type="checkbox"/> a contract <input type="checkbox"/> b grant <input type="checkbox"/> c cooperative agreement <input type="checkbox"/> d loan <input type="checkbox"/> e loan guarantee <input type="checkbox"/> f loan insurance	2. Status of Federal Action: <input type="checkbox"/> a bid/offer/application <input type="checkbox"/> b initial award <input type="checkbox"/> c post-award	3. Report Type: <input type="checkbox"/> a initial filing <input type="checkbox"/> b material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI).	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature _____ Print Name _____ Title _____ Telephone No _____ Date _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U S C section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

- 1 Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action
- 2 Identify the status of the covered Federal action
- 3 Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
- 4 Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
- 5 If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
- 6 Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
- 7 Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
- 8 Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
- 9 For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
- 10 (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
- 11 The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



Conflicts of Interest

Federal Deposit Insurance Corporation Representations and Certifications for Legal Contractors

The information and certifications required on this form will be used in determining the fitness and integrity of the law firm or sole practitioner ("Contractor") for entering into a Legal Services Agreement with the FDIC Legal Division, as provided in the Contractor Conflicts of Interest Regulations at 12 C F R Part 366. Refer to the enclosed copy of those regulations for policies and procedures to be followed by both Contractors and the FDIC Legal Division. The FDIC Legal Division retains the right, in its sole discretion, to qualify or disqualify a Contractor.

INSTRUCTIONS: Check one box for each of the following questions. If your response is "yes" to any of the questions listed below, provide a detailed explanation including dates, names, and the locations of the event(s) in question on a separate sheet and attach to this form.

SECTION I – DISQUALIFYING CONDITIONS - REPRESENTATIONS

To the best of the Contractor's knowledge	YES	NO
1. Has the Contractor ever been convicted of a felony? If yes, provide the offense, law enforcement authority and/or court, city and state, and disposition of charges.		
2. Has the Contractor ever been removed from or prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successor(s)?		
3. Has the Contractor ever demonstrated a pattern or practice of defalcation regarding obligations? (See Page 2)		
4. Has the Contractor ever caused a substantial loss to Federal deposit insurance funds? (See Page 2)		

SECTION II – CONFLICTS OF INTEREST - REPRESENTATIONS

The FDIC will not execute or renew Legal Services Agreements with Contractors that have conflicts of interest or permit Contractors to continue performance under existing Legal Services Agreements, unless such conflicts are eliminated by the Contractor or are waived by the FDIC Outside Counsel Conflicts Committee or other appropriate FDIC official.

In addition to the following certifications, Contractors seeking to perform services for the FDIC Legal Division must provide extensive disclosures regarding actual or potential conflicts of interest and matters that may present the appearance of a conflict. Please refer to the Conflicts and Ethics section of this application package for further instructions on required disclosures.

To the best of the Contractor's knowledge	YES	NO
5. Does the Contractor; any management official or affiliated business entity of the Contractor; or any employee, agent, or subcontractor of the Contractor who will perform services as a time charger under the Legal Services Agreement have one or more personal, business, or financial interests or relationship which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under the Legal Services Agreement?		
6. Is the Contractor, any management official or affiliated business entity of the Contractor; or any employee, agent, or subcontractor of the Contractor who will perform services as a time charger under the Legal Services Agreement an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit?		
7. Has the Contractor, any management official or affiliated business entity of the Contractor; or any employee, agent, or subcontractor of the Contractor who will perform services as a time charger under the Legal Services Agreement ever been suspended from contracting with a Federal entity or ever had a contract or Legal Services Agreement with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to completion which involved issues of conflicts of interest or ethical responsibilities?		

SECTION III – DEFAULTS - REPRESENTATIONS

8 Has the Contractor or any company under the Contractor's control defaulted on a material obligation to any insured depository institution during the ten (10) years preceding the submission of this application? If yes, attach a description of all such instances **(See below)**

YES

NO

SECTION IV – EMPLOYEES AND SUBCONTRACTORS - REPRESENTATIONS

9 Does the Contractor agree that it will not allow any employee, agent, or subcontractor to perform services as a time charger under the proposed Legal Services Agreement unless the Contractor first verifies with each such employee, agent, or subcontractor that, to the best of such person's knowledge, such person (a) is not disqualified from performing services under the Legal Services Agreement because of the existence of any of the conditions identified in Section I, (b) has no conflicts of interest as identified in Section II, unless a request by the Contractor for a waiver or proposal for the elimination of the conflict has been made; and (c) has not, during the ten (10) years preceding the submission of this application, defaulted on a material obligation to any insured depository institution? **(See below)**

SECTION V – CERTIFICATION

NOTICE: Pursuant to 18 U S C. § 1001, whoever knowingly and willingly falsifies a material fact, makes a false statement, or utilizes a false writing in connection with this application is subject to criminal sanctions under Title 18 of the United States Code.

I represent and warrant that I have the authority to execute these certifications on behalf of the Contractor below. I further represent and warrant that the above responses are true and correct and that all attached information is true and correct.

10. SIGNATURE (*Sign in ink*)

11. NAME AND TITLE (*Type or Print*)

12 NAME OF FIRM OR SOLE PRACTITIONER

13 DATE

DEFINITIONS

Terms used are defined in 12 C.F.R. § 366.2 as follows

QUESTION 3. Pattern or practice of defalcation regarding obligations means two or more instances in which: (1) a loan or advance from an insured depository institution is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof and there remains a legal obligation to pay an amount in excess of \$50,000, or (2) a loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000 to the insured depository institution

QUESTION 4. Substantial loss to Federal deposit insurance funds means (1) a loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FSLIC Resolution Fund (FRF), or funds maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of \$50,000; (2) an obligation to pay an outstanding, unsatisfied, final judgment in excess of \$50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF, or the funds maintained by the RTC for the benefit of insured depositors, or (3) a loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF, or the funds maintained by the RTC for the benefit of insured depositors, where there has been failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000

QUESTIONS 8 & 9. Default on a material obligation means a loan or advance from an insured depository institution which has never been delinquent for 90 or more days as to payment of principal or accrued interest, or a combination thereof, with a remaining balance of principal and accrued interest on the ninetieth day, or any time thereafter, in an amount in excess of \$50,000

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 75 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room 3082, Federal Deposit Insurance Corporation, 550 17th Street, N W , Washington, DC 20503

Outside Counsel Deskbook

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Outside Counsel Conflicts of Interest Procedures

I. Introduction

This directive provides standard procedures for the FDIC Legal Division ("Legal Division") with respect to outside counsel conflict of interest matters

These procedures are designed primarily for the guidance of Legal Division personnel, although every outside counsel is expected to follow these procedures pursuant to its Legal Services Agreement ("LSA") with the Legal Division. These procedures do not provide outside counsel with any right to due process or right to a waiver.

These procedures apply to all requests for waivers of outside counsel conflicts of interest submitted to the Outside Counsel Conflicts Committee ("Conflicts Committee"), in accordance with the "2003 Statement of Policies Concerning Outside Counsel Conflicts of Interest" issued in April 2003 ("Statement of Policies"), as amended or superseded.

II. Authority of the Conflicts Committee and Regional Counsel to Resolve Conflicts of Interest

The Legal Division has established a Conflicts Committee composed of five members (four attorneys from the Legal Division and a representative from the Office of Internal Control Management) which under delegated authority from the General Counsel has the authority to resolve outside counsel conflicts of interest and issues arising under the "Minimum Standards of Integrity and Fitness for an FDIC Contractor Regulations," 12 C F R Part 366 ("Contractor Regulations"), as they relate to law firms and sole practitioner lawyers providing services to the FDIC. Generally, requests for waivers of conflicts of interest may be granted or denied on behalf of the FDIC only by the Conflicts Committee, the General Counsel or the Chairman of the FDIC.

III. Reporting Conflicts of Interest

A. During the Application Process

Outside counsel desiring to perform work for the FDIC must meet minimum standards of competence, experience, integrity and fitness for contractors, as specified in the Contractor Regulations. As part of the application process for an LSA, outside counsel must provide information concerning actual or potential conflicts of interest and matters that may present the appearance of a conflict. Each initial or renewal application should be referred to the appropriate Conflicts Coordinator for review of the outside counsel's conflicts disclosures. Disclosures of conflicts made during the application or renewal process should be referred to the Conflicts Committee for resolution prior to final approval or rejection of the application, unless the office or section does not intend to execute an LSA with the firm for reasons other than those concerning conflicts of interest. In such cases, a waiver request need not be submitted, unless outside counsel was inherited and continues to perform work for the FDIC on inherited matters.

Under the Contractor Regulations, whenever outside counsel discovers it is not in compliance with the regulations, it must disclose the matter to the FDIC in writing within ten (10) business days, however, pursuant to the Statement of Policies, the Legal Division expects matters of a sensitive or high profile nature to be disclosed immediately upon discovery.

B. After Retention

After outside counsel has executed an LSA, it has the continuing responsibility to monitor and report in writing any actual or potential conflict of interest or appearance of a conflict,

whether or not it is representing the FDIC on active matters at the time of discovery Under the Contractor Regulations, whenever outside counsel discovers it is not in compliance with the regulations (e.g., a conflict of interest that arises when outside counsel contemplates representation of a client adverse to the FDIC or is discovered during the course of representation of another client), the matter must be disclosed in writing to the FDIC within ten (10) business days of discovery, however, pursuant to the Statement of Policies, the Legal Division expects matters of a sensitive or high profile nature to be disclosed immediately upon discovery

Conflicts of interest must be submitted to the Conflicts Committee for resolution even if the Legal Division office or section recommends denying the waiver request

C. Failure to Disclose Conflicts or Comply with Policies

Failure to make full and timely disclosure of actual or potential conflicts of interest, or matters that may present the appearance of a conflict, as well as failure to comply with FDIC conflicts of interest policies and procedures are extremely serious matters Such failures may subject outside counsel to corrective action including but not limited to (1) a letter of reprimand, (2) refusal to waive a conflict, (3) suspension of new referrals, (4) rejection or reduction of fee bills, (5) withdrawal of all pending matters, (6) termination of legal services, (7) imposition of a bar to application, (8) denial of an LSA, (9) referral to the appropriate state licensing authorities, and, in appropriate cases, (10) civil or criminal actions

It is solely within the discretion of the Legal Division to determine whether or not a conflict of interest exists Even the appearance of a conflict may result in the denial of a waiver or other appropriate actions In the event that matters are transferred pursuant to the corrective actions listed above, outside counsel is expected to follow FDIC policies and procedures and to cooperate fully in the orderly transfer of such matters

Legal Division personnel should notify their Conflicts Coordinator immediately upon discovery of any undisclosed outside counsel conflict of interest

IV. Procedures for Request Waives of Conflicts of Interest

To obtain a waiver of an actual or potential conflict of interest, or appearance of such, outside counsel must submit a written request to the designated Conflicts Coordinator at the Legal Division office or section with which the outside counsel negotiated its LSA or, if that office has closed, the office assuming the responsibilities of the closed office Outside counsel lacking an LSA should direct a written request to the Conflicts Coordinator in the FDIC office or section having geographic jurisdiction over the firm's principal office Outside counsel should not send waiver requests directly to the Legal Services Unit ("LSU") or the Conflicts Committee waiver requests will only be considered when accompanied by the written recommendation of the appropriate Conflicts Coordinator with the concurrence of the office's Regional Counsel or section's Assistant General Counsel

Outside counsel's waiver request (or the Conflicts Coordinator's recommendation, absent such request) should detail, where pertinent (1) the nature of the conflict of interest, (2) the parties and financial institutions involved, (3) the office responsible for the financial institution out of which the conflict of interest arises, (4) the nature of the work that has been, and/or currently is being, performed for the FDIC, (5) the financial institutions (or subsidiaries or servicers) for which work has been, or currently is being, performed on behalf of the FDIC, (6) the FDIC oversight attorney(s) involved in the conflict, and (7) any other relevant considerations suggested by the Statement of Policies

Waiver requests received by Legal Division personnel who are not Conflicts Coordinators should be immediately forwarded to the appropriate Conflicts Coordinator

To assist the LSU in tracking conflicts matters, the Conflicts Coordinators will forward to the LSU, via facsimile immediately upon receipt, all outside counsel conflicts disclosures or

requests for waiver, including those that may not present an actual conflict of interest or those subsequently waived by Regional Counsel pursuant to delegated authority. The Conflicts Coordinator will thereafter review outside counsel's disclosure and/or request, consult with the FDIC oversight attorney(s) involved, and coordinate the formulation of a recommendation to the Conflicts Committee. The Conflicts Coordinator is responsible for the completion of all documentation for the Conflicts Committee which should include a copy of outside counsel's disclosure or waiver request, the recommendation of the FDIC oversight attorney, a conflicts tracking system form, and the Conflicts Coordinator's recommendation for resolution of the conflict with concurrence by the office's Regional Counsel or section's Assistant General Counsel.

Appropriately documented conflicts matters are to be submitted to the Conflicts Committee for consideration as soon as completed but no later than THIRTY (30) DAYS after receipt of outside counsel's disclosure or request for waiver. If additional information is needed from outside counsel or others, the Conflicts Coordinator should ensure that a timely response is received so that the 30-day submission deadline is met. If no timely response is received, the Conflicts Coordinator should refer the matter to the Conflicts Committee without the additional information. Past due matters will be discussed with the Conflicts Coordinator and Legal Division management as appropriate.

The Conflicts Committee may exercise broad discretion when a conflict of interest is discovered without disclosure by outside counsel. If determined by the Conflicts Committee to be appropriate, however, the Conflicts Coordinator may notify outside counsel in writing of the discovery and allow counsel a specified period of time to address the issue in writing; if no response is received within the specified period, the Conflicts Coordinator will refer the matter to the Conflicts Committee without outside counsel input.

Meetings of the Conflicts Committee are not public proceedings. Appearances before the Conflicts Committee by outside counsel are not allowed. Contacts with individual members of the Conflicts Committee by outside counsel are strongly discouraged. Questions from outside counsel concerning pending waiver requests should be directed to the Conflicts Coordinator or the LSU in the Legal Operations Section.

V. Determinations by the Conflicts Committee

A. Regular Processing of Waiver Requests

The Conflicts Committee either meets or conducts voting via notational means to resolve pending waiver requests and other matters involving outside counsel. The Conflicts Committee will only consider requests for waiver that are appropriately documented and are received by the LSU.

B. Expedited Processing of Waiver Requests

The Conflicts Committee will consider a waiver request on an expedited basis for good cause shown. Good cause can be shown, for example, when a trial date, court or bid deadline is imminent, or when a client, potential client, or an employee of outside counsel will be materially prejudiced by a delay in resolution of the conflict of interest. The Conflicts Coordinator will make the initial determination as to whether to recommend expedited processing of a request for waiver, and will forward the request to the LSU. A brief written justification for expedited treatment must be incorporated into the documentation. If expedited processing is granted, facsimile copies of the waiver request will be accepted, provided original documents are later provided to the LSU. The Conflicts Committee will resolve expedited requests at the earliest possible time, customarily by notation vote with a minimum of three concurrences required. The LSU will notify outside counsel and the Conflicts Coordinator of the decision via facsimile followed by a confirmation letter to the outside counsel.

C. Reconsideration of Conflicts Committee Decisions

The Conflicts Committee will entertain requests for reconsideration of its decisions, when

submitted by the appropriate Conflicts Coordinator, upon a showing of good cause. Good cause is generally shown by demonstrating the availability of new and significant information or changed circumstances.

VI. Terminations and Suspensions

A. Conflicts Committee Action

If the Conflicts Committee determines that termination of outside counsel's legal services is appropriate, matters must promptly be transferred to other counsel or to an in-house attorney, unless an exception is justified. For terminations and suspensions, the Conflicts Coordinator of each affected office or section shall distribute a memorandum or e-mail to its Legal Division staff describing the action of the Conflicts Committee. In termination cases, the Conflicts Coordinator should instruct staff to close, transfer, or request exceptions for all active or inactive legal matters assigned to the outside counsel within 45 days of the decision and outline the internal procedures to be followed in each instance. Terminations and suspensions of outside counsel are also noted on the FDIC's computer tracking systems for outside counsel.

Requests for exceptions to terminations to permit outside counsel to continue representation of the FDIC on particular matters will be considered on a case-by-case basis upon the request of the oversight attorney. These requests must be in essentially the same form as a waiver request submission and must demonstrate that good cause exists to justify an exception. Factors considered typically include (1) availability of other experienced counsel in the geographic area, (2) pending deadlines and the likelihood of replacement counsel's becoming sufficiently knowledgeable to pursue the matter effectively, (3) cost of developing applicable expertise in replacement counsel, and (4) degree of prejudice to the FDIC.

B. Lawsuits Against Outside Counsel

Initiation of suit by the FDIC against outside counsel creates a conflict of interest requiring that no new referrals be made and that pending cases be reassigned to other counsel or to an in-house attorney. The Professional Liability Unit distributes a monthly list of lawsuits against outside counsel. Notifications to staff and requests for exceptions follow the procedure described in the preceding subsection.

VII. Conflicts Tracking

All conflict of interest waiver requests processed by the FDIC or RTC since January 1995 have been recorded on the Conflicts Tracking System, CTRACK. For each waiver request, CTRACK contains all relevant data, such as law firm information, conflict description, recommendation for resolution, and decision. CTRACK information is available in a read-only version in each field office and headquarters, and written reports of pending and historical matters may be generated by any user. The LSU is responsible for data entry and maintenance of the CTRACK system and also generates reports of pending conflicts matters. Updates of the conflicts data are performed on a regular basis.

Conflicts-related information may also be found on the FDIC's computer tracking systems for outside counsel. Comments for individual firms are added to the systems after the Conflicts Committee reaches a decision. These comments contain meeting dates and brief descriptions of the restrictions imposed.

Legal Division staff whose duties involve referral of matters to outside counsel must review the conflicts status of outside counsel on CTRACK and other systems PRIOR TO referring any matter to outside counsel.

VIII. Distribution of Conflicts Committee Decisions

The LSU is responsible for notifying each outside counsel in writing of the Conflicts Committee's decisions. Notification letters describe any conditions or corrective actions imposed by the Conflicts Committee and are delivered to the firm by Certified Mail, Return

Receipt Requested The letter states that "The decision of the Committee is effective upon receipt of this letter " Receipt is evidenced by the return of the Certified Mail Receipt

Conflict waiver requests and determinations are confidential and are not to be communicated to anyone outside the FDIC, except the outside counsel affected by the determination or as necessary in litigation or other matters after approval by the Conflicts Committee

IX. Other Responsibilities of Conflicts Coordinators

Each Conflicts Coordinator is responsible for maintaining adequate documentation concerning all requests for waivers of conflicts of interest within the office's or section's jurisdiction Documentation should include, at a minimum, the following (1) correspondence received from outside counsel disclosing the conflict and/or requesting a waiver, (2) internal correspondence between the oversight attorney or others involved in the conflict, (3) recommendation to the Conflicts Committee for resolution of the conflict, and (4) copy of the LSU's letter notifying outside counsel of the Conflicts Committee's decision

Outside counsel are responsible for compliance with the Statement of Policies However, the Conflicts Coordinators should generally monitor compliance by outside counsel within their jurisdiction with the Statement of Policies If the Conflicts Coordinator is notified that the representation or other type of conflict resulting in a conditional waiver is concluded or otherwise resolved, the Conflicts Coordinator is to provide written notice to the LSU, which will ensure that the indicated changes in status are reflected on the FDIC's computer tracking systems for outside counsel

Conflicts Coordinators should send ALL reported or discovered conflicts and conflicts-related disclosures to the LSU, even those that indicate a conflict may not exist under the circumstances presented

X. Effective Date

These procedures are effective immediately Any questions should be directed to the LSU of the Legal Operations Section, 550 17th Street N W , H-3007, Washington, D C , 20429, (202) 736-0079

Concur:

[signed]
Erica F Cooper
Deputy General Counsel

December 9, 1996

Last Updated 05/20/2005

legal@fdic.gov

Outside Counsel Deskbook

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2003 Statement of Policies Concerning Outside Counsel Conflicts of Interest

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FDIC

Federal Deposit Insurance Corporation

Washington, DC 20429

Office of the General Counsel

December 2003

2003 Statement of Policies Concerning Outside Counsel Conflicts of Interest

These policies set for the guidelines for the FDIC with respect to outside counsel conflict of interest matters. The policies are administered and applied by the FDIC Legal Division.

In accordance with the "Outside Counsel Conflict of Interest Procedures" issued in December 1996, these policies apply to all requests by FDIC outside counsel for waivers submitted to the FDIC Outside Counsel Conflicts Committee.

The "Statement of Policies Concerning Outside Counsel Conflicts of Interest" issued in June 1998 and December 1993, as well as the "Guidelines of the FDIC/RTC with Respect to Conflict of Interest and Confidentiality and General Policies of Waiver Favored by the Outside Counsel Conflicts Committee" issued in May 1990, are hereby superseded.

These policies are effective immediately.

[signed]
William F. Kroener, III
General Counsel

Attachment

DECEMBER 2003

2003 Statement of Policies Concerning Outside Counsel Conflicts of Interest

I. Introduction

The resolution of conflicts of interest in connection with the selection and retention of outside legal counsel employed by the Federal Deposit Insurance Corporation ("FDIC") will be governed by these policies.

These policies are for the guidance of the FDIC Legal Division in its relations with outside counsel, for the information of outside counsel who have been or seek to be retained by the FDIC, and for the general use of the FDIC Outside Counsel Conflicts Committee ("Conflicts Committee"). They supersede the "Statement of Policies Concerning Outside Counsel Conflicts of Interest", issued in June 1998 and December 1993, as well as the "Guidelines of the FDIC/RTC with Respect to Conflicts of Interest and Confidentiality and General Policies of Waiver Favored by the Outside Counsel Conflicts Committee" issued in May 1990.

Procedures for requesting waivers of outside counsel conflicts are contained in "Outside Counsel

Conflict of Interest Procedures" issued in December 1996

II. Definitions

As used in these policies

"Conflict of interest" or "conflict" means a situation in which outside counsel, any management official or affiliated business entity of outside counsel, or outside counsel's employee, agent, or subcontractor who will perform professional services for the FDIC as a time charger (1) has a personal, business, or financial interests or relationships that would cause a reasonable individual with knowledge of the relevant facts to question their integrity or impartiality, (2) is an adverse party to the FDIC in a lawsuit, (3) submits an offer to acquire an asset from us for which services were performed during the past three years, unless the agreement allows for the acquisition, or (4) engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence¹ Under these policies, a conflict of interest includes any representation or any interest adverse, potentially adverse, or presenting the appearance of being adverse to the FDIC, whether or not it is of a nature sufficient to affect counsel's legal judgment or ability to represent the FDIC zealously A conflict of interest may arise in litigation or in a non-litigated matter A conflict may also arise when outside counsel fail to cooperate with the FDIC in the resolution of a fee bill audit performed by the FDIC Office of the Inspector General²

"Conflicts Committee" means the FDIC Outside Counsel Conflicts Committee, which is responsible for resolving outside counsel conflicts of interest

"FDIC" means the Federal Deposit Insurance Corporation in all its capacities, whether as conservator, receiver, in its corporate capacity, organizer of a bridge bank, successor to the former Resolution Trust Corporation, or successor to the former Federal Savings and Loan Insurance Corporation

"Institution" means any bank or savings association the deposits of which are insured by the FDIC

"Legal Services Agreement" or "LSA" means an executed agreement between the Legal Division of the FDIC and outside counsel setting forth the terms and conditions of employment of outside counsel

"Outside counsel" means a lawyer, law firm or law firms providing services to the FDIC The term includes all attorneys in a firm, regardless of their status or designation

"Special Issues" mean (a) core issues concerning the validity of the statutes under which the FDIC operates, the competency of the FDIC to act under such statutes, the legitimacy of such conduct, and the rights, status or powers exercised by the FDIC, (b) matters of first impression or fundamental significance, or (c) matters of high visibility or sensitivity

"Substantially related" means having a commonality of law or fact between representation of the FDIC and representation of another client

"Waiver request" means a written request for a waiver by outside counsel to the FDIC Legal Division of an actual or potential conflict of interest or a matter that may present the appearance of a conflict of interest

III. Policy Objectives

The FDIC expects the highest ethical standards to be followed by outside counsel At a minimum, outside counsel must observe (1) applicable state bar rules of professional conduct with respect to both conflicts of interest and confidentiality, (2) the American Bar Association Model

Rules of Professional Conduct ("Model Rules") to the extent that the Model Rules are not contrary to applicable state bar rules, and (3) the requirements of 12 C F R Part 366

The FDIC is particularly cognizant of the consequences in terms of public perception of retaining outside counsel and seeks to avoid even the appearance of conflicts of interest The Legal Division requires outside counsel to represent the FDIC with undivided dedication and loyalty Therefore, these policies are not to be construed narrowly

The FDIC requires outside counsel to observe scrupulously all relevant requirements of attorney-client confidentiality. Confidentiality is crucial to the relationship of confidence and trust that the FDIC expects of outside counsel. The Model Rules provide that the confidentiality principle extends from information disclosed in confidence by the client to information gained from any source regarding the representation and exists both during and after the time of the representation. The FDIC is particularly concerned with safeguarding confidences and proprietary information and will take appropriate measures to ensure that such confidentiality is not jeopardized or breached.

IV. Scope

In general, the FDIC requires that any actual, potential, or appearance of a conflict of interest be reported to the conflicts coordinator in the Legal Division office or section that is responsible for overseeing the LSA with the outside counsel. There also are specific reporting requirements contained in 12 C.F.R. Part 366 as amended or superseded. To the extent these policies and 12 C.F.R. Part 366 differ in scope, the broader interpretation controls. The Legal Division, and not outside counsel, will make the determination whether a conflict exists. Procedures for requesting waivers of outside counsel conflicts of interest matters are contained in the "Outside Counsel Conflict of Interest Procedures" issued by the Legal Division. After a conflict has been reported, outside counsel must notify the Legal Division of any material change in facts.

On most matters, conflicts of interest with the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, and the Department of Justice (usually only on matters involving closed Institutions or their directors and officers or related third parties) are considered conflicts with the FDIC.

Even though an actual conflict, potential conflict, or appearance of a conflict may be too remote to cause a court to order counsel disqualified, the Conflicts Committee may nevertheless deny a waiver or take other corrective action. When in doubt, outside counsel must disclose the matter and seek a waiver.

A. Servicers

The FDIC may retain the services of various entities to manage and dispose of failed Institutions' assets ("Servicers"). These entities, in turn, are authorized to retain outside counsel for purposes of managing and disposing of the FDIC's assets. In these situations, outside counsel are not supervised directly by the FDIC and the degree to which attorneys of the Legal Division exercise control over the selection of counsel varies. Nevertheless, as contractors, Servicers are subject to the requirements of 12 C.F.R. Part 366 and are also expected to adhere to these policies in their entirety.

B. Subcontractors

The Legal Division may approve the retention of subcontractors, particularly experts or consultants, for assistance, opinions or testimony in the development of particular legal matters. These subcontractors may be attorneys or non-attorneys. Generally such subcontractors are engaged by outside counsel with approval from the Legal Division and

their services are billed to outside counsel.³

When engaging experts or consultants or other subcontractors, outside counsel must be cognizant of the requirements of the regulations at 12 C.F.R. Part 366. Outside counsel must make representations and certifications regarding any disqualifying conditions (discussed *infra*) and conflicts of interest of their subcontractors who will perform

professional services for the FDIC as time chargers under the subcontract. Disqualifying conditions and conflicts of interest of such subcontractors must be submitted to the Conflicts Committee for appropriate action.

C. Subsidiaries

Outside counsel representing a subsidiary (regardless of the tier) of an Institution under the control of the FDIC must submit any conflict of interest to the Legal Division for consideration by the Conflicts Committee. Further, outside counsel representing an interest adverse, potentially adverse, or appearing to be adverse to a subsidiary also must submit any conflict of interest to the Legal Division for consideration by the

Conflicts Committee

V. Representational Conflicts Of Interest

Outside counsel may not, without a waiver, engage in a simultaneous representation of the FDIC and another client having an interest adverse, potentially adverse, or even appearing to be adverse to the FDIC. In the event that outside counsel no longer represents the FDIC it may not later represent another client against the FDIC in a matter substantially related to any matter in which outside counsel previously represented the FDIC.

Examples of situations in which representational conflicts of interest can arise include those matters in which outside counsel represent any of the following:

- (1) A client having an interest adverse to any Institution for which the FDIC acts as conservator or receiver,
- (2) An open Institution that subsequently fails or a client having an interest adverse to such an Institution,
- (3) A debtor-in-possession, trustee in bankruptcy, or a receiver in any federal or state court or administrative proceeding in which the FDIC has an interest, as a creditor or otherwise,
- (4) A creditor in a bankruptcy, receivership, or other litigation proceeding where the FDIC has asserted claims against the same debtor in either the same or an unrelated proceeding,
- (5) An insurance carrier or stockholder or class of stockholders in any action against a director or officer of an Institution,
- (6) An Institution regarding regulatory matters or assistance transactions,
- (7) An officer, director, debtor, creditor or stockholder of any failed or assisted Institution in a matter relating to the FDIC, and
- (8) A prospective bidder for a troubled or failed Institution, or the assets of such Institution.

VI. Non-Representational Conflicts/Disqualifying Conditions

Generally, outside counsel must seek a waiver if outside counsel have any type of interest adverse, potentially adverse, or even appearing to be adverse to that of the FDIC, whether or not it is of a nature sufficient to affect counsel's legal judgment or ability to represent the FDIC zealously. In particular, a waiver must be sought if (1) outside counsel cannot subscribe to all of the representations and certifications required by 12 C.F.R. Part 366, (2) outside counsel have an ideological or other commitment that would impair the outside counsel's judgment or ability to represent the interests of the FDIC zealously, (3) the FDIC has a claim against outside counsel or any of their individual attorneys, or (4) outside counsel have been advised of a conflict of interest pursuant to an unresolved fee bill audit.

A. Contractor Conflict of Interest Regulations

Disqualifying Conditions - The Contractor Conflict of Interest Regulations at 12 C.F.R. Part 366 prohibit the hiring of outside counsel who have (1) been convicted of any felony, (2) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC, (3) demonstrated a pattern or practice of defalcation,⁴ or (4) caused a substantial loss to federal deposit insurance funds.⁵ Prior to retention outside counsel must also agree that they will not allow any employee, agent, or subcontractor who will perform professional services for the FDIC as a time charger to perform those services without verifying that such individuals are not disqualified because of the existence of any of the conditions above.

Outside counsel firms or their "management officials" with one or more disqualifying

conditions will be disqualified from working for the FDIC For a partnership, a management official is any member of the management committee if such a committee exists or, if none, any general partner of the firm The Conflicts Committee will terminate outside counsel's legal services and direct the orderly transfer of work away from such firms A disqualifying condition that pertains only to an individual who is not a management official may result in that individual's being prohibited from performing services for the FDIC

Examples of Non-representational Conflicts – Examples of situations in which non-representational conflicts of interest can arise include those matters in which outside counsel or any management official, affiliated business entity, or any employee, agent or subcontractor of outside counsel who will perform professional services for the FDIC as a time charger

(1) Is an officer, director, or substantial shareholder of an Institution,

(2) Has any outstanding debt, whether performing or in default, owed to any failed Institution (excluding debts assumed by an operating Institution),

(3) Is closely related to any person who is employed by the FDIC, is in litigation with the FDIC, has outstanding debt owed to any failed Institution or an ownership interest in such an Institution, and

(4) Served or serves as a trustee in bankruptcy or as a receiver in any federal or state court or administrative proceeding,

(5) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony

In addition, the regulations specify that outside counsel must disclose whether they or their management officials, affiliated business entities, employees, agents, or subcontractors are an adverse party to the FDIC in a lawsuit (further discussed in part infra), or have ever been suspended, excluded, or debarred from contracting with a federal entity, or have ever had their legal services terminated by the FDIC prior to completion of the LSA for reasons that involved issues of conflicts of interest or ethical responsibilities

Prior to retention outside counsel must also agree that they will not allow any employee, agent, or subcontractor who will perform professional services for the FDIC as a time charger to perform those services without verifying that such individual has no conflicts of interest

B. Ideological or Other Commitment

Representation by outside counsel of borrowers in lawsuits against lenders for alleged improper lending activities may constitute such a commitment to a particular legal position or to particular special interests as to constitute a conflict Similarly, extensive representation of accountants or insurance companies on bond claims may also constitute such a commitment

C. Claims Against Outside Counsel

Investigation Ongoing – When malpractice or similar claims by the FDIC against a law firm or individual thereof are being investigated, Legal Division staff may recommend to the Conflicts Committee that a moratorium on new assignments be imposed on the firm Once imposed, the moratorium may be removed only by action of the Conflicts Committee or the General Counsel

Suit has been filed – If a firm is sued by the FDIC for malpractice or similar claims, there is a presumption against continued use of that outside counsel It is FDIC policy that existing assignments are to be removed and no new referrals are to be made

Exceptions to this policy may be granted on a case-by-case basis by the Conflicts Committee or the General Counsel

If a suit against an individual attorney or employee does not also give rise to a suit against his or her firm, the conflict must nevertheless be reported and a waiver sought. Where a suit has been filed by the FDIC against an individual attorney, the Conflicts Committee may allow the attorney's firm to perform services for the FDIC if appropriate screening mechanisms are established. However, the Legal Division may decline to use the outside counsel firm if the alleged acts of an individual attorney are egregious, the livelihood of the firm is heavily dependent on the individual attorney who is the subject of the claims, or there are other factors that create an appearance of impropriety.

D. Unresolved Audit Issues

The FDIC Office of the Inspector General and/or Internal Review Unit of the Legal Division routinely audits or performs post-payment reviews of outside counsel billings and the supporting documentation for FDIC matters. These audits or reviews are documented in reports that may question certain costs and recommend that the Legal Division disallow and attempt to recover such costs. Outside counsel are afforded the opportunity to respond to these reports. If the Legal Division agrees with the analysis and recommendation and disallows all or a portion of the questioned costs, active resolution efforts will be undertaken by the Legal Division and outside counsel will be given an opportunity to respond to the Legal Division's requests for repayment of disallowed amounts.

If outside counsel fail to provide a response to the findings, or fail to remit the disallowed costs, or otherwise fail to respond adequately to the issues raised in the report, pursuant to the "Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues with the FDIC," 62 Fed. Reg. 13382 (March 20, 1997), outside counsel will be advised in writing by Legal Division staff responsible for the audit that failure to cooperate constitutes a conflict of interest with the FDIC. Unless the matter is resolved to the FDIC's satisfaction within ten business days of receipt of the written notice, the matter will then be referred to the Conflicts Committee for appropriate action, which may include a determination that the FDIC refrain from soliciting any future services from outside counsel and/or termination of legal services on any existing legal referrals.

VII. General Waiver Policy

Generally, requests for waivers of conflicts of interest may be granted or denied on behalf of the FDIC only by the Conflicts Committee or the General Counsel.

Requests for waivers are considered only on a case-by-case basis. Requests for waivers of hypothetical future conflicts of interest or requests for blanket waivers covering multiple prospective unidentified or hypothetical matters will not be considered. Silence on the part of the FDIC may not be construed as a waiver; outside counsel should inquire of the Legal Division if no response has been received for a previously disclosed conflict.

A. Factors Considered in Granting Waiver Requests

When a waiver is requested, the Conflicts Committee will balance the need to have adequate representation of the FDIC with all relevant factors. Factors considered may include but are not limited to:

- (1) The extent to which the FDIC's confidences may be compromised,
- (2) The extent to which the outside counsel has been forthright in bringing the existence of the conflict to the attention of the FDIC,
- (3) Any appearance of impropriety,
- (4) The presence of Special Issues,
- (5) The feasibility of screening mechanisms,⁶

- (6) The impact of replacing the outside counsel on matters presently handled,⁷
- (7) The nature and extent of the outside counsel's Institution practice,
- (8) The nature and extent of the outside counsel's representation of accountants, attorneys, insurance companies, or directors and officers of failed Institutions,
- (9) The extent to which the representation or acts complained of are factually or substantially related to matters currently or previously handled by the firm for the FDIC,
- (10) Whether an unfair advantage is gained as a result of the outside counsel's continuing or past representation of the FDIC,
- (11) Whether the conflict could affect the ability of outside counsel to represent zealously the interests of the FDIC,
- (12) In any pending or proposed litigation against outside counsel, the nature of the conflict,
- (13) The magnitude of any loss caused by the outside counsel's representation or conduct,
- (14) The extent to which any acts complained of represent actions of an individual member or employee of outside counsel rather than a practice or pattern of behavior commonly found within the firm,
- (15) The extent to which the acts complained of draw into question the competence or integrity of outside counsel, and
- (16) The extent to which the FDIC is a significant client of the firm

B. Matrix Guidelines

Conflicts of interest arising from multiple representations are often complex. A matrix illustrating positions generally taken by the Conflicts Committee with respect to certain recurrent types of representational conflicts is attached as Appendix A. The matrix is intended to represent a preliminary indication of the Legal Division's general disposition with respect to waivers of conflicts arising from representational conflicts. It should not be regarded as a determination on the question of waiver, which can come only after a closer, more detailed consideration of a particular situation, with knowledge of relevant facts and a weighing of appropriate factors.

C. Inherited Conflicts

Outside counsel's representations against an open Institution will place the firm in an adversarial position to the FDIC upon the failure of that Institution. The FDIC requires that their outside counsel continue to screen for conflicts, including those that develop because Institutions are placed in receivership or conservatorship. Such "inherited" conflicts are more likely to be waived unless Special Issues are involved. In such circumstances, the outside counsel usually will be prohibited from performing work arising out of the particular failed Institution. Even if outside counsel have obtained a waiver from the open Institution, the outside counsel must, in the event of the Institution's failure, also seek a waiver from the Conflicts Committee.

VIII. CONDITIONS COMMONLY IMPOSED

If a waiver of a conflict of interest is granted by the Conflicts Committee, various conditions may be imposed. In general, outside counsel may not handle any matter pertaining to the same Institution out of which the conflict arises. For example, if the Conflicts Committee grants a waiver to outside counsel representing a party suing the FDIC as receiver of a particular Institution, such a waiver will ordinarily be conditioned upon the outside counsel's not handling any matters for the FDIC arising out

of that Institution, although it could handle matters arising out of other FDIC Institutions

Depending on the facts of each situation, conditions imposed may also preclude outside counsel from undertaking any new referrals from the FDIC office or section involved or may require the imposition of screening mechanisms, i.e., screening all attorneys who are involved in the adverse representation, or are the subject of a claim, from working on any FDIC matter, including access to the FDIC Legal Research Bank. Outside counsel may also be precluded from performing any work at all for the affected FDIC office or section during the pendency of the adverse representation, requiring that any current matters supervised by the particular office or section be transferred to other counsel. This restriction is intended to prevent individual FDIC attorneys in a particular office or section from having to deal with outside counsel as both "friend" and "foe" simultaneously.

A. Claims Against Outside Counsel

If a waiver of a conflict of interest arising from an FDIC claim against outside counsel is granted by the Conflicts Committee, outside counsel may, in addition to other conditions imposed, be required to

- (1) Agree not to assert as a defense to any claim the fact that the outside counsel has been retained or is continuing to be retained by the FDIC,
- (2) Agree that no information obtained as a result of the retention will be used in defense of any claim asserted by the FDIC,
- (3) Agree that disclosure of any information by the FDIC in connection with the continued retention shall not constitute a waiver of any otherwise applicable privilege, and
- (4) Prohibit any attorney who is the subject of a claim by the FDIC from receiving any portion of the fees paid by the FDIC in any matter

B. Settlement

The settlement of a claim or adverse representation brought against the FDIC or by the FDIC may eliminate the existence of a conflict. If so, the former conflict of interest will not automatically bar the continued use of the outside counsel. Nevertheless, the FDIC may take the facts and circumstances of the claim into account in assigning any future work. Any conditions imposed when a waiver of the conflict was granted generally will no longer be applicable. Upon settlement of the claim, outside counsel are expected to provide written notification to the Legal Services Unit in Washington.

IX. Delegations of Authority

Previous delegations of authority granted in the 1993 "Statement of Policies Concerning Outside Counsel Conflicts of Interest" are hereby rescinded. The Conflicts Committee will make determinations concerning those conflict matters previously reviewed under delegated authority.

X. Noncompliance

Failure to make full and timely disclosure of actual or potential conflicts of interest, or matters that may present the appearance of a conflict, as well as failure to comply with FDIC conflicts of interest policies and procedures, are extremely serious matters. Such failures may subject outside counsel to corrective action including, but not limited to: (1) a letter of reprimand, (2) refusal to waive a conflict, (3) suspension of new referrals, (4) rejection or reduction of fee bills, (5) withdrawal of all pending matters, (6) termination of legal services, (7) imposition of a bar to application, (8) denial of an LSA, (9) referral to the appropriate state licensing authorities, and, in appropriate cases, (10) civil or criminal actions.

XI. Conclusion

These policies are designed to provide general guidance only. Within the framework provided by these policies, the Conflicts Committee and the staff of the Legal Division exercise broad discretion. These policies do not provide outside counsel with any right to a waiver.

Contact Information

The Legal Services Unit in Washington has sole responsibility for the distribution of outside counsel conflicts policies, procedures, and other related conflicts information. For information, contact the

Legal Services Unit, 550 17th Street, N W , Room H-3119, Washington D C 20429 Telephone Number (877) 275-3342 or (202) 736-0000

1 See Contractor Conflict of Interest Regulations at 12 C F R § 366 10 Cf Rule 1 7, 1 8, 1 9, and 1 10 of the Model Rules of Professional Conduct

2 See Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues with FDIC, 62 Fed Reg 13382 (March 20, 1997)

3 In some circumstances, experts or consultants on legal matters are retained and paid directly by the Legal Division pursuant to its delegations of authority for the provision of legal services These experts or consultants may be non-attorneys As contractors, such experts or consultants are subject to the requirements of 12 C F R Part 366 Because such contractors are retained by the Legal Division instead of the Division of Administration, the disqualifying conditions and conflicts of interest of such contractors must be submitted to the Conflicts Committee for resolution

4 Defined under the regulations to mean two or more instances in which a loan or advance from an insured depository institution is more than 90 days delinquent in the payment of principal, interest, or a combination thereof and there remains a legal obligation to pay an amount in excess of \$50,000

5 Defined under the regulations to mean (1)An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000, (2) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding, (3) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding, or (4) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness

6 The Conflicts Committee will consider such things as the (i) size and structural divisions of the law firm, (ii) likelihood of contact between the affected attorneys(s) responsible for the adverse representation and firm attorneys performing services on behalf of the FDIC, and (iii) existence and effectiveness of measures to prevent the affected attorney(s) from gaining access to current files or sharing information gained by the firm as the result of its FDIC representation

7 In considering whether to replace outside counsel, the Conflicts Committee will consider (i) availability of other experienced counsel in the geographic area, (ii) pending deadlines and the feasibility of replacement counsel's becoming sufficiently knowledgeable to pursue the matter effectively, and (iii) the cost of developing applicable expertise in replacement counsel

Appendix A - Probable Conflicts Committee Reaction to Requests for Waiver of Certain Conflicts Arising from Multiple Representation

Represent FDIC: & Adverse to FDIC on:	Prof. Liability	Routine Closed Inst.	Closed Inst. w/Special Matters	Negotiated Transaction	Employment Matters
Professional Liability	-	+	+	+	+
Routine Closed Institution	+	+	+	+	+
Closed Institution with Special Issues	+	+	-	+	+
Negotiated Transactions	+	+	+	-	+
Employment	+	+	+	+	-
Enforcement	-	+	+	+	+
General FDIC Corporate & Regulation	-	+	+	+	+

Notes:

1 Generally, the FDIC disfavors waivers of Professional Liability, Special Issues, and Negotiated Transactions matters if the firm seeking the waiver is working on the same type of matters for an adverse party The FDIC generally permits their firms to perform Routine Closed Institution work against the FDIC (representing other creditors, bidders, asset purchasers, etc), but not out of the

same Institution or the same FDIC office or section. Also, in order to avoid even an appearance of impropriety and to ensure the integrity of the bidding process, a firm that has represented a failed Institution generally will not be permitted to bid or represent a bidder on that Institution or its assets.

2. The sign "+" means the Conflicts Committee is more likely than in the case of the sign "-" to waive a conflict. This assumes that the conflict does not (i) arise from the same transaction, (ii) to the extent that it can be determined at the time a waiver is sought, involve litigation in the same court, or (iii) arise within the same conservatorship, receivership or office or section primarily responsible for the matter.

3. The matrix addresses only conflicts that may arise out of multiple representations by outside counsel. It does not address conflicts that may arise out of relationships or adverse interests separate and apart from representations, nor does it address the issue of confidentiality. A waiver of a conflict in connection with a multiple representation is not an authorization to breach confidentiality.

4. "Professional Liability" refers to claims arising out of conduct by those providing professional services, advice, or counsel to Institutions including, but not limited to, directors, officers, attorneys, accountants, appraisers, securities or commodities brokers, as well as fidelity bond and insurance issues involved in those claims.

5. "Routine Closed Institution" refers to asset collections, defensive matters, deposit insurance cases, and representation of bidders, whether litigated or non-litigated, where the issues raised do not involve Special Issues as previously defined.

6. "Negotiated Transactions" refers to those resolution transactions necessary to resolve the status of failing or failed Institutions where substantial negotiations are required to reach and document an agreement.

7. "Employment" refers to matters involving disputes between the FDIC and its employees.

8. "Enforcement" refers to matters involving FDIC administrative enforcement powers including, but not limited to, cease-and-desist, termination of insurance, suspension or removal, and assessment of civil money penalty proceedings.

9. "General FDIC Corporate & Regulations" refers to matters involving the FDIC as a corporation and the FDIC as regulatory agency or insurer including, but not limited to, the scope of corporate powers, the applicability of various statutes and regulations to day-to-day operations, and the applicability of various statutes and regulations to Institutions' operations. Generally, undertaking an adverse representation involving General FDIC Corporate and Regulations will be disfavored if outside counsel represents the FDIC on Professional Liability matters. Each matter is reviewed on a case-by-case basis however.

10. In the event that outside counsel may be requested to represent contractors in disputes regarding contracts with the FDIC or RTC, or in administrative proceedings involving the proposed suspension or exclusion of contractors, the Conflicts Committee will consider such waiver requests on a case-by-case basis, but generally will not favor such requests where outside counsel are representing the FDIC in other than Routine Closed Institution matters. Such matters are not considered General FDIC Corporate & Regulations matters.



FDIC Law, Regulations, Related Acts

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2000 - FDIC Rules and Regulations

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PART 366—MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

Sec.

- 366 0 Definitions
- 366 1 What is the purpose of this part?
- 366.2 What is the scope of this part?
- 366 3 Who cannot perform contractual services for the FDIC?
- 366 4 When is there a pattern or practice of defalcation?
- 366 5 What causes a substantial loss to a federal deposit insurance fund?
- 366 6 How is my ownership or control determined?
- 366 7 Will the FDIC waive the prohibitions under § 366 3?
- 366 8 Who can grant a waiver of a prohibition or conflict of interest?
- 366 9 What other requirements could prevent me from performing contractual services for the FDIC?
- 366 10 When would I have a conflict of interest?
- 366 11 Will the FDIC waive a conflict of interest?
- 366 12 What are the FDIC's minimum standards of ethical responsibility?
- 366 13 What is my obligation regarding confidential information?
- 366 14 What information must I provide the FDIC?
- 366 15 What advice or determinations will the FDIC provide me on the applicability of this part?
- 366 16 When may I seek a reconsideration or review of an FDIC determination?
- 366 17 What are the possible consequences for violating this part?

Authority: 12 U.S.C. 1819(Tenth), 1822(f)(3) and (4), Sec. 19 of Pub. L. 103--204, 107 Stat. 2369
SOURCE: The provisions of this part 366 appear at 67 Fed. Reg. 34596, May 15, 2002, effective May 15, 2002, except as otherwise noted.

§ 366.0 Definitions.

As used in this part

- (a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.
- (b) The terms *we*, *our*, and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.
- (c) The terms *I*, *me*, *my*, *mine*, *you*, and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.
- (d) The phrase *insured depository institution* refers to any bank or savings association whose deposits are insured by the FDIC.

[Codified to 12 C.F.R. § 366 0]

§ 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with 12 U S C. 1822(f)(3) and the prohibitions and the submission of information in accordance with 12 U S C. 1822(f)(4),

[Codified to 12 C.F.R. § 366.1]

§ 366.2 What is the scope of this part?

(a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.

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(b) This part does not apply to.

(1) An FDIC employee for the purposes of title 18, United States Code; or

(2) The FDIC when we operate an insured depository institution such as a bridge bank or conservatorship

[Codified to 12 C.F.R. § 366.2]

§ 366.3 Who cannot perform contractual services for the FDIC?

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

(a) Has a felony conviction;

(b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action,

(c) Has a pattern or practice of defalcation; or

(d) Is responsible for a substantial loss to a federal deposit insurance fund

[Codified to 12 C.F.R. § 366.3]

§ 366.4 When is there a pattern or practice of defalcation?

(a) You have a pattern or practice of defalcation under § 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:

(1) To one or more insured depository institutions,

(2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof, and

(3) More than \$50,000 each

(b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive

(1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than \$50,000 each. You have a pattern or practice of defalcation

(2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for \$170,000. The other one is with XYZ bank for \$60,000. You have a pattern or practice of defalcation

(3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than \$50,000. The other two have outstanding balances of less than \$50,000. You do not have a pattern or practice of defalcation

(4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than \$50,000. Two of those three were 90 days past due but are now current. You do not have

a pattern or practice of defalcation

[Codified to 12 C.F.R. § 366.4]

§ 366.5 What causes a substantial loss to a federal deposit insurance fund?

You cause a substantial loss to a federal deposit insurance fund under § 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

(a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000,

(b) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding,

(c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(d) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099--C, Information Reporting for Discharge of Indebtedness
{{12-31-02 p 3195}}

[Codified to 12 C.F.R. § 366.5]

§ 366.6 How is my ownership or control determined?

(a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control

(b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.

(c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive

(1) You have control if you are the president or chief executive officer of an organization

(2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm

(3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.

(4) You have ownership or control if you have the:

(i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company,

(ii) Ability to direct in any manner the election of a majority of a company's directors or trustees, or

(iii) Ability to exercise a controlling influence over the company's management and policies

[Codified to 12 C.F.R. § 366.6]

§ 366.7 Will the FDIC waive the prohibitions under § 366.3?

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals

[Codified to 12 C.F.R. § 366.7]

§ 366.8 Who can grant a waiver of a prohibition or conflict of interest?

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366

[Codified to 12 C.F.R. § 366.8]

§ 366.9 What other requirements could prevent me from performing contractual services for the FDIC?

You must avoid a conflict of interest, be ethically responsible, and maintain confidential information as described in §§ 366.10 through 366.13. You must also provide us with the information we require in § 366.14. Failure to meet these requirements may prevent you from contracting with us.

[Codified to 12 C.F.R. § 366.9]

§ 366.10 When would I have a conflict of interest?

(a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control

(1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract,

(2) Is a party to litigation against us, or represents a party that is;
{{12-31-02 p 3196}}

(3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition, or

(4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.

(b) The following are examples of a conflict of interest. These examples are not inclusive.

(1) You submit an offer to perform property management services for us and you own or manage a competing property.

(2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business

(3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.

(4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit

[Codified to 12 C.F.R. § 366.10]

§ 366.11 Will the FDIC waive a conflict of interest?

(a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors

(b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.

(1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination

(2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination

[Codified to 12 C.F.R. § 366.11]

§ 366.12 What are the FDIC's minimum standards of ethical responsibility?

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part

(c) You must disclose to us waste, fraud, abuse or corruption. Contact the Inspector General at 1-800-964-FDIC or Ighotlinefdic.gov

(d) You and any person who performs contract services to us must not

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect,

(2) Use or allow the use of our property, except as specified in the contract,

(3) Make an unauthorized promise or commitment on our behalf, or

(4) Provide impermissible gifts or entertainment to an FDIC employee or other person providing services to us.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us

(2) Submitting false invoices or claims, or making misleading or false statements

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so

[Codified to 12 C.F.R. § 366 12]

[Section 366 12 amended at 67 Fed. Reg. 69993, November 20, 2002, effective December 20, 2002]

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§ 366.13 What is my obligation regarding confidential information?

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless

(1) The contract allows or we authorize the use or disclosure,

(2) The information is generally available to the general public, or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party

[Codified to 12 C F R § 366 13]

§ 366.14 What information must I provide the FDIC?

You must

(a) Certify in writing that you can perform services for us under § 366 3 and have no conflict of interest under § 366 10(a)

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf

(e) Comply with any request from us for information.

(f) *Retain any information* you prepare or rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last

[Codified to 12 C F.R. § 366 14]

[Section 366.14 amended at 67 Fed. Reg 69993, November 20, 2002, effective December 20, 2002]

§ 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract

(c) We may determine what corrective action you must take

(d) We may grant you a waiver for good cause shown where provided for under this part

[Codified to 12 C F.R. § 366 15]

§ 366.16 When may I seek a reconsideration or review of an FDIC determination?

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision

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(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review

(c) You must provide an explanation of how you perceive that we misapplied this part that sets forth the legal or factual errors for our review of an initial decision

[Codified to 12 C F.R. § 366.16]

§ 366.17 What are the possible consequences for violating this part?

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions

[Codified to 12 C F.R. § 366 17]

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Outside Counsel Deskbook

Statement of Policy on Contracting With Firms That Have Unresolved Audit Issues With FDIC

Agency Federal Deposit Insurance Corporation

Action. Statement of Policy

Summary

The Federal Deposit Insurance Corporation (FDIC) has adopted a policy statement concerning contracting with firms that have unresolved audit issues with FDIC. The policy statement sets forth the procedures to be followed to provide proper notification to an affected contractor or outside counsel when an audit report is issued, and a management decision has been made on a respective finding, in order to afford the firm an opportunity to respond. When an FDIC audit identifies questioned costs and issues remain outstanding or unresolved as a result of the firm's failure to cooperate with FDIC management in resolving issues associated with identified disallowed costs, by for example (1) failing to respond timely to an FDIC request to produce documentation to support claimed costs, or (2) otherwise failing to adequately document claimed costs, or (3) by failing to remit the disallowed portion of questioned costs identified in such audit reports, application of the policy may result in a determination to refrain from soliciting new business from that firm.

This policy statement applies to firms providing goods and services to FDIC, including attorneys or law firms providing legal services to FDIC.

Effective date:

This policy statement is effective March 20, 1997.

For further information contact

Ann Bridges Steely, Associate Director, Acquisition Services Branch, at (202) 942-3010 Peter M. Somerville, Counsel, Contracting Law Unit, at (202) 736-0110, or Carl A. Polvinale Jr., Counsel, Legal Operations Section, at (202) 736-0079

Supplementary Information

The text of the Policy Statement follows.

1. Background

The FDIC Office of the Inspector General (OIG) routinely audits contracts with firms providing services to FDIC. These audits frequently contain an analysis whereby certain contract costs are questioned, as well as a recommendation that FDIC management disallow and attempt to recover these costs. When the OIG transmits the audit report and findings to the appropriate FDIC program office, FDIC management then reviews such findings and recommendation. This evaluation results in the issuance of a final decision that may sustain all of the audit findings, or a portion thereof. When FDIC management determines that certain questioned costs should not be charged to the Corporation, such questioned costs that are sustained are then deemed to be "disallowed" costs within the meaning of the Inspector General Act.

Once a management decision has been made to disallow such costs, active resolution efforts are undertaken by FDIC management to recover funds paid without adequate documentation or otherwise inappropriately paid to the firm during the course of the engagement. In those circumstances where the FDIC requests that an audited firm remit disallowed amounts and the contractor fails to do so or fails to actively cooperate with FDIC management in its efforts to resolve the issues associated with identified disallowed costs, it is prudent business for FDIC to selectively refrain from soliciting future services from the firm.

2. General Policy

To provide procedures whereby the FDIC may elect to refrain from soliciting a firm for new business if

- (a) the results of an audit reflect potentially recoverable disallowed costs and audit issues remain outstanding or unresolved within the time period set forth in the notice letter sent by FDIC, and
- (b) the firm failed or declined to cooperate with resolution efforts undertaken by FDIC management in response to the audit findings, including the failure to adequately support its contract costs or the failure to remit the disallowed portion of the questioned costs identified in such audit report

3. Definitions

- (a) Disallowed cost means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the government
- (b) Management decision means the evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary
- (c) Questioned cost means a cost that is questioned in an audit by the OIG or similar auditing agency because of
 - (i) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds,
 - (ii) a finding that, at the time of the audit, such cost is not supported by adequate documentation, or
 - (iii) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable

4. Procedures

Issued audit reports that identify questioned costs relating to contractual engagements are assigned to the Division of Administration, Acquisition Services Branch (ASB) staff, or the Outside Counsel Unit, Legal Division (OCU), for resolution. In implementing this policy statement, the following steps shall be taken.

- (a) Management decision. Once a management decision is made on a respective finding, the matter is then assigned to ASB or OCU for resolution. A copy of the relevant audit report shall be transmitted to the firm under a cover letter which
 - (i) identifies the ASB or OCU which is responsible for resolving the audit issues,
 - (ii) identifies the ASB or OCU employee primarily responsible for resolution and to whom all communications from the firm should be sent,
 - (iii) requests that the firm respond to the findings contained in the report within ten (10) business days of receipt of the letter, or such other time as specified in the letter. Such responses should include supporting documentation where appropriate
- (b) If the firm fails to respond to this request, or fails to remit the disallowed portion of the questioned costs contained in the audit report, or otherwise fails to adequately respond to the issues raised in the report, the following procedures shall apply
 - (i) with respect to audits of firms other than outside counsel, the ASB employee identified in section 4(a)(ii) shall send a letter to the firm advising the firm of its failure to cooperate, and which advises the firm that unless it remits the requested repayment or makes other arrangements satisfactory to the Associate Director who is responsible for resolution of this audit (whose name shall be provided to the firm) within ten business days of receipt of this

letter, the Director, Division of Administration may, effective as of that date, make a determination that the FDIC refrain from soliciting any future services from this firm until such time as all issues identified in the subject audit report are resolved to the FDIC's satisfaction, and direct that notice to be sent to the firm of this action

(ii) with respect to audits of outside counsel, the Legal Division employee identified in section 4 (a)(ii) shall send a letter to the outside counsel which advises such outside counsel that its failure to cooperate constitutes a conflict of interest with the FDIC, and which advises the outside counsel that unless it remits the requested repayment or makes other arrangements satisfactory to the Assistant General Counsel who is responsible for resolution of this audit (whose name shall be provided to the contractor) within ten business days of receipt of this letter, the matter will be referred to the Outside Counsel Conflicts Committee for appropriate action, which may include a determination that the FDIC refrain from soliciting any future services from such outside counsel and/or terminate FDIC's existing engagements, until such time as all issues identified in the subject audit report are resolved to the FDIC's satisfaction

Dated at Washington, D C this 14th day of March, 1997

Federal Deposit Insurance Corporation
Robert E. Feldman
Deputy Executive Secretary
[FR Doc 97-6995 Filed 3-19-97, 8 45 am]
BILLING CODE 6714-01-P

Last Updated 05/20/2005

legal@fdic.gov

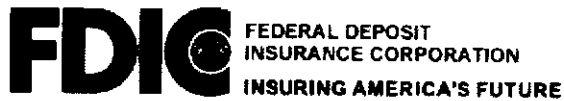
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Electronic Funds Transfer (EFT)

- **Guidelines**

-



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Outside Counsel Deskbook

Electronic Funds Transfer (EFT) Requirements

Payments by the FDIC under legal referrals may be made by check or electronic funds transfer (EFT) at the option of the FDIC. If payment is made by EFT, the FDIC may, at its option, also forward the associated payment information by electronic transfer. As used herein, the term "EFT" refers to the funds transfer and may also include the information transfer.

Mandatory Submission of EFT Information

Outside counsel is required, as a condition to any payment under a legal referral, to provide the FDIC with the information required to make payment by EFT as described below, unless the FDIC determines that submission of the information is not required. Outside counsel shall provide EFT information as described below unless waiver is granted. This information shall apply to all legal referrals outside counsel may receive. If outside counsel has multiple remittance offices, EFT information may be required for each remittance office.

Outside Counsel's EFT Information

Prior to submission of the first request for payment under a legal referral, outside counsel shall confirm the accuracy of EFT information previously provided the FDIC. If the EFT information changes, outside counsel is responsible for providing the changed information to the FDIC.

Required EFT Information

The FDIC may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System at the FDIC's option. Outside counsel shall provide the following information for both methods in a form acceptable to the FDIC. See the attached form.

- The tax identification number
- Outside counsel's name and remittance address and account number at outside counsel's financial agent
- The signature (manual or electronic, as appropriate), title, and telephone number of the outside counsel official authorized to provide this information

For ACH payments only

- Name, address, and 9-digit Routing Transit Number of outside counsel's financial agent
- Outside counsel's account number and the type of account (checking, saving, or lockbox)

For Federal Reserve Wire Transfer System payments only

- Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for outside counsel's financial agent
- If outside counsel's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, outside counsel shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment

Suspension of Payment

Notwithstanding the provisions of the LSA, the FDIC is not required to make any payment under a legal referral until after receipt, by the appropriate FDIC office, of the correct EFT payment information from outside counsel, a certificate is submitted or a waiver is granted. Until receipt of the correct EFT information, any invoice shall be deemed not to be a valid invoice.

If the EFT information changes after submission of correct EFT information, the FDIC shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, outside counsel may request that no further payments be made until the changed EFT information is implemented by the FDIC.

Outside Counsel EFT Arrangements

Outside counsel shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described above. Outside counsel shall pay all fees and charges for receipt and processing of transfers.

Liability for Uncompleted or Erroneous Transfers

If an uncompleted or erroneous transfer occurs because the FDIC failed to use the outside counsel-provided EFT information in the correct manner, the FDIC remains responsible for (i) making a correct payment and (ii) recovering any erroneously directed funds.

If an uncompleted or erroneous transfer occurs because outside counsel-provided EFT information was incorrect at the time of FDIC release of the EFT payment transaction instruction to the Federal Reserve System, and

- If the funds are no longer under the control of the FDIC, the FDIC is deemed to have made payment and outside counsel is responsible for recovery of any erroneously directed funds, or
- If the funds remain under the control of the FDIC, the FDIC retains the right to either make payment by mail or suspend the payment in accordance with provision above.

EFT and Assignment of Claims

If outside counsel assigns the proceeds of a legal referral, the assignee shall provide the assignee EFT information required herein. In all respects, the requirements of this provision shall apply to the assignee as if it were outside counsel. EFT information that shows the ultimate recipient of the transfer to be other than outside counsel, in the absence of a proper assignment of claims acceptable to the FDIC, is incorrect EFT information for purposes of these requirements.

FDIC Discretion

If outside counsel does not wish to receive payment by EFT methods for one or more payments, outside counsel may submit a request to the FDIC to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the FDIC.

Change of EFT Information by Financial Agent

Outside counsel agrees that outside counsel's financial agent may notify the FDIC of a change to the routing transit number, outside counsel account number, or account type. The FDIC shall use the changed data in accordance with the provisions above. Outside counsel agrees that the information provided by the agent is deemed to be correct information as if it were provided by outside counsel. Outside counsel agrees that the agent's notice of changed EFT data is deemed to be a request by outside counsel in accordance with the provisions that no further payments be made until the changed EFT information is implemented by the FDIC.

Last Updated 05/20/2005

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Federal Deposit Insurance Corporation
 Division of Finance
Substitute Form W-9
REQUEST FOR TAXPAYER
IDENTIFICATION NUMBER AND CERTIFICATION

PRIVACY ACT STATEMENT

Section 6109 of the Internal Revenue Code requires you to give your correct Taxpayer Identification Number (TIN) to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. The IRS will use the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation and to cities, states, and the District of Columbia to carry out their tax laws. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Name _____

Business Name _____ Exempt From Backup Withholding

Address (Number, Street, Apt or Suite No) _____

City, State, and ZIP Code _____ List Account Number(s) (Optional) _____

SECTION I - TAXPAYER ID NUMBER, PAYEE TYPE, AND BUSINESS OWNERSHIP TYPE

TAXPAYER ID NUMBER

Enter your Taxpayer Identification Number (TIN) in the appropriate box. For individuals, this is your Social Security Number (SSN). For other entities, it is your Employer Identification Number (EIN).

Employer Identification Number (EIN)

		-								
--	--	---	--	--	--	--	--	--	--	--

OR

Social Security Number (SSN)

		-								
--	--	---	--	--	--	--	--	--	--	--

(Please check one box in each column)

PAYEE TYPE

BUSINESS OWNERSHIP TYPE

<input type="checkbox"/> Individual <input type="checkbox"/> Federal Government Agency <input type="checkbox"/> State, Local Government Agency <input type="checkbox"/> Law Firm or Practice <input type="checkbox"/> Legal Service Provider <input type="checkbox"/> Foreign/Non-resident (Provide the appropriate Form W-8) <input type="checkbox"/> Other (Please explain) _____	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government Agency <input type="checkbox"/> Trust <input type="checkbox"/> Tax Exempt/Non-Profit <input type="checkbox"/> Other (Please explain) _____
---	---

CERTIFICATION INSTRUCTIONS - You must cross out item 2, below if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting of interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement account (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.

SECTION II - CERTIFICATION

Under penalties of perjury, I certify that

- 1 The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- 2 I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest and dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- 3 I am a U S person (including a U S resident alien).

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of U S Person			Date
Name (Please print)	Title	Telephone Number () -	Fax Number () -

Federal Deposit Insurance Corporation
PAYEE INFORMATION FOR AUTOMATIC DEPOSIT OF PAYMENT

INSTRUCTIONS: Complete and return this form to the Federal Deposit Insurance Corporation (FDIC). For additional information regarding Direct Deposit, please call the Division of Finance at 202-416-6900. **NOTE:** The information collected on this form will be used solely to update our administrative records. It does not provide any right to payment or reimbursement for current or prior work and is not to be construed as a solicitation for new business. You will continue to receive check payments until the FDIC has fully processed this form and confirmed your banking information.

SECTION I - PAYEE INFORMATION

NAME OF PAYEE	TAXPAYER ID NUMBER	TELEPHONE NUMBER () -
STREET ADDRESS		
CITY	STATE	ZIP CODE
NAME OF CONTACT PERSON		TELEPHONE NUMBER () -
E-MAIL ADDRESS <i>(For forwarding remittances)</i>		FAX NUMBER () -

SECTION II - FINANCIAL INSTITUTION INFORMATION

NAME OF FINANCIAL INSTITUTION	TELEPHONE NUMBER () -	
STREET ADDRESS		
CITY	STATE	ZIP CODE
BANK ROUTING NUMBER <i>(9-digits)</i>	BANK ACCOUNT NUMBER	ACCOUNT TYPE <i>(Check one)</i> <input type="checkbox"/> Checking <input type="checkbox"/> Savings

NOTE: The 9-digit Bank Routing Number and Bank Account Number are found on the bottom of the check. The Bank Routing Number is the first sequence of numbers; the Bank Account Number follows.

SECTION III - AUTHORIZATION

I/We authorize the Federal Deposit Insurance Corporation (FDIC) to make payments due to me/us by electronic funds transfer to the account listed above. I/We will notify the FDIC as soon as possible if my/our account information changes

NAME OF AUTHORIZER <i>(Please print or type)</i>	TELEPHONE NUMBER () -
SIGNATURE OF AUTHORIZATION	DATE

PRIVACY ACT STATEMENT

The collection of information you are requested to provide on this form is authorized under the Federal Deposit Insurance Act (12 U.S.C. §§ 1819 and 1820). The information is required in order for the FDIC to electronically transmit and process payment data to your financial institution. Failure to provide the requested information may delay or prevent the receipt of your payments through the Electronic Funds Transfer (EFT) payment process. Disclosure of information on this form by the FDIC may be made in accordance with any "routine uses of records" listed in the FDIC's Financial Information System, 30-64-0012.

Invoice Package

Federal Deposit Insurance Corporation

LEGAL INVOICE FOR FEES AND EXPENSES

SECTION I - LAW FIRM AND INSTITUTION INFORMATION

Matter Number		Matter Caption		
Institution Number	Name of Institution			
	City	State	ZIP Code	
Federal Tax Number	Firm's Name			
	Address			
Vendor Number	City	State	ZIP Code	
	Law Firm Contact Attorney		Telephone Number	
Law Firm Accounts Receivable Contact		Telephone Number		
FDIC Office Location	FDIC Attorney	Telephone Number		

SECTION II - CURRENT BILLING INFORMATION

Invoice Number. _____	Billing Period Date (MM/DD/YYYY) From ____/____/____ Through. / /	
FEES BILLED	EXPENSES BILLED	GRAND TOTAL

SECTION III - CERTIFICATION

I certify that the information contained herein is true and correct to the best of my knowledge, information, and belief, and that all charges for legal services and disbursements reflected herein are in accordance with our Legal Services Agreement with the Legal Division and the Division's Outside Counsel Deskbook

Name of Authorized Law Firm Representative (<i>Print legibly or type</i>)	Title of Authorized Law Firm Representative
Signature of Authorized Law Firm Representative	Date

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average 10 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Public Reporting Act Clearance Officer, Legal Division, Room 3082, Federal Deposit Insurance Corporation, 550 17th Street, N W , Washington, D C 20503

Legal Referral

Outside Counsel Deskbook

[OCD Homepage](#)

Referral Letter

Chapters

1 [Representing the FDIC](#)

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2 [Conflicts of Interest](#)

[ATTORNEY]

3 [Legal Services Agreement](#)

[FIRM]

[ADDRESS]

[CITY/STATE/ZIP]

4 [Legal Referral](#)

5. [Case Management](#)

Re [INSTITUTION NAME/FIN]

[ASSET/CASE NAME]

[LMIS NUMBER(S)]

6 [Case Plan and Budget](#)

7 [Invoice Package](#)

8. [Legal Matter Closeout](#)

Dear [ATTORNEY]

9. [Post-Representation Responsibilities](#)

Your firm is being retained to provide legal services to the Federal Deposit Insurance Corporation ("FDIC") in the matter [or matters] referenced above. This referral to your firm is subject to the provisions of the Legal Services Agreement ("LSA") between your firm and the FDIC, the Outside Counsel Deskbook ("Deskbook"), as it may be amended as well as the documents enclosed herein.

10 [Foreign Laws Firms](#)

Appendices

The legal services encompassed by this referral are [Brief description of services and effective date to begin work]

A. [Contacts](#)

B. [Statutory Compliance](#)

[Include a paragraph about your section/office's instructions for submission of budgets and incorporation of approved budget in the referral letter.] Your firm must have an approved budget in place before invoices can be paid. Please refer to the section in the Deskbook regarding the FDIC Legal Research Bank before commencing any legal research.

C. [Electronic](#)

[Billing/Timekeeping](#)

The Oversight Attorney for this referral is _____, [phone number]. The Oversight Attorney is responsible for managing the progress and resolution of this matter. The Oversight Attorney is available to provide assistance concerning FDIC special powers and significant issues of the FDIC, to discuss legal or factual issues associated with this matter, and to help resolve any questions that may arise during your representation. The Deskbook previously provided to your firm details the role and responsibilities of the Oversight Attorney. [See also the attached supplemental memorandum from the _____ Section.]

The FDIC requires outside counsel to submit invoices on a monthly basis unless the amount (fees and expenses) to be invoiced is less than \$500. If the amount is less than \$500, outside counsel may submit its invoices on a quarterly basis. Invoices for fees and expenses should be submitted within 30 days from the last date in outside counsel's billing period. The Legal Division recognizes that firms may experience delays receiving invoices and supporting documentation for expenses to be included in the firm's invoice to the FDIC. Therefore, invoices for such expenses should be submitted within 60 days from the last date in outside counsel's billing period. At the conclusion or termination of this referral or any matter under this referral, outside counsel should submit its final invoice for fees and expenses within 90 days of conclusion or termination of the referral or matter. Failure to submit invoices in a timely manner as set forth above may significantly delay FDIC's

invoice processing and payment. Absent extraordinary circumstances, FDIC will not process invoices for fees submitted over one year from the date services are rendered. Further information is contained in the Outside Counsel Deskbook.

In the event the total fees and expenses for this referral are expected to exceed \$100,000, outside counsel must comply with the provisions of the Byrd Amendment and complete either the enclosed Certification or Disclosure Form, as applicable.

Please confirm acceptance of this referral by returning a counter-signed copy of this letter to me. Your acceptance also constitutes your certification that your firm has conducted an appropriate inquiry and that you have found no conflicts of interest in connection with representation of the FDIC on this matter (or that such conflicts have been waived by the FDIC Outside Counsel Conflicts Committee or Regional Counsel as appropriate).

Sincerely,

[Delegated Authority]

Agreed and accepted by

[Attorney]
For [Law Firm]

Date

Enclosures: Byrd Certification Form
Byrd Disclosure Form
[Supplemental Memorandum]
[Budget Forms and Instructions]

Last Updated 05/20/2005

legal@fdic.gov



Home > About FDIC > Doing Business with the FDIC > Outside Counsel Deskbook

Outside Counsel Deskbook

Byrd Amendment Implementation Statement

FDIC

Federal Deposit Insurance Corporation

Washington, DC 20429

Legal Division

TO: FDIC Outside Counsel

SUBJECT: Implementation of 31 U.S.C. § 1352 Instructions for Completing Required Form(s)

In accordance with 31 U.S.C. § 1352 (b) (the "Act" or "Byrd Amendment"), all firms that request or receive a "contract" to provide legal services to the FDIC on a matter for which the firm has been or is expected to be paid \$100,000 (fees and expenses) or more must complete and return the FDIC Certification Form 3700/04A (8-02) ("Certification Form"). On the Certification Form your firm certifies whether it has made any payment or has agreed to make any payment prohibited by the Act. Furthermore, if any such payment has or will be made, the firm shall also complete and submit the Disclosure of Lobbying Activities (Standard Form LLL) ("Disclosure Form"). Thus, the Certification Form is required whether or not your firm has engaged in any lobbying activities. The Disclosure Form should be filed only if your firm has engaged in lobbying activities.

Your firm is responsible for determining when the total fees (including expenses) for a legal matter exceed or are expected to exceed \$100,000. Furthermore, your firm is responsible for complying with 31 U.S.C. § 1352 (b) when total fees (including expenses) for a legal matter were initially estimated to be less than \$100,000 and were subsequently amended to exceed \$100,000, or if you received \$100,000 or more for a legal matter.

If your firm **has not** previously filed a Certification Form and a Disclosure Form, if required, in accordance with 31 U.S.C. § 1352 (b), then your firm must file the appropriate form(s) with the FDIC **within 20 days from the date of the engagement**. If your firm **has** previously filed a Certification Form and Disclosure Form, if required, please note that your firm has a continuing duty to update previously filed Certification Forms and Disclosure Forms, pursuant to 31 U.S.C. § 1352 (b)(4)(C). If we do not receive an amended Certification Form and Disclosure Form, if required, then we will assume that no event has occurred that has materially affected the accuracy of a previously filed Certification Form and Disclosure Form.

Completed forms should be returned to the FDIC Legal Division office that issued the specific referral or engagement. Please note that your firm is responsible for ensuring that the forms that you file with the FDIC are accurate. The Act provides that those "persons", i.e. firms, who fail to file the Certification Form or the Disclosure Form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure to disclose. 31 U.S.C. § 1352 (c)(2)(A).

The Byrd Amendment, prohibits the use of appropriated funds by recipients of a "Federal contract" for purposes of influencing or attempting to influence federal officials in connection with a "Federal action," such as the awarding of a "Federal contract." The Act prohibits "contractors" from using appropriated funds for lobbying in connection with a contract, grant, loan or cooperative agreement with a Federal agency. Furthermore, the Act requires the "contractor" to disclose to the Federal agency involved its lobbying activities connected with such "contract," grant or loan when the "contract" amount exceeds \$100,000 regardless of whether the activities are funded with appropriated funds.

The Act requires that a recipient of a "Federal contract" in excess of \$100,000 must file with the agency certain certification and disclosure forms. Certification and disclosure forms must be filed with the agency in accordance with 31 U.S.C. § 1352 (b)(4)

(A) with each submission that requests an award of a federal contract, grant, loan, or cooperative agreement,

(B) upon the receipt of a federal contract, grant, loan, or cooperative agreement, and

(C) at the end of each calendar quarter in which any event occurs that "materially affects the accuracy of the information contained in any declaration previously filed."

Last Updated 05/20/2005

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●

FDIC Contractor Representations and Certifications

SUBMITTED BY:

●

Contractor Name

●

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

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ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average one-half hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, Washington, D C 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D C 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U S C) § 1819, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in so examining the contractor's compliance.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent, to individuals involved in judicial or administrative proceedings, and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications shall be executed by an official authorized to bind the offeror, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent statement may render the maker subject to prosecution under 18 United States Code (U S C) § 1001, 1007, and 1014. For purposes of these representations and certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U S C. The offeror shall provide immediate written notice to the Contracting Officer, if, at any time prior to contract award, the offeror learns that one or more of the representations or certifications was erroneous when submitted or has become erroneous by reason of changed circumstances.

1. MINORITY AND WOMEN-OWNED BUSINESS REPRESENTATIONS

a. It is, it is not, a minority-owned business concern. A minority-owned business concern is defined as a firm in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm which is principally owned by another business entity or a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more minorities does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more of the qualifying minority owner(s). The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control of management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

b. If a minority-owned business, please check the appropriate box below indicating racial/ethnic category:

- American Indian/Alaska Native Asian Black or African
 Hispanic or Latino Native Hawaiian or Other Pacific Islander

c. It is, it is not, a women-owned business. A women-owned business is defined as a firm in which at least 51% of the ownership and control is directly or unconditionally held by one or more women. A firm which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s) management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A women owner's unexercised right to cause a change in control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

d. If offeror is a minority or women-owned business, where did it hear about FDIC contracting opportunities?

- Convention/Procurement Fair Minority and/or Women's Organization Personal Contact
 Current Solicitation Other (*Explain*)

Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move mouse to the next field.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

2. SMALL DISADVANTAGED BUSINESS CONCERN CERTIFICATION

It is, it is not, a small disadvantaged business concern that has been certified as a small disadvantaged business concern by the Small Business Administration, or it has filed an application with the Small Business Administration to be certified as a small disadvantaged business concern. A small disadvantaged business concern that has applied for but not yet received Small Business Administration certification may be entitled to treatment as a small disadvantaged business concern where certification can be obtained before the contract is awarded.

3. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

a. The offer certifies that

- (1) The prices in this proposal have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer or (iii) the methods or factors used to calculate the prices offered,
- (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law, and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.

b. Each signature on the proposal is considered to be a certification by the signatory that the signatory

- (1) Is the person in the offeror's organization responsible within that organization for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to a (1) through a (3) above, or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a (1) through a (3) above
Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move the mouse to the next field.

(insert full name of person(s) in the offeror's organization responsible or determining the prices offered in this proposal, and the title of his or her position in the offeror's organization),

(ii) As an authorized agent, certifies that the principals named in subdivision b (2)(i) above have not participated, and will not participate in, any action contrary to subparagraphs a (1) through a (3) above, and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a (1) through a (3) above.

c. A proposal will not be considered for award where a (1), a (3) or b above has been deleted or modified. If the offeror deleted or modifies a (2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

4. CONTINGENT FEE REPRESENTATION

Not applicable to proposals below \$100,000 or for the acquisition of commercial items

The offeror represents that except for full-time bona fide employees working solely for the offeror, the offeror (a) has, has not, employed or retained any person or company to solicit or obtain this contract, and (b) has, has not, paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract. The offeror agrees to provide information relating to this Representation as requested by the Contracting Officer when either (a) or (b) herein is answered affirmatively. As used herein, "bona fide employee" means a person, employed by an offeror or contractor and subject to the offeror's or the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FDIC contracts, nor holds out as being able to obtain any FDIC contract or contracts through improper influence.

5. EQUAL OPPORTUNITY CERTIFICATION

a Have you participated in any contractual agreement which contained the Equal Employment Opportunity provisions prescribed in Executive Order (E O) 11246?

Yes No

b Were you required pursuant to the rules and regulations of Equal Employment Opportunity (41 CFR 60-1) to file a compliance report as the result of such contractual agreement?

Yes No

c Did you file the necessary compliance report? (If "yes" answer questions d and e.)

Yes No

d Name of agency requiring report _____

e When was report filed? _____

f Has any action been required of you to improve your compliance posture?

Yes No

g Name and address of Government "Compliance Agency," if known

Click here to type text. If additional space is needed, use the TAB key to insert another row. Otherwise, move the mouse to the next field.

h What is your current employment? _____

i Have you prepared a written affirmative action compliance program?

Yes No

If "No," the reason for this is

Offeror is an agency or instrumentality of state or local government

Offeror employs less than 50 persons

Offeror has not been awarded a Federal contract or subcontract since July 1, 1968

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

J Data on subcontractors (Use supplementary sheets where required.)

NAME OF SUBCONTRACTORS AND ADDRESSES

	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

- (1) Previously held contracts subject to E O 11246
- (2) Previously filed certificate of nonsegregated facilities
- (3) Previously filed compliance report

6. DUPLICATION OF COST

The offeror represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source

7. CLEAN AIR AND WATER CERTIFICATION

(Applicable if the offer exceeds \$100,000, or if the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. § 1857 c-8 (c) (1)), or the Federal Water Pollution Control Act (33 U.S.C. § 1819 (c)) and is listed by the Environmental Protection Agency (EPA), or is not otherwise exempt.)

The offeror certifies as follows

- a. Any facility to be utilized in the performance of this proposed contract has, has not, been listed on the EPA list of violating facilities
- b. It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA list of violating facilities
- c. It will include substantially this certification, including this paragraph c, in every nonexempt subcontract

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

8. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

Applicable to contracts exceeding \$100,000

a The offeror certifies that, to the best of its knowledge and belief, the following statements are true

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement

Yes No

- (2) No nonappropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the solicitation associated with this certification

Yes No

If the offeror has checked the "No" box at 9a (2) above, indicating that any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities" (available upon request) to the Contracting Officer

- b The offeror certifies that it will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly
- c Submission of this certification and disclosure, and when required, a completed OMB Standard Form LLL is a prerequisite for making or entering into this contract imposed by 31 U S C § 1352 Any person who makes an expenditure prohibited under the contract provision entitled "Limitation on Payments to Influence Certain Federal Transactions" in the FDIC General Provisions, or who fails to file or amend the disclosure form to be filed or amended with this certification, shall be subject to a civil penalty of not less than \$10, 000, and not more than \$100,000, for each failure

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

9. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U S C § 1001 for making false statements in proposals. The offeror also agrees to notify the FDIC in writing, within 10 days, after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within the representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the offeror intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the FDIC's examination of the contractor's compliance with FDIC non-ethics contracting regulations.

SOLICITATION NUMBER		
NAME OF OFFEROR <i>(Please print or type)</i>	OFFEROR'S TAX IDENTIFICATION NUMBER (TIN)	
TITLE		
NAME OF OFFEROR'S FIRM	OFFEROR'S TELEPHONE NUMBER ()	
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-0046

(See reverse for public burden disclosure)

1. Type of Federal Action: <input type="checkbox"/> a contract <input type="checkbox"/> b. grant <input type="checkbox"/> c cooperative agreement <input type="checkbox"/> d loan <input type="checkbox"/> e loan guarantee <input type="checkbox"/> f loan insurance	2. Status of Federal Action: <input type="checkbox"/> a bid/offer/application <input type="checkbox"/> b initial award <input type="checkbox"/> c post-award	3. Report Type: <input type="checkbox"/> a initial filing <input type="checkbox"/> b material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> Congressional District, <i>if known</i> 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i>	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI)</i>	b. Individuals Performing Services <i>(including address if different from No 10a)</i> <i>(last name, first name, MI)</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature _____ Print Name _____ Title _____ Telephone No _____ Date _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U S C section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

- 1 Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action
- 2 Identify the status of the covered Federal action
- 3 Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
- 4 Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
- 5 If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
- 6 Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
- 7 Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
- 8 Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
- 9 For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
- 10 (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
- 11 The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



Legal Services Agreement Forms



LEGAL SERVICES AGREEMENT

Federal Tax ID Number _____

This **Legal Services Agreement** between your firm and the Legal Division of the Federal Deposit Insurance Corporation (FDIC) in all capacities governs all legal services rendered to the FDIC. This is not a referral or engagement for legal services. Referrals are made pursuant to this agreement by Legal Division attorneys with delegated authority and may be accompanied by supplemental requests or instructions.

Our relationship also will be governed by and subject to the policies, requirements, practices and procedures set forth in the FDIC's "Outside Counsel Deskbook" previously provided to you and incorporated herein by reference, as from time to time amended (the "Deskbook"). You represent, warrant and covenant that (i) your firm has no conflict with the interests of the FDIC or the former Resolution Trust Corporation that has not been disclosed in writing to the FDIC; (ii) you will advise us immediately of all conflicts that develop in the future; (iii) each of the attorneys and paraprofessionals in your firm who provides services to the FDIC has reviewed, understands and agrees to act strictly in compliance with all provisions, requirements and policies (including statutory and regulatory provisions) identified in the Deskbook, and (iv) all information submitted in connection with your registration with the Legal Division is and remains accurate and complete, and that you will advise us promptly in writing of all changes affecting such submission.

Your firm agrees to provide legal services in accordance with the fee or hourly rate structure (for each attorney and paraprofessional assigned to work on FDIC matters) set forth on the attached schedule(s), which may be amended only by written consent of the Legal Division. We agree to process for payment all undisputed invoices submitted by the firm in proper order promptly upon receipt. Absent extraordinary circumstances, the FDIC will not pay invoices submitted over one year from the date that services are rendered.

This agreement shall remain in effect for two years from the effective date set forth below subject, however, to earlier termination by the Legal Division without cause or advance notice. In the event your firm is providing services under any referrals as of the expiration date of this agreement, this agreement shall continue for the sole purpose of completing such referrals under these same terms and conditions until the earliest date: (i) all such referrals are completed; (ii) your firm and the FDIC execute a new Legal Services Agreement; or (iii) the FDIC exercises its right to terminate this agreement. Upon termination, you agree to comply with the provisions set forth in the Deskbook and to forward upon demand of the Legal Division all files and documents concerning all FDIC engagements, including all work products of your firm.

All notices to you pursuant to this agreement shall be sent to the address indicated above, and all notices to the Legal Division shall be sent to the Legal Division, Federal Deposit Insurance Corporation, Attn Outside Counsel Liaison, 550 17th Street, NW, Mail Stop H-3119, Washington, DC 20429-9990.

ACCEPTED AND AGREED

Effective Date _____

(Type Name of Firm)

(Authorized Signature)

(Type Name and Title)

(Authorized Legal Division Signature)

(Type Name and Title)

LSA EFFECTIVE DATE (MM/DD/YYYY)

Federal Deposit Insurance Corporation
**LEGAL SERVICES AGREEMENT (LSA)
 AMENDMENT**

SECTION I - LEGAL SERVICES PROVIDER INFORMATION

NAME OF LAW FIRM

FEDERAL TAX IDENTIFICATION NUMBER

BRANCH/OFFICE LOCATION (Each office of a multiple office firm/business must complete a separate rate amendment)

SECTION II - AMENDED INFORMATION (Please make appropriate changes to Firm Name, Address, Telephone Number, Fax Number, and Contact Attorney.)

NAME OF LAW FIRM

FEDERAL TAX IDENTIFICATION NUMBER (Structural changes that result in a new tax ID number may require a new application and a new LSA, see Outside Counsel Deskbook)

ADDRESS

CITY

STATE

ZIP CODE

E-MAIL ADDRESS

NAME OF CONTACT ATTORNEY

NEW TELEPHONE NUMBER (Include Area Code)

FAX NUMBER (Include Area Code)

ADD (A) OR DELETE (D)	BILLABLE INDIVIDUAL (First, Middle, Last, Suffix) Alphabetical Order	STATE LICENSES	POSITION Partner (P) Associate (A) Paraprofessional (PP) Specify Other Position (O)	YEARS IN PRACTICE	MINORITY STATUS Asian American (A) Black American (B) Hispanic American (H) Native American Indian (N)	GENDER (M or F)	STANDARD RATE	PERCENT % DISCOUNT	PROPOSED FDIC RATE

SECTION III - SIGNATURES

SUBMITTED BY (Name and Signature of Firm's Authorized Representative)

TITLE

DATE SIGNED (MM/DD/YYYY)

FDIC DELEGATED APPROVING OFFICIAL (Print legibly or type)

TITLE

DATE SIGNED (MM/DD/YYYY)

SIGNATURE OF FDIC DELEGATED APPROVING OFFICIAL

LEGAL DIVISION OR OFFICE

EFFECTIVE DATE (MM/DD/YYYY)

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**Federal Deposit Insurance Corporation
OUTSIDE COUNSEL LEGAL SERVICES AGREEMENT
RATE SCHEDULE**

LEGAL SERVICES AGREEMENT
EFFECTIVE DATE (MM/DD/YYYY) / /

INSTRUCTIONS Each office of a multiple office firm must complete a separate Outside Counsel Legal Services Rate Schedule. All amendments to this Legal Services Agreement Rate Schedule, i.e., firm's name, Tax Identification Number, address, contract attorney, telephone/fax numbers, billable individual, or additions/deletions must contain the information shown on the Legal Services Agreement Amendment form. Contact the Legal Information Specialist processing your firm's invoice or dial 1 (800) 846-1901 to request copies of the Legal Services Agreement Amendment form or download it from the FDIC Internet at (http://www.fdic.gov/buying/legal/outside/APPNDX/D_3.pdf). **NOTE** Use the mouse to move to the next field. Attach continuation sheets if necessary.

SECTION I - OUTSIDE COUNSEL INFORMATION

NAME OF LAW FIRM _____ FEDERAL TAX IDENTIFICATION NUMBER _____
BRANCH/OFFICE LOCATION _____

ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____ E-MAIL ADDRESS _____
NAME OF CONTACT ATTORNEY _____ PHONE NUMBER (Include Area Code) _____ FAX NUMBER (Include Area Code) _____

BILLABLE INDIVIDUAL (First, Middle, Last) Alphabetical Order	STATE LICENSES	POSITION Partner (P) Associate (A) Paraprofessional (PP) Specify Other Position (O)	YEARS IN PRACTICE	MINORITY STATUS Asian American (A) Black American (B) Hispanic American (H) Native American Indian (N)	GENDER (M OR F)	STANDARD RATE	PERCENT % DISCOUNT	PROPOSED FDIC RATE

SECTION II - SIGNATURES

SUBMITTED BY (Name and Signature of Law Firm's Authorized Representative) _____ TITLE _____ DATE SIGNED (MM/DD/YYYY) _____
NAME OF FDIC DELEGATED APPROVING OFFICIAL (Please print legibly or type) _____ TITLE _____ DATE SIGNED (MM/DD/YYYY) _____
SIGNATURE OF FDIC DELEGATED APPROVING OFFICIAL _____ LEGAL DIVISION OR OFFICE _____ EFFECTIVE DATE (MM/DD/YYYY) _____

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OMB NUMBER 3064-0122
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Home > About FDIC > Doing Business with the FDIC > Outside Counsel Deskbook

Outside Counsel Deskbook

Foreign Firm Legal Services Agreement

LEGAL SERVICES AGREEMENT

FOREIGN LAW FIRMS

[Firm Name]
[Address – Main Firm Location]
[City, Country]

This **Legal Services Agreement** between your firm and the Legal Division of the Federal Deposit Insurance Corporation (“FDIC”) in all capacities governs all legal services rendered to the FDIC. This is not a referral or engagement for legal services. Referrals are made pursuant to this agreement by Legal Division attorneys with delegated authority and may be accompanied by supplemental requests or instructions.

Our relationship also will be governed by and subject to applicable policies, requirements, practices and procedures set forth in the FDIC’s *Outside Counsel Deskbook*, incorporated herein by reference, as from time to time amended (“*Deskbook*”). You represent, warrant and covenant that (i) your firm has no conflict with the interests of the FDIC or the former Resolution Trust Corporation that has not been disclosed in writing to the FDIC, (ii) you will advise us immediately of all conflicts that develop in the future, (iii) each of the attorneys and paraprofessionals in your firm who provides services to the FDIC has reviewed, understands and agrees to act strictly in compliance with provisions, requirements and policies identified in the *Deskbook* that apply to your firm, and (iv) all information submitted in connection with your registration with the FDIC Legal Division is and remains accurate and complete and that you will advise us promptly in writing of all changes affecting such submission.

Your firm agrees to provide legal services in accordance with the fee or hourly rate structure (for each attorney and paraprofessional assigned to work on FDIC matters) set forth in US currency on the attached schedule(s), which may be amended only by written consent of the Legal Division. We agree to process for payment all undisputed invoices submitted by the firm in proper order promptly upon receipt. Absent extraordinary circumstances, the FDIC will not pay invoices submitted over one year from the date that services are rendered.

This agreement shall remain in effect for two years from the effective date set forth below subject, however, to earlier termination by the Legal Division without cause or advance notice. In the event your firm is providing services under any referrals as of the expiration date of this agreement, this agreement shall continue for the sole purpose of completing such referrals under the same terms and conditions until the earliest date (i) all such referrals are completed, (ii) your firm and the FDIC execute a new Legal Services Agreement, or (iii) the FDIC exercises its right to terminate this agreement. Upon termination, you agree to comply with the provisions set forth in the *Deskbook* and to forward upon demand of the Legal Division all files and documents concerning all FDIC engagements, including all work products of your firm.

All notices to you pursuant to this agreement shall be sent to the address indicated above, and all notices to the Legal Division shall be sent to Legal Division, Federal Deposit Insurance Corporation, Attention: Legal Services Unit (LSU), 550 17th Street N W Washington D C 20429-9990.

The parties expressly agree that the laws of the United States of America will govern and control this agreement. The parties also expressly agree that any legal action arising under or in connection with this agreement is subject to the exclusive jurisdiction of the U.S. District Court for the District of Columbia or the U.S. District Court for the Northern District of Texas.

Accepted and agreed

Effective date

[TYPE NAME OF FIRM]

Federal Deposit Insurance Corporation

By: Authorized Signature Date

(Print/Type Name & Title) Date

Last Updated 05/20/2005

legal@fdic.gov

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Travel



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Outside Counsel Deskbook

Sample of Law Firm Travel Voucher

Sample

OMB Number 3064-0122
EXPIRATION DATE 03/31/2007

Federal Deposit Insurance Corporation LAW FIRM TRAVEL VOUCHER

SECTION I - TRAVELER INFORMATION														
1 NAME OF TRAVELER (Last, First, MI)					2 HOME OFFICE			3 FEDERAL TAX ID NUMBER			4 INVOICE NUMBER			
Doe, John					Atlanta, GA			555111322			2222			
5 RESIDENCE (Include City, State and ZIP Code)					6 LAW FIRM NAME					7 MATTER NUMBER				
123rd Street, Atlanta, GA 34567					Doe & Doe Law Firm					930000000				
8 DATE	9 NATURE OF EXPENSE <i>(Departure/Arrival Times are Required for Per Diem Payment)</i>	10 AMOUNTS CLAIMED												
		10 Mileage	11 Per Diem	12 Lodging	13 Air Fare	14 Car Rental	15 Other							
	Purpose of Travel: REO Meeting - Tampa, FL													
1-2-05	Leave Office 10:30 am													
	Train from office to airport													1.00
	Taxi to temporary assignment													7.00
	Arrive temporary assignment 1 15 pm				22.50		57.00							
	Taxi from temporary assignment to hotel													12.00
1-3-05	Leave temporary assignment 7 35 am													
	Taxi from hotel to AP													7.00
	Train, AP to office													1.00
	Arrive office 10:30 am				15.00									
	Airfare RT ATL/TPA/ATL								200.0					
16 <input type="checkbox"/> CONTINUATION SHEET (Subtotals brought forward)														
17 TOTALS														
18 CERTIFIED CORRECT (Traveler's Signature)														
19 DATE SIGNED														
20 TOTAL REIMBURSEMENT														
3/15/05														
316.50														

NOTE: If additional space is needed, complete and attach form FDIC 5210A2A, Law Firm Travel Voucher (Continuation Sheet)

SECTION II - CERTIFICATION		
I certify that I have examined this travel voucher and to the best of my knowledge and belief all costs claimed are allowable in accordance with FDIC travel regulations. Costs claimed here have not been previously billed to FDIC unless identified as a resubmission.		
Name/Title of FDIC Oversight Attorney	Signature	Date

PRIVACY ACT STATEMENT

The Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. Sec. 1441a provides the authority to solicit the requested information, except for Social Security Number which is solicited under the authority of Executive Order 9397. The primary use of this information is to examine and approve reimbursement for expenses incurred on authorized travel by FDIC contractors. The information on this form may be disclosed to the General Accounting Office in connection with periodic audits to Federal or State agencies charged with enforcing or implementing a statute, rule or regulation when it appears there may have been a violation of that statute, rule or regulation. Information on this form may also be disclosed as set forth in the routine uses in the FDIC's Financial Information System of records. Providing the information is voluntary, however failure to provide all the requested information may result in suspension or disallowance of your travel expense claim.

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CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

January 2004

1.0 INTRODUCTION

The Contractor should have a policy that requires its employees to use sound business judgement in both determining the need for travel, as well as in expending Contractor financial resources when travel is necessary. The following guidelines are provided to assist the Contractor in its compliance with contractual requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement guidelines. Travelers will not be reimbursed for excess costs caused by:

- An indirect route as a matter of personal preference
- Premature departure for personal reasons from a temporary location; or
- Extending a stay for personal reasons.

2.0 APPLICABILITY

To be entitled to Lodgings-Plus per diem reimbursement, the contract must allow for travel and the Contractor's employee must be on a temporary assignment that is at least 50 miles in distance from either his/her office or residence. If a temporary assignment concludes during the workday and is located within 100 miles of the Contractor's official station or residence, the Contractor employee is expected to return to their residence, rather than remain at the temporary location overnight. The cost of travel for spouses, other family members, and friends is not allowable under any circumstances.

3.0 TRAVEL AUTHORIZATION

Contractors shall ensure that all travel on behalf of the FDIC is necessary and allowable under the contract. A management official of the Contractor shall authorize all travel and travel vouchers reflecting travel expenditures.

4.0 AIR TRAVEL

Air travel should be in coach class only, unless the employee bears the cost of the difference between coach and first class. Travel should be planned as far in advance as possible to take advantage of discounted fares; especially, if reasonable certainty exists that the event will take place. If a restricted fare is booked and the Contractor's employee requires a change, a reasonable exchange fee may be claimed.

5.0 RENTAL CARS

Generally, no car larger than a mid-size should be rented. The Contractor should have a policy that requires employees to compare the cost of car rental with other forms of transportation and to choose the cheaper mode of transportation. The use of rental cars, even if authorized, must be justified in writing by the traveler and attached to the voucher. Claims for rental car gasoline must be supported by original receipts.

6.0 LODGING

The Contractor is expected to have a policy that provides for reasonable but not extravagant lodging accommodations for employees in travel status. The Contractor should make use of

government rates whenever possible; otherwise, corporate rates or other discounts should be obtained.

If the contract is a level of effort type of contract (e.g., labor hour or time and materials) with reimbursable travel, and the contractor must be in the Washington, D.C., area overnight, the contractor is required to stay at the L. William Seidman Center (Seidman Center) providing space is available. The contractor shall notify the Contracting Officer of the need for a reservation, and the Contracting Officer shall contact the Seidman Center to make the reservation. If space is not available, the Seidman Center management will obtain an alternate reservation, or provide permission for contractor to obtain alternate lodging. For reimbursement, the contractor must provide written evidence of lack of availability at the Seidman Center at the time of submission of travel voucher.

Any hotel expenses considered excessive or unreasonable will not be reimbursed. Instead, in those cases, lodging reimbursement will be limited to the U.S. Government GSA lodging rate for the city in question as listed in the most recent OAG Official Traveler – Travel Guide.

7.0 SUBSISTENCE

Employees on overnight travel status shall be reimbursed on a per diem basis. The current FDIC per diem rates allowable are listed in Section 16.0 of these Guidelines. Specific per diem rates for different localities may be found on the General Services Administration web site, the specific citation for which is as follows:

<http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>. When an employee is on per diem, incidental expenses such as laundry and dry cleaning are considered to be covered by the per diem.

8.0 MISCELLANEOUS EXPENSES

Employees in non-overnight travel status, who are away from their residence at least 11 consecutive hours excluding meal time, and the meal is specifically authorized, should be reimbursed on actual expense incurred basis with meal cost limited to a \$10.00 charge (receipt needed) or \$6.00 without a receipt. According to the IRS regulations, the Contractor must report this expense as income.

9.0 LONG DISTANCE PERSONAL CALLS

While on travel status, an employee may claim the actual amount incurred, not to exceed \$3 per day, for personal long-distance telephone calls while on an overnight travel assignment. This is in addition to per diem, if applicable.

10.0 USE OF PERSONAL OWNED VEHICLE

The Contractor may reimburse an employee for use of his/her personal vehicle while on Contractor related business. The maximum reimbursement rate will be the rate stipulated by the IRS (See Section 18.0 for the current rates).

In addition, a Contractor employee may be reimbursed 8 cents for the first additional Contractor employee passenger and 4 cents for each additional Contractor passenger. According to the IRS regulations, the additional expense reimbursement must be reported as income to the employee.

If an employee chooses to use his/her own vehicle in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or mileage reimbursement and the per diem difference.

NOTE: FDIC does **not insure** contractors, their employees, or their vehicles for liability.

11.0 TAXICABS

The use of taxicabs is permitted while Contractors are on official travel for FDIC. Taxi hire is appropriate when:

- a) public transportation, airport limousine service, and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances;
- b) traveling between transportation terminals and the residence, hotel, or office while in an official travel status; or
- c) for travel from the Contractor's residence to the official station to depart on an assignment requiring at least one night's lodging, and from the official station to the residence on the day the employee returns from that trip.

Taxi fares for trips used to obtain meals will not be reimbursed.

Reimbursement for taxicab fares (plus the customary 15% tip) will be made only if an appropriate receipt is submitted with the voucher.

12.0 NON-REIMBURSEMENT EXPENSES

Examples of expenses that will not be reimbursed include the following:

- a. alcoholic beverages, entertainment;
- b. laundry, dry cleaning and pressing (per diem reimbursement);
- c. travel insurance;
- d. parking fines;
- e. charges incurred because of indirect travel for personal reasons;
- f. gratuities and tips paid to porters, waiters, bellboys, and hotel maids inside the lodging facility (per diem reimbursement);
- g. nonproductive time related to official travel to and from one's temporary duty station; and
- h. any charges, fees, or other associated costs related to the making of reservations or other accommodations for travel.

13.0 RECEIPTS

Except for per diem expenses, valid original receipts are required for all expenditures regardless of cost. If a receipt is not normally provided for the expense (metro, bus token, etc.), the certification signed by the traveler on the voucher will justify the expense.

Receipts submitted with the voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. If an electronic ticket is used, the boarding passes for each flight must be submitted with the travel voucher

14.0 TRAVEL VOUCHER COMPLETION

After completion of travel, a travel voucher (may use contractor's voucher) must be submitted for reimbursement. In addition, dates and times of each departure from residence or office, arrival at and the name of the place of temporary assignment, and arrival at the office or residence must be shown on the travel voucher. A certification signed by the traveler must be included on the travel voucher that states that the trip indicated was actually taken and that all expenses are accurate and correct.

15.0 INVOICES

Contractors billing for reimbursement of travel expenses must submit an original and two (2) duplicates of each invoice to include all supporting documents.

The penalty for invoicing a travel voucher that falsifies any item in the claim forfeits the claim (28 U.S.C. 2514). Further, travelers who falsify a claim may be fined or imprisoned for not more than 5 years or both (18 U.S.C. Section 1001), and a corporation may be fined up to maximum of \$500,000 (18 U.S.C. Section 3571 (c)).

16.0 PER DIEM FOR OVERNIGHT TRAVEL:

AMOUNT OF PER DIEM TO BE CLAIMED:

DEPARTING						
Sites with per diem rate of:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
If you leave between:						
12 Midnight to 5:59 AM	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
6:00 AM to 11:59 AM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
12 Noon to 5:59 PM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
6:00 PM to 11:59 PM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
RETURNING						
Sites with per diem rate of:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
If you return between:						
12 Midnight to 5:59 AM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
6:00 AM to 11:59 AM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
12 Noon to 5:59 PM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
6:00 PM to 11:59	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00

17.0 MEAL DEDUCTIONS

If meals are provided by another person or entity, the following amounts shall be deducted from per diem rates.

PROVIDED MEALS DEDUCTIBLE FROM MAXIMUM PER DIEM RATES*						
MAXIMUM PER DIEM RATES:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
BREAKFAST	\$6	\$7	\$8	\$9	\$9	\$10
LUNCH	\$6	\$7	\$8	\$9	\$11	\$12
DINNER	\$16	\$18	\$20	\$22	\$24	\$26
INCIDENTALS	\$2	\$2	\$2	\$2	\$2	\$2

*For those destinations that are not listed, the maximum hotel expense shall be \$55.00 per day and the maximum per diem rate shall be \$30.00.

18.0 MILEAGE RATE FOR USE OF PERSONAL VEHICLE:

Effective January 1, 2004, the mileage rate allowed for use of a personal vehicle on business is 37.5 cents per mile.



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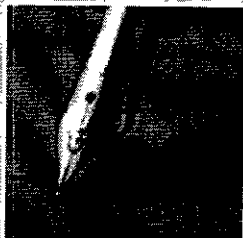
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Overview

Per Diem Rates

FY 05 Per Diem Rate Highlights

FY04 Per Diem Rate Highlights

FY 03 Per Diem Rate Highlights

Hotel Listings at Per Diem

Meals and Incidental Expense Breakdown

Trip Talk

Downloadable Files

Per Diem

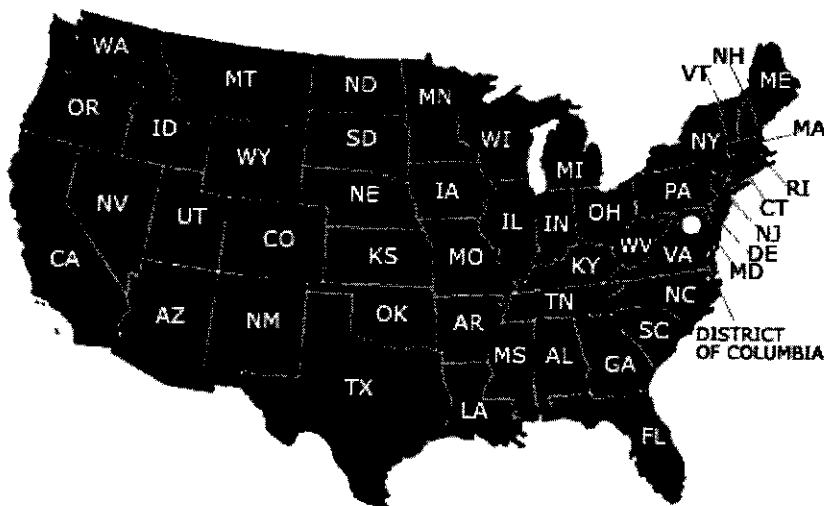
Domestic Per Diem Rates

Rates are set by fiscal year, effective beginning each October 1

To look up rates and find links to participating hotels throughout the continental United States (CONUS), select a year and click on a state.

NOTE: If neither the city nor the county is listed, the location is a standard CONUS destination with a rate of \$60.00 for lodging and \$31.00 for meals and incidental expenses (M&IE)

Find Rates for Fiscal Year 2005 (Current Year)



For all domestic Per Diem rate questions, please visit the [Federal Travel Regulation Discussion website](#).

For rates in non-contiguous U.S. locations, click here. For example Alaska, Hawaii, Guam and other non-foreign overseas locations

For rates in foreign locations, click here.

Fire Safety: The policy of the government, as reflected in the Hotel and Motel Fire Safety Act of 1990 (Pub L No 101-391, September 25, 1990 as amended by Pub L No 105-85, November 18, 1997), referred to as "the Act" in this paragraph, is to save lives and protect property by

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promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, we encourage employees to stay in a fire-safe facility (i.e., an approved accommodation), when commercial lodging is required. A list of lodging properties that meet government requirements is on the [U.S. Fire Administration's website](#).

Additional Per Diem Information

Doc ID	Name	Format	Size	Publish Date
	FY 2005 Per diem Rates Addendum	Word	22k	
	FY 2005 Per diem Destination Clarifications	Excel	28k	
	FY 2005 Per diem New Destinations	Excel	15k	
	FY 2004 Destinations Dropping to Standard CONUS	Excel	19k	
	FY 2005 Restudy	Excel	24k	

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