

# Executive Order 13,392, Improving Agency Disclosure of Information-- Results of the FOIA Review, Plan and Report of the Federal Deposit Insurance Corporation

Conducted under the supervision of the Chief FOIA Officer, Douglas H. Jones  
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## Part A: Discussion of the overall FOIA operations at the FDIC

### **FDIC Philosophy**

It is the goal of the Federal Deposit Insurance Corporation (FDIC) to affirmatively, cooperatively and effectively serve the public through the Freedom of Information Act (FOIA). The FDIC has grown and improved its web site to include much information that no longer requires a formal FOIA submission. The FDIC has maintained its FOIA public web site and has accepted electronic FOIA requests from the public since the mid-1990s. The FDIC shares the Justice Department's philosophy of proactive communications with FOIA requesters. The FDIC is also committed to the goals and objectives of Executive Order 13,392 (Improving Agency Disclosure of Information) (the Executive Order): to provide citizen-centered ways to provide useful information to the public about the operations and activities of the FDIC, to provide quality and courteous service in all FOIA operations, and to achieve and maintain efficiency and timeliness in the proper handling of FOIA requests.

### **Staffing, Office and Record Locations**

The FDIC's FOIA Office is operated and managed from the FDIC's headquarters in Washington, D.C. with a staff of eight, including three senior information specialists, three administrative persons and two attorneys. Major FDIC Divisions and Offices also provide chief FOIA coordinators (who also have other duties within their Division or Office) to assist in locating, reviewing and processing records. The FOIA Office is managed by the FDIC's Legal Division and overseen by the agency's General Counsel, who also serves as the FDIC's Chief FOIA Officer. The Chief FOIA Officer has recently appointed the FDIC Ombudsman as the FOIA Public Liaison, to assist in any customer service issues and further facilitate the FDIC's responsibilities under the FOIA. FDIC records may be located at headquarters, regional, or field offices. Older records and many paper records may also be located at off-site storage facilities.

### **Number of requests and appeals**

Since 2001, the FDIC has received an average of 800 FOIA requests per year. In 2005, the FDIC received 856 FOIA requests, an increase of 11% over the prior year. A volume fluctuation of 11% is significant but within the normal range of past fluctuations. At the time of this report, there are approximately thirty-six FOIA requests open and awaiting fulfillment.

The FDIC received fifteen FOIA appeals in calendar year 2005, and nineteen appeals in each of the previous two years. FOIA appeals may be decided by the FDIC Board of Directors but are normally decided by FDIC supervisory attorneys designated by the General Counsel. These attorneys reside in the FDIC Legal Division's Litigation Branch, a group separate and independent of the FOIA Office and its management. Results from the past two years of FOIA

appeals show few reversals or partial reversals of initial decisions. The FDIC has received four FOIA appeals in 2006, one of which is pending.

**Processing/fulfillment of requests**

All FDIC FOIA request and appeal files are given a unique tracking number and entered into a secure database, which helps to manage the requests and report the operational results. Requests are screened in advance to determine if: (a) they have reasonably described the information or records, (b) the records are already available elsewhere; (c) the request might be fulfilled by the Public Information Center or another FDIC component; (d) a recent or similar FOIA response may fulfill the request; and (e) the request is in compliance with the FOIA and FDIC's FOIA regulations. Requests identified for immediate fulfillment are placed into a "fast-track" for summary processing. Requests with infirmities, such as the lack of a reasonable description, incomplete contact information, or other noncompliance with the FOIA, are also placed into a "fast-track," and the requesters are contacted and informed of the problem with their request.

Requests that are preliminarily identified for a records search are electronically sent from the FOIA Office to one or more identified FOIA contacts in the Divisions or Offices in charge of the requested records. The designated Division or Office then evaluates the request and prepares the appropriate response to the FOIA Office, or, in some cases, directly to the FOIA requester. In other cases, the FOIA Office responds to the member of the public.

After fulfillment of each FOIA request, data regarding the handling, disposition and closing of the file is entered into the FOIA database. Database printouts, requests, responses, other communications, and records responsive to the request are normally retained in the FOIA files. FOIA files are managed by the FDIC in accord with the FOIA, FDIC regulations, the General Records Schedule, and the FDIC Records Disposition Schedule.

**Procedures Used to Avoid Backlogs**

The FDIC aggressively addressed its former FOIA backlogs in the late 1990s. Once those backlogs were eliminated, the FOIA Office began to focus on quality customer service, continuous communications with requesters, and frequent review of FOIA response timelines to keep backlogs from re-emerging.

For all voluminous or complex requests, as well as those that are clearly seeking FOIA-exempt records, requesters are contacted up-front by the FOIA office. The requester is supplied with an oral evaluation of their request and an explanation of FDIC's multiple-track FOIA processing. These requesters are given the opportunity to amend their requests for placement into the simple-track processing queue. Many complex requests are converted to simple requests through this pro-active process. Every requester is also mailed an acknowledgment letter by our FOIA Office, which briefly explains the FOIA process and supplies the contact information for the FDIC's FOIA Service Center. The FOIA Office programs the deadlines for every FOIA request into the FOIA database and staff electronic calendars. The FOIA Office runs frequent database queries to identify requests that are approaching a due date. When a due date is approaching, the FOIA Office supervisor contacts the assigned FOIA Specialist or the program office to offer further assistance in fulfilling the identified request.

By using these pro-active techniques, the FDIC has achieved a median FOIA response time in the past three years of less than 15 days for simple requests and 24 days for complex requests. Timelines for news media requesters granted expedited processing have been even lower, spanning a median of just 7 days to fulfillment in the past three years.

Despite the best efforts of any FOIA agency, some FOIA requests will always take longer than twenty days to fulfill. Whenever a pending, perfected FOIA request remains unfulfilled after twenty business days has elapsed, the FOIA Office engages in specific steps to bring about the fulfillment of such a request. These steps include contacting the requester to determine if they wish to amend or clarify their request to include only readily available, non-exempt records, or to obtain an extension of time for response if they are unwilling or unable to amend or clarify their pending request. The FOIA Office also contacts the program office where the search is being conducted to offer assistance in working out any problems or issues that may have arisen. All such internal or external contacts are documented in the FOIA request file. The FOIA Office at this time also determines if a partial release of records is available. Additionally, the FOIA Office supervisor meets with FDIC FOIA Specialists to formulate individual fulfillment plans for identified requests.

#### **Quality Controls and Internal Review**

The FDIC has continuously evaluated its FOIA operations under multiple reviews to ensure that the public is well-served in obtaining necessary information. The Legal Division's Internal Review Group conducted comprehensive program reviews of the FOIA Office in 2002 and 2005. The overall results of those reviews indicate that the FDIC provides quality service to the public seeking access to records under the FOIA

The FDIC's Office of Enterprise Risk Management (OERM) and the Legal Division have also regularly conducted risk assessment analyses of the FDIC's FOIA program. These analyses look at risk factors for errors in program administration and establish a plan to reduce the identified risks. OERM and the Legal Division then devise and run tests at prescribed intervals to measure results and compliance by reducing or eliminating the identified risk. This past year's tests indicated that risks in the FOIA Office remain well-managed and accounted for in the management of the FOIA Office.

Further program review is achieved internally by the Chief FOIA Officer and FOIA Office management. The FDIC continuously evaluates the FOIA database to identify and monitor trends and eliminate bottlenecks affecting processing time or efficiency. The Chief FOIA Officer maintains an active role in the review of FOIA operations, meeting and communicating regularly with FOIA Office staff and receiving reports on FOIA Office goals, activities, and results.

The FDIC is confident that the full implementation of Executive Order 13,392 will result in a continuing improvement of our FOIA mission to serve the public. Part C of this review and report, set forth below, shows that the FDIC has already implemented a number of FOIA enhancements and improvements since Executive Order 13,392 was issued on December 14, 2005.

## **Part B: List of subject areas selected for review**

1. Affirmative disclosure under subsection (a)(2)
2. Proactive disclosure of information
3. Overall FOIA web site improvement
4. Improvement of FDIC's FOIA Guide
5. Automated tracking capabilities
6. Electronic FOIA—automated processing
7. Electronic FOIA—receiving and responding to requests electronically
8. Multi-track processing
9. Acknowledgment letters
10. System of handling referrals
11. System of handling consultations
12. Additional training needed
13. Centralization/decentralization

## **Part C: Narrative statement of the results of the review**

Upon a review of FOIA operations and effectiveness, items 1, 2, and 12 in Part B above have been selected as potential improvement areas. They are further discussed below in Parts D and E.

### **Review and Results of Part B., Items 3 and 4**

Upon the issuance of the Executive Order, the FDIC undertook a review of its FOIA web site and all associated web pages. We checked to ensure the currency of information that may have become outdated due to organizational changes. We looked for the appropriate places in the FOIA web site to incorporate the terms and policies of the Executive Order. We manually tested each hyper-link for every web page on the site. We examined whether the “Popular FOIA” public web page needed an enhancement of new hyper-links and an updating of recently requested popular items. We examined the web traffic for the pages on the FOIA public web site to ensure that all pages were reachable and being accessed by the public.

We examined the “Incoming Requests” public web page to determine the number of FOIA requests received. We have also sent and continue to send periodic test messages to ensure operational capability. Since the “Incoming Requests” public web page is receiving up to 60% of all FOIA requests at the FDIC, we specifically looked at that page to ensure that the form on the page is easy to follow and would be completed in a way that ensured the request's compliance with the FOIA and the FDIC's regulations.

We also examined the FDIC's published electronic FOIA Guide, a web presence that the FDIC has maintained since 1998. We examined each page of the FOIA Guide to evaluate the clarity, currency, and quality of the information presented. We looked specifically at identifying the best places in the FOIA Guide to place relevant information about the FDIC's compliance with the Executive Order. We surveyed the Guide to determine if the information was current, accurate, clear and complete.

The review identified areas of the FOIA Guide and the balance of the FOIA web site that needed updating. We updated and amended the affected pages for several reasons, including

organizational change, implementation of the Executive Order, ease of reading, and technical errors. The FDIC also decided to add additional hyper-links to the “Popular FOIA” public web page, as well as an item of current public interest (a financial institution application). We updated the “Incoming Requests” public web page to clarify a few terms for ease of consumer use. We added prominent sections to the FOIA public web site, identifying both the Chief FOIA Officer and the FOIA Public Liaison and their contact information. We added prominent hyper-links identifying the FOIA Requester Service Center, and established and web-posted the operational hours for its live telephonic use. See below, for additional information concerning the interactive telephonic FOIA Service Center established by the FDIC. After the full update of the FOIA public web site, we re-checked each web page for spelling, accuracy and the currency of all web hyper-links.

#### **Review and Results of Part B., Items 5, 6 7, 8, and 13**

The FDIC has examined its automated tracking capabilities and its implementation of the 1996 “EFOIA” amendments to the FOIA, both in terms of automated processing of and electronic response to FOIA requests. While considering the FDIC’s electronic tracking of and responses to FOIA requests, we also considered our level of customer service and its relationship to the centralization of our FOIA operations.

We examined the secure FOIA database to ensure that it is tracking all reportable functions and permutations for the FDIC’s Annual FOIA Report. We also looked at FOIA Annual Report paper files to identify any glitches or reporting bottlenecks that may be attributable to the FOIA database. We further queried the FOIA database to elicit reports that help us spot trends in FOIA requests, such as requests about particular subject matters, requests tasked to certain or to multiple Divisions or Offices, requests afforded expedited processing, requests placed into the FDIC’s “fast-track” FOIA program, and requests assigned to designated staff members. We also sorted past requests by requester fee category to determine if commercial requesters were receiving the same level of service as noncommercial, news media or educational requesters. We looked at FOIA response times and the number of appeals filed and their disposition. We examined the percentage of FOIA requests that we were receiving electronically and examined the question of tracking the number of FOIA requests fulfilled electronically. We examined the two distinct tracks for FOIA processing, the “fast track” and the “normal track.”

In looking at centralization, we examined the structure of the FOIA Office, our use of key Division or Office contact staff, and the degree of delegation, against the backdrop of the crucial need for accuracy and timeliness in FOIA operations. The operation of the FOIA Office is discussed above in Part A.

We also reviewed our FOIA interactive public telephone access system, a phone line with multiple menus dedicated strictly for public access to the FDIC’s FOIA program. We examined the full script of each interactive voice message in the system to ensure accuracy and currency of the information, as well as ease of use, clarity and courtesy.

The review showed that the secure FOIA database is powerful, captures all relevant data, and is a valuable tool in the continuing management of the FDIC’s FOIA program. We note also that the FDIC’s Internal Review Group examined the FOIA database in late 2004 and was impressed with its use and operation. The database tracks a large number of data fields crucial for

successful FOIA operations and provides the needed electronic tracking and logging of requests that comply with the FOIA and the needs of the FDIC to maintain a high level of customer service in FOIA operations. The review also showed that the FOIA database quickly identifies requests that begin to exceed the statutory timelines of the FOIA, another important tool in proper FOIA management. The analysis of tracks found that fast track requests have increased in number but that processing time for fast track requests remain low (16 days, taken from the last FDIC FOIA Annual Report). Concomitantly, we found that the number of normal track requests has decreased from prior years. This is evidence of increased web and other availability of information that previously required normal track processing.

The review indicated that all categories of FOIA requesters are receiving timely and accurate FOIA responses but that news media requesters received the fastest response time. This condition was determined to exist because journalists are often afforded “expedited processing,” which affords them a quick right of access to FDIC records of particular public interest. Due to the timeline contained in the FDIC FOIA Control Record for every FOIA request, the review also showed that the central FOIA contact staff member for each Division or Office was aware of the timelines imposed by the FOIA.

The review showed that certain Divisions and Offices of the FDIC are tasked for records more than others. In particular, the review showed that there is presently a strong interest in several subject areas, particularly bank statistical and business information and applications by proposed institutions for deposit insurance. Due to this subject interest, the review also showed a heightened interest in records belonging to our Division of Insurance and Research and our Division of Supervision and Consumer Protection. Despite the increased work for these Divisions, a review of the response times in requests assigned to them showed fulfillment within the norm of FDIC’s FOIA response timelines. The FDIC has also made other affirmative disclosure of this type of information, which is further discussed further below in Part D, Affirmative disclosure under subsection (a)(2), and Proactive disclosure of information.

The review showed the steady increase and growing number of electronic FOIA requests received through the FDIC’s web site since the 1997 roll-out date to accept electronic requests. Requests received through the FDIC’s web site for the past nine months constitute 64% of all FOIA requests received. The FOIA Office has, by policy since 2001, fulfilled these electronic requests with an electronic response. The review showed that, only in a limited number of requests where records were voluminous, was the FDIC unable to respond electronically to electronic requests.

The review indicated that the FOIA interactive telephone system contained predominantly current and accurate information about the FDIC’s FOIA program. We amended the script, however, to clarify the available options, to recognize organizational changes, and to incorporate the FOIA Requester Service Center, including its new hours of operation with live assistance. This upgrade has additionally raised FDIC customer service standards in FOIA by switching from voice message only to live assistance for the public seeking information about the FDIC’s FOIA program. This FOIA-dedicated phone line (1(800) 898-7021), now with the advanced features of both recorded information on a variety of FOIA topics, and the ability to speak with the FOIA Office Staff, is an integral part of the FDIC’s FOIA Requester Service Center.

We also tried to assess appropriate degree of program centralization by looking at customer satisfaction in terms of appeals filed, their disposition, and any complaints lodged with regard to the handling of past FOIA requests. We noted that the number of FOIA appeals filed in relation to the number of requests filed is low, with only 5 appeals out of 295 FOIA requests filed during 2006 to date. Three of the five appeals were denied, and the FOIA Office was found to have made the appropriate response to the initial FOIA requests; two FOIA appeals remain pending. Review of other recent FOIA appeals found similar results. More information on this topic is available in the latest FDIC FOIA Annual Report.

The review further showed a near absence of complaints about the service provided by the FOIA Office. Of the two complaints in the past three years, one was found to be meritless and the other was resolved favorably after locating responsive records in a remote location. Since the present system produces a low amount of FOIA appeals per FOIA requests received, indicates a low amount of complaints, and consistently logs favorable FOIA response times, these areas were ruled out for significant change or becoming the subject of improvement areas.

#### **Review and Results of Part B., Items 9, 10, and 11**

The FDIC examined its use of FOIA referrals to and consultations with other agencies. We examined our FOIA database to select the FOIA request files with referrals for the past several years. We looked at the number of referrals, the average response times on those files, and the overall communications record. Consultations are tracked as message logs or e-mails in each particular FOIA file. We surveyed consultations with file spot-checks of communications logs in recent files processed by various staff in the FOIA Office.

We determined from the database review that referrals constitute an extremely low percentage (less than 1%) of incoming FOIA requests. We found that FOIA consultations outside of the FDIC also constituted a very small number of FOIA requests. We noted no anomalies in response time for referrals.

The FOIA Office conducted an internal review of its acknowledgment letters. The standard FOIA acknowledgment letter, which is sent out to every FOIA requester, was examined for completeness, accuracy, and courtesy/customer service.

The review identified a need to update the acknowledgment letter with information about the FDIC's FOIA Requester Service Center. We also added salutations and clarified two sentences. The acknowledgment letters have been amended and now fully conform to the customer service and politeness/courtesy standards of the Executive Order and the FDIC.

### **Parts D and E: Proposed improvement areas and timelines/milestones**

#### **Potential Improvement Area No. 1— Affirmative disclosure under subsection (a)(2).**

Subsection (a)(2) of the FOIA requires that an agency make available for public inspection and copying five categories of records (i.e., final opinions and orders, statements of policy, manuals and instructions, certain records released in response to "traditional" FOIA requests, and a general index). Subsection (a)(2) also provides for the redaction of information when necessary to prevent a clearly unwarranted invasion of personal privacy.

Section (a)(iv) of the Executive Order requires that each agency "review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in [subsection (a)(2) of the FOIA]."

Following a review of the FDIC's policies and practices, it is clear that the FDIC currently makes publicly available through its website (<http://www.fdic.gov>) and through other means much information required to be disclosed pursuant to subsection (a)(2). For example: final orders, including FDIC enforcement decisions, are available at the FDIC's website; statements of policy and interpretations affecting financial institutions and which have been adopted by the FDIC and not published in the Federal Register are disseminated in Financial Institution Letters ("FIL's"); copies of frequently requested records are retained by the FOIA Office, and administrative staff manuals that affect the public are available at the FDIC's Public Information Center ("PIC"), at regional and local offices and elsewhere.

The FDIC's compliance with subsection (a)(2) has been evolutionary, and reflects an amalgam of initiatives from each division and office. The FDIC continues to produce more and timelier information on its web site, including a broad range of banking statistical and business information used by financial analysts, bankers, students, educators and the public.

We conducted this review with the following goals in mind: 1. To ensure that the FDIC's information policies are in full accord with the mandates of subsection (a)(2) of the FOIA and Executive Order 13,392; and 2. To ensure that program office staff understands and appropriately implements the affirmative disclosure standards of subsection (a)(2) of the FOIA.

We plan to take the following steps to implement the above goals: 1. Distribution of guidance to management in each FDIC Division or Office to assist them in ensuring that their standards and practices are in accord with FOIA subsection (a)(2) (to be completed by September 30, 2006); 2. Development of a survey to evaluate each Division and Office's subsection (a)(2) compliance (to be completed by May 31, 2007); 3. Completion of a web site usage review as a tool to better evaluate subsection (a)(2) compliance (to be completed by March 31, 2007).

Subsection (a)(2) compliance can only be measured against a standard of what was previously available. Prior to the extensive use of web sites to disseminate agency information, very little was available under subsection (a)(2) of the FOIA. And what was available was not readily available. The survey and web site use review should establish a baseline from which to measure the ever-increasing volume of records being made publicly available to the public by the FDIC.

#### **Potential Improvement Area No. 2-- Proactive disclosure of information**

From the time of its creation in 1933, the FDIC's operations and activities have been the subject of public interest. Throughout this period, the FDIC has been at the forefront of proactive disclosure of information. Some disclosures were mandated by statute, including, e.g., the Federal Deposit Insurance Act, 12 U.S.C. § 1811(a), *et seq.* (FDIA), the Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801, *et seq.*, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the Community Reinvestment Act ("CRA"), 12 U.S.C. §



2901, *et seq.*, and the Government in the Sunshine Act, 5 U.S.C. § 552b. Many disclosures were mandated by regulation, including, e.g., the "CRA Sunshine Requirements" of the FDIA, 12 C.F.R. Part 346, enacted under the Gramm-Leach-Bliley Act. However, many of FDIC's disclosures were proactive, and were not mandated by statute, regulation, or otherwise.

FOIA disclosure is required in two principal venues: (1) "reading room" disclosures pursuant to FOIA subsections (a)(1) and (a)(2), including Federal Register publication; and (2) disclosures in response to written "FOIA requests" pursuant to subsection (a)(3). Disclosures pursuant to subsections (a)(1) and (a)(2) include records of sufficient public interest to warrant public availability in advance of a request for information. However, only those categories of records in subsections (a)(1) and (a)(2) are required to be disclosed. Reasonably described agency records not publicly available under subsections (a)(1) and (a)(2) may be requested under subsection (a)(3).

While not formally amending subsections (a)(1) and (a)(2), the Executive Order instructs each agency to plan for "increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA."

The FDIC currently has a comprehensive, experience-based framework for the proactive disclosure of information. This framework provides for information disclosures to be made directly by the FDIC through the PIC, regional/local offices, and the FDIC's public web site. This framework is supplemented by disclosures made at open Board meetings, by testimony before Congress, and by a stream of press releases, research reports, financial institution guidance, and consumer publications. This framework also provides for disclosure through cooperative arrangements with other agencies, including, e.g., the publication of "Uniform Bank Performance Reports" by the Federal Financial Institutions Examination Council's (FFIEC), and for some disclosures to be made directly by financial institutions.

The PIC plays a critical role in the proactive disclosure of information. As summarized in the FDIC's 2005 Annual Report, at 124:

"FDIC publications, press releases, speeches and Congressional testimony, directives to financial institutions, policy manuals and other documents are available on request or by subscription through the Public Information Center. These documents include the *Quarterly Banking Profile*, *FDIC Consumer News* and a variety of deposit insurance and consumer pamphlets."

Each office contributes to the proactive disclosure of information. Federal Register notices published by the Division of Supervision and Consumer Protection sometimes elucidate issues and solicit comments, whether or not required by statute or regulation. Press releases issued by the FDIC's Office of Public Affairs publicize events concerning the FDIC's operations and activities. Unclaimed deposit information compiled by the Division of Resolutions and Receiverships is available to first-party account owners on-line at the FDIC's web site. Statements of operations for financial institutions in receivership are published by the Division of Finance. *Ad hoc* reports on myriad subjects are published by the Division of Insurance and

Research. Even discretionary disclosures of sensitive information sometimes are made pursuant to 12 C.F.R. Part 309.6.

Despite these outreach efforts, the FOIA Office continues to receive FOIA requests for discrete categories of information that otherwise are not publicly available. Responses to these requests typically are made pursuant to subsection (a)(3) of the FOIA, though some responses are made pursuant to the Government in the Sunshine Act. Regardless, these responses divert finite resources that could be reserved for non-recurring requests for records.

Typical of these recurring requests are:

- Requests from asset trackers for unclaimed asset information.
- Requests from FOIA clearinghouses for contract information.
- Request from public interest groups for applications.<sup>1</sup>
- Requests for organizational directories.<sup>2</sup>

In each instance, the responsive information is reasonably described, is able to be located, and is subject to a disclosure methodology under articulable standards. In some instances (e.g., minutes or transcripts of closed board meetings), periodic review may be necessary to determine whether an earlier sensitivity about public disclosure has lapsed with the passage of time. Other records (e.g., applications) may need to be redacted for reasons of personal privacy or for other reasons, consistent with the policy set forth in FOIA subsection (a)(2).

With the FDIC public web site use becoming increasingly important for public access to our records, we think that the primary goal for proactive disclosure is to keep the web site as the main resource point from which to make this information available. Toward this end, the FOIA Office senior staff has set goals to 1. Meet with our colleagues in the Division of Resolutions and Receiverships to systematically review and to ensure the public availability of the non-exempt portions of unclaimed asset information (by October 31, 2006); 2. Meet with our colleagues in the Division of Administration to systematically review and ensure the public availability of non-exempt portions of FDIC contracts (by December 31, 2006); 3. Meet with our colleagues in the Division of Supervision and Consumer Protection to systematically review and ensure the public availability of applications and non-exempt portions thereof (by March 31, 2007); and 4. systematically review and to ensure that there are no obstacles to the continuing public availability of a current, accurate and complete FDIC organizational directory (by August 31, 2007). The FOIA Office staff and the Chief FOIA Officer also plan to issue guidance on the Executive Order's mandate that more information be made publicly available without the need of

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<sup>1</sup> Applications may be for charter, change in control, deposit insurance, merger, branch closure, or other action. Non-exempt portions are publicly available at regional and field offices for a limited period of time (e.g., for sixty or ninety days after filing). However, requests for applications after the expiration of that period and requests for the "non-public" portions are processed pursuant to subsection (a)(3) of the FOIA.

<sup>2</sup> Subsection (a)(1)(A) of the FOIA requires that each agency publish "descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions[.]" Implementing guidance from the Office of Management and Budget, including, e.g., its April 23, 1998, memorandum to the Heads of Executive Agencies, Subject: Updated Guidance on Developing a Handbook for Individuals Seeking Access to Public Information, emphasizes the need for each agency to maintain a "presence" in the Government Information Locator Service ("GILS"). A GILS presence includes some, but perhaps not all, information sought in FOIA requests for an organizational directory.

a FOIA request (by April 30, 2007) and to reference these portions of the Executive Order at future training sessions. Training needs are further addressed below.

The FDIC's success with respect to the proactive disclosure of information can be measured in direct and quantifiable ways, based on the policy objective set forth in Section 3(b)(ii) of the Executive Order; i.e., "increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA." FOIA requests for the broad categories of recurring requests will be monitored for increases or decreases in frequency. Logic dictates that a decreased number of FOIA requests subsequent to additional public availability would be a success indicator.

**Potential Improvement Area No. 3—Additional Training Needed (formal and/or on the job)**

Unlike other information access and management provisions, including, e.g., the Privacy Act of 1974, 5 U.S.C. § 552a, the FOIA does not contain an express mandate requiring the training of agency personnel. However, practical considerations, including the need for an effective, efficient and lawfully compliant FOIA program, make training imperative. Training insures that FDIC personnel are knowledgeable of applicable law, policies and procedures, and that all personnel are aware of their FOIA responsibilities.

Subsection (e)(5) of the FOIA requires the "Department of Justice to encourage agency compliance with [the FOIA]." As the Department of Justice recently observed in the Implementation Guidance for the Executive Order, "because of the historically heavy turnover in FOIA personnel at federal agencies, FOIA training has long been a major element of government wide FOIA administration." Thus, notwithstanding the absence of a statutory mandate to "train" agency FOIA personnel, the Department of Justice has encouraged agencies to provide FOIA training.

Each year, the Department of Justice publishes a compilation of training opportunities available for agency FOIA personnel. See, e.g., DOJ FOIA Post, *FOIA Training Opportunities*, Fiscal Year 2006, [www.usdoj.gov](http://www.usdoj.gov), posted 7/21/05, supplemented 9/20/05 and 1/26/06. The Department of Justice complements these formal "classroom" training opportunities with other resources, including, e.g., publication of a biennial "FOIA Guide" and "Freedom of Information Act Case List," and periodic and *ad hoc* "FOIA Posts" that discuss FOIA issues of current interest or provide guidance. See, e.g., FOIA Post, *Treatment of Unit Prices after McDonnell Douglas v. Air Force*, [www.usdoj.gov](http://www.usdoj.gov), 9/8/05.

Though at the forefront of FOIA training, the Department of Justice is not alone. FOIA guidance sometimes is issued directly by the President. See, e.g., the Executive Order; and Executive Order 12,600, on Predisclosure Notification Procedures for Confidential Commercial Information, 6/23/87. Other FOIA guidance sometimes is issued by the Executive Office of the President. See, e.g., Guidance on Homeland Security Information, Memorandum for Heads of Executive Departments and Agencies, from Andrew H. Card, Jr., Assistant to the President and Chief of Staff, 3/2/02.

The "private sector" also plays a role in FOIA training. The American Society of Access Professionals ("ASAP") "was founded as a professional forum dedicated, according to its web

site, to bringing government FOIA and Privacy Act personnel in touch with the requester community . . . [and] is the leading organization providing quality professional educational programs." ASAP regularly offers FOIA training, on a fee-for-service basis. Similarly, as stated on its website, [www.accessreports.com](http://www.accessreports.com), "Access Reports Freedom of Information," is a private sector newsletter service that reports on FOIA issues, and is available by paid subscription. A similar newsletter for purchase, which also covers privacy issues, "Privacy Times," is also available. The FDIC subscribes to both of these newsletters, which are disseminated to agency personnel working on FOIA and Privacy Act issues.

The FDIC's FOIA training may be viewed from two distinct perspectives: (1) that of the student (i.e., FDIC personnel who *receive* FOIA training *from* others); and (2) that of a teacher (i.e., FDIC personnel who *provide* FOIA training *to* others). These perspectives are fluid. The FOIA Office staff may be students while attending a Department of Justice FOIA seminar, yet be teachers while lecturing before an agency-wide meeting of senior FOIA coordinators. Similarly, the FDIC's Division and Office FOIA coordinators may be students while acting on FOIA guidance distributed by the FOIA Office, yet be teachers while explaining that guidance to office staff to which individual FOIA requests may be assigned for records search or review.

The Department of Justice has suggested that the issuance of Executive Order 13,392 "is a good occasion for agencies to consider whether they are taking full advantage of the government wide FOIA training that is available." Although this appears to focus on the perspective of the agency as student rather than as teacher, the Justice Department has also said on FOIA Post in a 2/22/2005 release and reiterated in the Implementation Guidance on the Executive Order that the effectiveness of "on-the-job training" within each agency also needs to be considered.

The FOIA Office staff regularly attends FOIA training, going to seminars sponsored by the Department of Justice, ASAP, and by other groups. To keep abreast of changing technologies, the FOIA Office staff sometimes attends conventions of information technology service providers, and reviews and evaluates software designed to automate FOIA processing. The FOIA Office and other selected staff review the aforementioned "Access Reports Freedom of Information" and "Privacy Times." Guidance issued by the Department of Justice, Executive Orders issued by the President, and other mandates are also reviewed and analyzed by the FOIA Office staff. Opinions rendered in FOIA appeals following determinations made with respect to administrative appeals of FOIA requests, are circulated and discussed within the FOIA Office. Counsel in the FOIA Office and attorneys and others who process FOIA appeals, regularly review, analyze, and report on case law affecting FOIA policies and procedures, and their potential impacts upon FOIA operations. Other FOIA Office staff members are encouraged to review the Department of Justice FOIA website, including "FOIA Post," and to read pertinent reference materials. Training conducted approximately once each year by the FOIA Office staff always is well-attended by FDIC personnel whose responsibilities include FOIA program activities.

The FOIA Office staff has developed and distributed intra-agency guidance reflecting procedural and policy changes necessitated by Executive Order, case law, administrative determination or otherwise. A comprehensive revision of FDIC directive 1023.1, Procedures for Processing Freedom of Information Act Requests (the FOIA Directive), was approved on April 18, 2006,

and was promptly distributed, with implementing guidance, to all senior FOIA coordinators. The FDIC's Chief FOIA Officer also issued a memorandum to all senior managers in the FDIC highlighting the new FOIA Directive and the FDIC's responsibilities under the Executive Order. The representative of the Chief FOIA Officer also gave a detailed briefing to the FDIC Ombudsman, the FDIC's Public FOIA Liaison under the Executive Order. Senior FOIA specialists daily provide "hands-on" training to Division and Office FOIA coordinators during the review of potential FOIA responses. At a Nov. 2005 meeting of the FDIC's senior FOIA coordinators, the FOIA Office staff gave three concise training presentations that were well-received. Some FOIA training presentations by the FOIA Office staff, including one from this Nov. 2005 session, have been placed on the FDIC's internal, web-based television network for later viewing by field staff and others unable to attend the seminars.

In general, the FOIA Office's role as teacher has targeted the Division and Office chief FOIA coordinators for the FDIC. The adequacy and extent of any subsequent training of additional support, field, or other personnel by the FDIC's senior FOIA coordinators has never been thoroughly evaluated. To help clear up this uncertainty, as part of the next FOIA training initiative, the FOIA Office will focus on the adequacy of training of FDIC support and other staff within program and Divisional offices that routinely assist in the fulfillment of FOIA requests.

The goals of this improvement area are: 1. to encourage and conduct the training of FDIC staff within program or Divisional Offices, who may have the need to search for and review records requested under the FOIA, including an evaluation of computer-based instruction (CBI) through FDIC's internal web network; and 2. to monitor and measure the adequacy of such training. We will implement the plan by first issuing a written guidance to Division and Office chief FOIA coordinators (by September 30, 2006). We will then look at CBI and decide whether to use it as part of or the entire training regimen (by December 31, 2006). We will then complete the development of the training regimen and conduct the first training class targeted to support and other staff who may be involved in the fulfillment of FOIA requests (by March 31, 2007).

The adequacy of training of FOIA support staff can be measured in two ways: (1) by directly measuring training (e.g., the number of training sessions attended, the number of hours spent in training, the number of FOIA support staff participating in training, etc.); and (2) by indirectly measuring the effect of such training upon the efficiency and productivity of the FDIC's FOIA program (i.e., a "results-oriented" measurement of the benefits of training).

The direct measurement would be easier to achieve, as it would require only the reporting and evaluation of uniform data in a prescribed format. Though more complex, the results-oriented benefits of training also may be measured in various discrete and quantifiable ways. For example, an improvement in the timeliness of a division or office's response to requests that were assigned for their action, would indicate greater training with respect to the need to comply with applicable FOIA deadlines. Similarly, greater detail from the Division and Office chief FOIA contacts in documenting the adequacy of a records search, would indicate greater training with respect to various FOIA procedural and substantive requirements. Data for the results-oriented measurements may be derived from information already maintained within the secure FOIA database. Additionally, the FDIC would obtain course evaluations from the subjects of the training.

The FDIC welcomes the challenges and the opportunities for improvement presented by the Executive Order. Efficiently, timely and courteously providing the public with records and information about the FDIC through the FOIA is a valuable service to our fellow citizens. The FDIC looks forward to evaluating the results of our further review and improvement plan implementation. For further questions regarding the FDIC's FOIA operations, please contact the Chief FOIA Officer, Acting General Counsel Douglas H. Jones ([doujones@fdic.gov](mailto:doujones@fdic.gov)) or Counsel Fred Fisch ([ffisch@fdic.gov](mailto:ffisch@fdic.gov)).