

Outside Counsel Electronic Billing Deskbook

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Purpose

The FDIC Legal Division has implemented an electronic billing program to enable Outside Counsel to quickly and securely submit invoices electronically for payment. The Outside Counsel Electronic Billing Deskbook ("E-billing Deskbook") has been prepared by the Legal Division ("Legal Division" or "Division") of the FDIC. The E-billing 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 E-billing Deskbook.

The E-billing 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.

Effective Date

The effective date of the E-billing Deskbook is August 10, 2009. The Legal Division may amend the E-billing 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 -Word](#) 37k ([Word Help](#))

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 - PDF](#) (pages 8, 9 & 10 of FDIC Certification Form 3700/04A) ([PDF 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](#))

Legal Referral

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

Legal Services Agreement forms

- [Legal Services Agreement - Word](#) 66k ([Word Help](#))
- [Legal Services Agreement E-billing Amendment - Word](#) 123k ([Word Help](#))
- [Legal Services Agreement E-billing Amendment Continuation Sheet - Word](#) 162k ([Word Help](#))
- [Legal Services Agreement E-billing Rate Schedule - Word](#) 63k ([Word Help](#))
- [Legal Services Agreement E-billing Rate Schedule Continuation Sheet](#) 35k ([Word Help](#))
- [Foreign Firm Legal Services Agreement](#)
- [Minority And Women Outreach Program Information Form](#)

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](#)
- [Legal Support Services Deskbook](#)

1.1 Scope of the E-Billing Deskbook

The E-billing 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 electronic invoices ("E-invoice"). Refer to [Section 1.7](#) below and [Chapter 7, Section 7.10](#)

1.7 Audit Rights

Outside Counsel must permit the FDIC, the FDIC Office of Inspector General and the Government Accountability Office, or their representatives, to conduct audits or reviews of your FDIC billings, including previously paid invoices or E-invoices. All paid E-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 E-invoice files, original underlying support documentation for expenses, subcontractor invoices, and original or electronic 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 timekeeping systems are discussed in [Appendix C](#). The FDIC reserves the right to obtain additional information upon review of any electronic invoice package submission 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 E-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 E-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, documents, original underlying support documentation for expenses, subcontractor invoices, and electronic time sheets 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 E-invoice. Under no circumstances may you withhold files in the event of a dispute with the FDIC.

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 Group Washington, D.C.
2. Legal Services Group contacts oversight attorney(s) who make(s) a recommendation.
3. Legal Services Group submits the request and recommendation for requisite Legal Division approval.
4. Legal Services Group submits the request to the Conflicts Committee.
5. Conflicts Committee makes determination.
6. Legal Services Group 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 Group in Washington, D.C., at (877) 275-3342.

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 E-billing form (LSA). Refer to [LSA E-billing 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 E-billing 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 E-billing 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 E-billing 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 E-billing 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 E-billing 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 E-billing 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 E-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 E-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 E-billing 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 E-billing 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 E-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 an E-billing rate schedule attached to your LSA. Complete the LSA E-billing 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 E-billing Amendment Form

1. When completing an [LSA E-billing 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:

- Biller's Full Name;
- Biller's Initials;
- 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 E-billing Amendment form.

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

2. Mail the original E-billing Amendment 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 Group
3501 Fairfax Dr., Room E-6066
Arlington, VA 22226

4. The FDIC Oversight Attorney will notify you if your request to amend your LSA is approved. You will receive a copy of the fully-executed LSA E-billing 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 E-billing 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.

Legal Referral

4.1 Legal Referral

When the Legal Division retains your firm to provide legal services for a particular case or matter a legal referral will be made to you. A legal referral generally covers only 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 E-billing 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 cooperation.

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, 3501 Fairfax Drive, Room VS-E-6052, Arlington, VA 22226

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.

In 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.

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

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 - PDF](#) 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 - PDF](#) 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.

E-invoice Preparation and Submission

7.1 E-invoice Package

This chapter covers the procedures for preparing and submitting an E-invoice to the FDIC. The FDIC uses a third party E-billing service provider to provide E-billing capability. Outside Counsel submits E-invoices to the Automated Invoice Management System (AIMS) provided by the third party E-billing service provider.

An E-invoice package consists of the following:

- An E-invoice file for uploading to the AIMS;
- All original receipts and other supporting documentation (which must be maintained in Outside Counsel's files for audit purposes).

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 E-invoice for payment of your services.

7.2 E-invoice Preparation

Each month Outside Counsel should prepare an E-invoice to be uploaded to AIMS for each matter assigned to the firm unless the amount (fees and expenses) to be billed is less than \$500. If the amount (fees and expenses) is less than \$500, Outside Counsel should prepare E-invoices on a quarterly basis, unless doing so would cause undue hardship to the firm.

Outside Counsel should prepare E-invoices for fees and expenses within 30 days of the last day in your billing period, except as noted above.

At the conclusion or termination of the matter, Outside Counsel should prepare the final E-invoice for fees and expenses within 90 days of the matter's conclusion or termination. Refer to [Chapter 8](#) and [Chapter 9](#).

NOTE: Outside Counsel may not bill the FDIC more than once per month. Outside Counsel 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 E-invoices in a timely manner as set forth above may significantly delay the FDIC's processing and payment of the E-invoice.

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

The FDIC assigns each matter a different matter number. The matter number must be entered on each E-invoice that is uploaded to the AIMS. The screen below is the first of two screens used by Outside Counsel to capture fee and expense data.

Invoice Header Details			
Vendor Details		Vendor ID 0000001797	
Client Details		DCDEMO	
Invoice	Matter	Invoice Totals	
Invoice No	EINVOICE02-1	Matter Name	Fees
Invoice Date	10/23/2008	Matter No	010005928
Invoice Start / End	11/25/2007 - 12/31/2007		Fee Discount
Received	10/23/2008		Expenses
Allocated to Fiscal Period	10/2008		Expense Discount
Invoice Type	Invoice		Invoice Total
Currency	USD		Adjustments
			Invoice Net
Account Type		PO Number	
Client Tax ID		Vendor Tax ID	
Invoice Description	Auto created test invoice. Created on 10/23/2008 10:38:35 AM		

The second screen, as seen below, captures detailed fee and expense charges for the matter.

All Line Item Details										
Description	<input type="text"/>	Start Date	<input type="text"/>	End Date	<input type="text"/>					
Timekeeper ID	<input type="text"/>	Task Code	<input type="text"/>	Activity Code	<input type="text"/>					
Currency = USD										
Type	Date	TK	Task	Act	Description	Hrs/Units	Rate	Disc	Cash Adj	Tax
Fee	12/3/2007	0001	B110		RB - Review of issues regarding Kutak bills	6.60	190.00	0.00	...	0.00
Fee	12/3/2007	0001	B110		JT - Review results of hearing and begin working on project regarding substituting exhibits with Kutak	4.40	190.00	0.00	...	0.00
Fee	12/3/2007	0001	B110		DM - Conference with Robert Bell regarding prove up of "K" documents	0.40	240.00	0.00	...	0.00
Fee	12/3/2007	0001	B110		CRL - E-mail and telephone conference with R.Robinson re: hearing transcript and errata	6.50	155.00	0.00	...	0.00
Fee	12/4/2007	0001	B110		RB - Review of Kutak inventory regarding Kutak liability documents	4.80	190.00	0.00	...	0.00
Fee	12/4/2007	0001	B110		JT - Brief meeting with Mullin to go over Kutak document review project	4.80	190.00	0.00	...	0.00
Fee	12/4/2007	0001	B110		DM - Conference with John Turner regarding which exhibits are most critical to find in K documents	0.30	240.00	0.00	...	0.00
Fee	12/4/2007	0001	B110		CRL - Work on deposition designations, telephone conferences and emails with opposing counsel re: same	6.30	155.00	0.00	...	0.00
Exp	11/25/2007	0001	E124		Boardroom - War Room	1.00	220.60	0.00	...	0.00
Exp	11/26/2007	0001	E124		Boardroom - War Room	1.00	222.60	0.00	...	0.00
Exp	11/27/2007	0001	E124		Boardroom - War Room	1.00	222.60	0.00	...	0.00
Exp	11/28/2007	0001	E124		Boardroom - War Room	1.00	222.60	0.00	...	0.00
Exp	11/29/2007	0001	E124		Boardroom - War Room	1.00	222.60	0.00	...	0.00
Exp	12/7/2007	0001	E124		Guest Room Attribution 13 nights	1.00	1,324.96	0.00	...	0.00

Page (1 of 1) [All Records Shown] 14 Total Records

Fees

Block Billing of Services

Time billed for each fee or expense should be identified separately. Do not combine different types of activities in one entry on the E-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.

Description of Fees

The description of the service provided 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](#) (see also the [sample travel voucher](#)).

7.3 E-invoice Submission and Validation

Submission

Specific instructions on how to upload the E-invoice to AIMS will be provided to Outside Counsel by the FDIC's E-billing service provider.

Validation

When the E-invoice is uploaded to AIMS a validation process will occur. If the E-invoice does not meet the following validation rules it will be rejected and returned to Outside Counsel for corrections. Once corrections are made the E-invoice should be resubmitted, under the same invoice number, to the E-billing service provider.

Mandatory Validations:

Invoice line items math must be correct

Invoice line items must equal total invoice amount

Only one matter may be billed per invoice

Vendor must submit invoice with valid matter number

Vendor must submit invoice with valid vendor number (Note: DC will auto-populate the vendor number)

Vendor must be associated to matter it is billing against

Invoice Number cannot be greater than 20 characters

Invoice Number can only contain alpha numeric characters

If the E-invoice does not meet the following validation rules the E-invoice file will be accepted by the FDIC with warnings that certain rules require further FDIC review.

Configurable Validations:

Date Validations

Line item date cannot be older than 62 days from the Invoice Date

Line item date should fall between Invoice Start and End Date

Billing Start date should be the first day of the month

Billing End date should be the last day of the month

Invoice date cannot be more than 90 days from the invoice received date

Timekeeper Validations

Timekeepers are required for all fee line items

Timekeeper IDs must be valid

Timekeeper rates must be valid

Line Item Validations

The following task and expense codes should be flagged

- E106 (Online research)
- E109 (Local Travel)
- E111 (Meals)
- E124 (Other)

The following task and expense codes are not allowed

- E101 (Copy Charges) cannot exceed \$.08
- E103 (Word Processing)
- E108 (Postage)

The following words in the line item description will be flagged for Fees

- DataCert, overtime, file review, revision, invoice preparation

The following words in the line item description will be flagged for Expenses

- Westlaw, Lexis, Nexis, electronic research

Invoice line items may only contain fee rates billed in .10 increments

7.4 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 E-billing Deskbook. Outside Counsel is required to keep on file all original receipts and other supporting documentation for any and all expenses incurred.*

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 E-billing Deskbook. The Legal Division considers your oversight of experts and other professional service providers an important duty under your legal referral. Outside Counsel is required to keep on file all subcontractor invoices and original receipts for expenses submitted by subcontractors in the event the FDIC performs an audit of the matter.

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).
- Itemized fax charges (telephone long distance charge (line charge) is the only acceptable charge).
- Itemized long distance telephone charges.
- Itemized overnight delivery. Itemization should include name of person to whom the delivery was sent and the name and type of delivery service used.
- Itemized electronic research. Itemization should include person's name who is performing the research and the name of the service provider. In addition, the FDIC Research Bank should be consulted before any legal research is performed and it should be noted in the description for that entry on the E-invoice that you have done so. Prior approval by the Oversight Attorney is required for electronic research.
- Out-of-pocket expenses relating to providing training to FDIC.
- Itemized extraordinary postage (i.e., bulk or certified mail).
- Expert witnesses and other professional service providers.
- Investigators.
- Court reporters.
- Outside photocopying.
- Publication notices.
- Other Subcontractors, if approved. The name of the subcontractor, the name of the person that performed the work, a description of the work performed, the date, and the charge must be noted in the description for that entry on the E-invoice.
- Filing Fees. Please note that Outside Counsel should not bill for federal court fees when filing on behalf of the FDIC. A description of the filing fees including the court, and type of fee must be noted in the description for that

entry on the E-invoice.

- Other case-specific (non-overhead) expenses. A description of the expenses must be noted in the description for that entry on the E-invoice. Approval should be documented in the case file for audit purposes.
- 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.*

7.5 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.
- E-invoice preparation, review, or for corrections to the E-invoice required by the FDIC Oversight Attorney or Financial Specialist.
- 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.
- Charging attorney time for preparing and presenting training to the FDIC.

7.6 Over Budget E-Invoices

If the full payment of the E-invoice causes the legal matter to exceed the grand total of the approved Budget, the FDIC will notify you. The E-invoice cannot be paid until an Amended Budget is submitted and approved. The Financial Specialist will notify the Oversight Attorney that an amended budget is needed. The Oversight Attorney will work with Outside Counsel to submit an amended budget. Refer to [Chapter 6](#) for further information.

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. The E-invoice file that Outside Counsel submits to FDIC for payment will not include receipts and supporting documentation. However, for audit purposes, Outside Counsel must prepare an FDIC travel voucher for all travel relating to FDIC matters and the hard copy travel voucher along with original receipts and other supporting documentation must be maintained by the firm. (See below for more information on preparing FDIC travel vouchers). The E-invoice description must also contain detailed information about travel expenses as outlined below.

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. Original receipts must be maintained in Outside Counsel's files for audit purposes. The E-invoice description must include the traveler's name, ticket number, class of travel, date of travel, and price paid.

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 and maintained along with original receipts in Outside Counsel's files. The E-invoice description must include the traveler's name, name of the rental car company, the rental company's invoice number, the dates of rental, type of car, the number of passengers, miles driven, gas usage, and any other relevant information about the rental.. 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. Original receipts must be maintained in Outside Counsel's files for audit purposes. The E-invoice description must include the date, hotel name, type of room, type of rate charged.

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 and 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](#). The E-invoice description should include the date, phone number, and charges.

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. Appropriate documentation should be maintained in Outside Counsel's files to show the actual cost of coach air travel compared to mileage reimbursement.

NOTE: <i>FDIC does not insure privately-owned vehicles for liability.</i>
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Taxicabs

The use of taxicabs is permitted while you are on official travel for FDIC. Reimbursement for taxicab fares (plus the customary 15% tip) is allowed. The E-invoice description must include the traveler's name, the name of the taxi service, the to and from location, the date, and the charge. Original taxicab receipts must be maintained in Outside Counsel's files for audit purposes. 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 prepared and maintained along with original receipts in Outside Counsel's files for audit purposes. 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](#) (see also the [sample Travel Voucher](#)).

Receipts

Except for per diem expenses, you must maintain 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 attached to 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 attached to the Law Firm Travel Voucher.

Penalties

WARNING: The penalty for knowingly submitting falsified travel charges on an E-invoice 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 FDIC E-invoice Review

E-invoice files 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 Financial Specialist reviews the E-invoice and forwards it to the Oversight Attorney for review and approval. The Oversight Attorney performs a substantive review of your E-invoice and approves it for payment.

NOTE: FDIC E-invoice processing time is a minimum of thirty (30) days after receipt of an accepted E-invoice file. 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") unless the Secretary of Treasury decides otherwise..

7.9 Reconsideration of Disallowances

You must submit all requests for reconsideration of disallowances by preparing a new E-invoice file for the amount to be reconsidered. The new E-invoice file **must** have the original invoice number followed by the letter “R” along with justification for reconsideration. The new E-invoice file should be submitted to the E-billing service provider within 90 days from receipt of notice of disallowance. The request must include matter number, E-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.*

7.10 Audit and Records Retention

Outside Counsel must permit the FDIC, the FDIC Office of Inspector General, the FDIC Legal Division's Risk Management Group, and the Government Accountability Office, or their representatives, to conduct audits or reviews of your FDIC billings, including previously paid Invoice Packages and/or E-invoices, receipts, and supporting documentation.

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

- Copies of all E-invoice file submissions (refer to [Section 7.1](#));
- Original receipts and underlying support documentation not submitted with the E-invoice file;
- Subcontractor invoices; and
- Original or electronic time sheets and time and expense adjustment records. Example of adjustment records includes documentation explaining differences between time sheet hours and invoices hours for billable individuals.

See the Record Retention Guidelines for Electronic Billing ([Appendix C](#)) for record retention requirements. The FDIC reserves the right to obtain additional information upon review of any E-invoice or underlying support documentation, including subcontractor invoices and electronic time sheets.

7.11 Frequently Asked Questions

Below you will find answers to questions often raised by Outside Counsel when submitting E-invoices.

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 E-invoice to the FDIC. The FDIC will not pay them directly. Outside Counsel must maintain subcontractor invoices, receipts, and proof of payment in Outside Counsel's files for audit purposes.

When should I submit an E-invoice?

On a monthly basis, if the total equals \$500.00 or more. If your total is less than \$500.00, submit your E-invoice 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 E-invoice?

Make sure you use a different invoice number for each E-invoice you submit unless an E-invoice is rejected and you are asked to make mandatory validation rule changes. If that happens the corrected E-invoice file should be submitted with the original invoice number.

Do not forget Outside Counsel must maintain all original receipts and other supporting documentation in Outside Counsel's files for audit purposes.

Make sure your "billing from" and "billing through" dates do not overlap. For example, if an E-invoice covers the period from January 2 to January 16, a subsequent E-invoice 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 in the E-invoice description. The bill from the carrier must be retained in Outside Counsel's files for three years after final payment for audit purposes.

What happens if the E-invoice is rejected by the E-billing service provider?

Outside Counsel will be notified that the E-invoice cannot be processed because certain mandatory validation rules were not met. Outside Counsel must ensure the E-invoice meets all mandatory validation rules and the E-invoice should be resubmitted to the E-billing service provider.

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

Legal Matter Closeout

8.1 Final E-invoice Package

At the conclusion of a matter, you should submit your final E-invoice Package within 90 days of conclusion. It is important that you note on the E-invoice that this is a final E-invoice Package. Refer to [Chapter 7](#) for procedures for submitting your E-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 E-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 Group, Attn: Counsel John C. Binkley, 3501 Fairfax Drive, Room VS-E-6068, Arlington, VA 22226 (Phone (703) 562-2322), with a list of records that are at issue. The records may not be destroyed without the written permission of the Legal Services Group. 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 E-invoice.

NOTE: *For purposes of subsequent audits, Outside Counsel must retain certain documentation. Refer to [Chapter 1, Section 1.7](#) and [Chapter 7, Section 7.10](#). Your failure to maintain required documentation may cause the FDIC to disallow previously paid fees and expenses.*

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 Group 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.

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 E-billing 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 E-billing Deskbook Compliance

A foreign law firm is required to adhere to many of the same requirements of this E-billing Deskbook as US firms; however, the FDIC recognizes that some E-billing 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 E-billing Deskbook. It is important that the principal 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 E-billing Deskbook, as it may be amended from time to time.

Incorporated in and attached to the LSA is an [E-billing Hourly Rate Schedule](#) 63k ([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 E-billing Hourly Rate Schedule form for each approved billable individual:

- Full name
- Biller's Initials
- 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 E-billing 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 E-billing 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 E-billing 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; or
- 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 E-billing 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 E-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 E-billing Amendment form](#) are not required for foreign law firms:

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

The completed LSA E-billing 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 E-billing 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 E-billing 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 E-billing Hourly Rate Schedule form or the LSA E-billing 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 E-billing 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 E-Invoice Preparation and Submission

The Legal Division has specific policies and procedures relating to submission, processing and payment of E-invoices. A foreign law firm is required to adhere to the requirements for preparing an E-invoice and submitting it to the FDIC as set out in Chapter 7 of the E-billing Deskbook. In addition to the requirements identified in [Chapter 7](#), any E-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 preparation and submission of an E-invoice.

10.9 Other Applicable E-billing Deskbook Chapters

In addition to the information specified in this chapter, the following E-billing *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](#) – E-invoice Preparation and Submission

[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 Group (LSG) at 1-877-275-3342.

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:

FDIC Legal Division
Attn: Legal Services Group
3501 Fairfax Drive Room VS-E-6066
Arlington, VA 22226
(703) 562-2326
(703) 562-2499 (fax)
(877) ASK-FDIC or (877) 275-3342

Legal Research Bank:

FDIC Legal Division
Attn: Legal Research Bank
3501 Fairfax Drive Room VS-E-6042
Arlington, VA 22226
(703) 562-2348

Equal Employment Opportunity and Diversity:

FDIC Office of Diversity and Economic Opportunity –
MWOB Program

3501 Fairfax Drive Room VS-E-2014
Arlington, VA 22226
(703) 562-6070

MWOLF Program:

FDIC Legal Division
Attn: Legal Services Group
3501 Fairfax Drive Room VS-E-6056
Arlington, VA 22226
(877) 275-3342
(703) 562-2365
(703) 562-2499 (fax)

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 at [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](#)****FDIC Legal Division:**

Attn: Outside Counsel Coordinator
1601 Bryan Street
Dallas, Texas 75201
(800) 568-9161
(972) 455-7094 (fax)

Media Inquiries:

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

Conflicts of Interest:

FDIC Legal Division
Attn: Conflicts of Interest
Coordinator
3501 Fairfax Drive Room VS-E
6066
Arlington, VA 22226
(703) 562-2326
(703) 562-2499 (fax)
(877) ASK-FDIC or (877) 275-3342

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 transfer and 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. § 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) unless the Treasury Secretary decides otherwise.

Drug-Free Workplace Act of 1988

[41 U.S.C. §§ 701-707](#)

Requires drug-free workplace for federal contractors.

False Claims Act of 1863

[31 U.S.C. § 3729](#)

Identifies penalties for making or presenting false, fictitious or fraudulent claims against the United States Government.

False, Fictitious or Fraudulent Claims

[18 U.S.C. § 287](#)

Identifies penalties for making or presenting false, fictitious or fraudulent claims against the United States Government.

False Statements or Entries

[18 U.S.C. § 1001](#)

Identifies penalties for knowingly and willfully making false statements or entries.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989

[12 U.S.C. § 1833e\(c\)](#)

Requires FDIC establishment of a Minority Outreach Program.

Forfeiture of Fraudulent Claims

[28 U.S.C. § 2514](#)

Identifies penalties for participation in fraudulent claims against the United States Government.

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](#)

Establishes criteria regarding the 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 for persons who have been served

with process who have FDIC documents in their possession.

Vietnam Era Veterans' Readjustment Assistance Act of 1974
[38 U.S.C. § 4212](#)

Veterans' employment emphasis under federal contracts.

Appendix C - Record Retention Guidelines for E-billing

Appendix C details FDIC requirements concerning record retention for E-billing by Outside Counsel.

The FDIC Legal Division has established E-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.

Audits of Outside Counsel have been an integral part of the Legal Division's internal control and risk management program. Beginning in 1999, the Legal Division recognized the need for a program of independent post-payment fee bill reviews to be conducted by an organization within the Legal Division. To that end, the Risk Management Group (RMG) was tasked with implementing the Legal Division's Post-Payment Review (PPR) Program to enhance the Legal Division's internal controls over payments made to Outside Counsel and legal support services providers. The Legal Division also determined that the RMG could effectively fulfill this Outside Counsel audit function by examining e-invoices and corresponding back-up documentation retained by Outside Counsel to ensure compliance with the Legal Division's policies and procedures.

To facilitate such audit activities, you are required to:

- Retain all E-invoice files, original underlying support documentation for expenses, subcontractor invoices, original or electronic time sheets, and time and expense adjustment records, for at least three years after final payment under the legal referral.
- Retain signed copies of all budget and amended budget forms, as well as signed copies of the Legal Services Agreement (LSA) and Amendments to the LSA. Refer to [Chapter 1](#) and [Chapter 7](#).

The Legal Division has also 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 an E-invoice file is uploaded to the E-billing service provider. 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, Outside Counsel 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 expenses. The Legal Division reserves the right, should there be substantial questioned costs raised on audit based on deficiencies identified in a firm's electronic timekeeping 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.

These guidelines are effective for legal fees and expenses incurred on or after August 10, 2009, and are incorporated in the E-billing Deskbook.

Appendix E - Validation Criteria

Appendix E lists the validation criteria that the FDIC electronic billing system uses to process data. Outside counsel bills not conforming to these criteria will be rejected by the server before the user may submit the bill.

Mandatory Validations

- Invoice line items math must be correct
- Invoice line items must equal total invoice amount
- Only one matter may be billed per invoice
- Vendor must submit invoice with valid matter number
- Vendor must submit invoice with valid vendor number
- Note – DC will auto-populate the vendor number
- Vendor must be associated to matter it is billing against
- Invoice Number can not be greater than 20 characters
- Invoice Number can only contain alpha numeric characters

Configurable Validations

Date Validations

- Line Item date can not be older than 62 days from the Invoice Date
- Line Item date should fall between Invoice Start and End Date
- Billing Start date should be the first day of the month
- Billing End date should be the last day of the month
- Invoice date can not be more than 90 days from the invoice received date

Timekeeper Validations

- Timekeepers are required for all fee line items
- Timekeeper IDs must be valid
- Timekeeper rates must be valid

Line Item Validations

- The following task and expense codes should be flagged
 - E106 (Online research)
 - E109 (Local Travel)
 - E111 (Meals)
 - E124 (Other)
- The following task and expense codes are not allowed
 - E101 (Copy Charges) cannot exceed \$.08
 - E103 (Word processing)
 - E108 (Postage)
- The following words in the line item description will be flagged for Fees
 - DataCert overtime, file review, revision, invoice preparation
- The following words in the line item description will be flagged for Expenses
 - Westlaw, Lexis, Nexis, electronic research
- Invoice line items may only contain fee rates billed in .10 increments

Misc. Requirements

- Expense backups are only necessary upon request
- Split Bills: Entire bill should be submitted with line item detail and an IE/IF line item will be used to write down the other party's portion.
- Flat Fees: Entire bill should be submitted with line item detail and an IE/IF line item will be used to write up or write down the bill to the agreed upon rate
- Third party bills will be billed through the outside counsel

* A complete list of task and expense codes can be found at:

<http://www.abanet.org/litigation/utbms/home.html>