



# Legal Support Services Deskbook

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## Purpose

The Legal Support Services Deskbook ("LSS Deskbook") has been prepared by the FDIC Legal Division ("Legal Division" or "Division") to provide policies, procedures, and standard forms for legal support services ("LSS") Providers. LSS Providers include experts, mediators, consultants, electronic discovery vendors, language translation & interpreter services, court reporters, or other service providers apart from attorneys or law firms. The LSS Deskbook sets forth many of the FDIC’s requirements that govern the relationship between the FDIC and LSS Providers. It is important that in-house attorneys (“Oversight Attorneys”) and LSS Providers read, maintain familiarity with, and adhere to the provisions of the LSS Deskbook.

The LSS Deskbook includes policies, procedures, and forms that the FDIC requires its LSS Providers to follow and use, in consultation with the direction of the FDIC Oversight Attorneys. Each chapter covers a key area or interest. Appendices provide additional information, forms, and worksheets. The LSS Deskbook is publicly available on the [fdic.gov](http://fdic.gov) website.

## Forms & Related Links

### Alternative Dispute Resolution/Binding Arbitration

- [Binding Arbitration - FDIC Directive 5310.1 \(June 5, 2001\) - PDF](#)
- [Final Statement of Policy Regarding Binding Arbitration](#) (govinfo.gov)

### Budget Forms

- [Expert Budget - PDF](#)
- [Legal Support Services \(LSS\) Provider Budget Form - PDF](#)

## Byrd Amendment

- [Byrd Amendment Implementation Statement](#)
- [Certification Form - PDF](#) (FDIC Certification Form 3700/04A)
- [Disclosure of Lobbying Activities Form](#) (gsa.gov)

## Conflicts of Interest

- [12 C.F.R. Part 366 - Minimum Standards of Integrity and Fitness for an FDIC Contractor](#)
- [Oral Representations and Certifications for Expert Legal Support Services Telephone Authorization for Expenditures Under \\$5,000 - PDF](#)
- [Representations and Certifications for Expert Legal Support Services Provider - MS Word](#)

## Electronic Funds Transfer (EFT) Guidelines

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

## Expert/Legal Support Services Amendment & Rate Schedule Forms

- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Amendment - PDF](#)
- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Rate Schedule - PDF](#)

## Invoice Forms

- [Expert Invoice for Fees & Expenses - PDF](#)
- [Legal Support Services Provider Invoice for Fees and Expenses - PDF](#)

## Travel

- [Travel Voucher - PDF](#)
- [FDIC's Contractor Travel Reimbursement Guidelines - PDF](#)
- [GSA Per Diem Rates](#) (gsa.gov)

## Related Information

- [Outside Counsel Deskbook](#)

## Effective Date

The original effective date of the LSS Deskbook is December 2005. The Legal Division may amend the LSS Deskbook from time to time. Unless otherwise noted, amendments are effective on the date published on [fdic.gov](http://fdic.gov).

## Inquiries

For further assistance with FDIC's LSS Deskbook policies and procedures, contact the FDIC Oversight Attorney administering the agreement or the Legal Division's Legal Services & Special Contracts Group (formerly known as the Outside Counsel Management Group) at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) or via US Mail at:

Legal Services & Special Contracts Group  
3501 Fairfax Drive (VS-E-6097)  
Arlington, VA 22226.

## Chapter 1 – Working for the FDIC Legal Division

### 1.1 Scope of the Legal Support Services Deskbook ("LSS Deskbook")

The Legal Support Services Deskbook ("LSS Deskbook") describes the policies and procedures that all LSS Providers engaged by the FDIC Legal Division must follow.

### 1.2 Identifying the FDIC as a Client

LSS Providers may list the FDIC as a client in published materials with adherence to the following restrictions.

LSS Providers may not represent that they have been "approved" as LSS Providers for the FDIC. All LSS Providers must comply with applicable ethics rules regarding advertising, including those restrictions pertaining to claims of "expert" status, expertise, or specialization. LSS Providers may not quote FDIC materials or staff comments concerning performance evaluations.

### 1.3 Statutory Compliance

The Legal Division requires all LSS Providers to comply with all applicable statutes and regulations, as well as orders, policies, procedures, and directives. Refer to [Appendix A](#) for a non-exhaustive 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 a part of the FDIC Legal Division's Diversity & Inclusion Program, the Legal Division seeks to engage firms owned by minorities or women. Moreover, the FDIC expects its contractors and sub-contractors to take action to ensure that all individuals have equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a qualified covered veteran as defined in 38 U.S.C. § 4212(a)(3). "Minority-owned businesses" 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:

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

“Women-owned businesses” are those that are at least 51% owned and controlled (through day-to-day management) by non-minority women. Businesses 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 Legal Division works to ensure the inclusion of minorities and women to the maximum extent possible. (See [12 C.F.R. Part 361](#)) The FDIC provides assistance to minority- or women-owned businesses and minorities and women within other businesses with matters relating to the retention of LSS Providers. If interested in such assistance, contact the Legal Division’s Diversity & Inclusion Program at:

Legal Division Diversity & Inclusion Program

3501 Fairfax Drive (VS-E-6097)

Arlington VA 22226.

Email: [fdicLegalDivisionDEIprogram@fdic.gov](mailto:fdicLegalDivisionDEIprogram@fdic.gov)

## 1.5 Ethical Considerations

LSS Providers must maintain the highest ethical standards and comply with all applicable laws, rules, and regulations governing ethical conduct. In particular, LSS Providers must be cognizant of the following: To avoid any appearance of an ethical conflict, neither the LSS Provider, nor any person associated with the potential or engaged LSS Provider, may provide any gift, gratuity, favor, entertainment, loan, or other thing of monetary value to any employee of the FDIC. ([See 5 C.F.R. § 2635, Subpart B, Standards of Ethical Conduct for Employees of the Executive Branch.](#)) While private businesses 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 or loans from anyone who does, or seeks to do, business with the FDIC.

LSS Providers 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 firms/businesses. Generally, however, former FDIC employees may work on matters that they worked on personally or that were under their supervision while at the FDIC only when their post-employment employer is not in a position adverse to the FDIC.

If an FDIC employee was involved in negotiating the firm’s/business’ current FDIC Legal Support Services Agreement (LSSA), that individual, upon joining the firm/business may not, during the duration of the LSSA renegotiate the rate schedule, request changes in billable individuals, or be involved in any matter pertaining to questions of the competence of the services provided under the LSSA.

For more information, contact the Ethics & ADR Unit of the FDIC Executive Secretary Section at (703) 562-2704.

## 1.6 Workpapers and Document Ownership – Assignment of Rights

Workpapers and other work product (whether in paper or electronically stored ("workpapers")), prepared by LSS Providers or accomplished under their direction or control are the property of the FDIC.



Under no circumstances may the engaged firm/business withhold files from the FDIC for any reason, including a payment dispute.

## 1.7 Audit Rights

LSS Providers must permit the FDIC, the FDIC Office of Inspector General, and the Government Accountability Office, or their representatives, to conduct audits or reviews of FDIC billings, including previously paid invoices. All paid invoices are subject to audit and Legal Division review regardless of disallowance taken during the bill review and approval process.

For purposes of subsequent audits and Legal Division review, LSS Providers must retain copies of all invoice packages and original underlying support documentation, including time sheets, cancelled checks, invoices, and time and expense adjustment records, for at least three years after final payment for services provided.

See [Appendix C for further information on record keeping requirements for electronic billing](#). The FDIC reserves the right to obtain additional information upon review of any itemized bill or support documentation.

## 1.8 Fees and Expenses

LSS Providers must provide legal support services at competitive fixed prices or in hourly rates.

LSS Provider must include in their fixed prices or hourly rates, its costs for doing business, including all "overhead," general and administrative costs, fringe benefits, and profit. The LSS Provider may not submit (and the FDIC will not pay) invoices for such costs of doing business. LSS Providers may not invoice "markups" above any costs actually incurred for supplies or services obtained for the Legal Division.

The FDIC will only pay reasonable costs for services rendered or supplies provided in the course of engagement for legal support services. All invoices for services rendered and expenses incurred must be consistent with the LSSA. See [Chapter 6 for a further discussion of the invoice process](#). The FDIC will not pay for inflated hours or other artificially inflated prices. In the course of performing work on behalf of the FDIC, any discounts received by the LSS Provider must be passed on to the FDIC.

When an LSS Provider performs work on an FDIC matter on behalf of a law firm that holds a Legal Services Agreement (LSA) with the FDIC, the LSS Provider must abide by the rates in its LSSA, unless the LSA law firm has negotiated lower rates with the LSS Provider, in which case such discounts must be passed on to the FDIC.

Moreover, an LSS Provider cannot furnish services or levy charges or fees on any FDIC matters that are outside of its current LSSA, nor charge higher pricing than that featured within it, without written pre-approval from the Oversight Attorney.

Where practicable, if an LSS Provider is hired as a subcontractor by a firm with an existing LSA with the FDIC, consideration should be given to the feasibility of dealing directly with the FDIC through the Oversight Attorney.

**Note:** (1) The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in civil or criminal sanctions. (2) Under no circumstances may LSS Providers 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 Mandatory Registration with SAM

The FDIC will only make awards or legal referrals to businesses that are registered in the System for Award Management (SAM) database. Registration is via <https://sam.gov/content/home>. This webpage also contains user guides and demonstration videos under the Help tab. If you have any questions regarding SAM or the registration process, please contact the SAM Assistance Center toll free at (866) 606-8220.

## 1.10 Contacts with the Media and the Public

Under no circumstances may LSS Providers comment to the media on FDIC matters.

### Media Inquiries

LSS Providers must promptly advise the FDIC Oversight Attorney of all media inquiries concerning FDIC matters. The Oversight Attorney will refer the inquiry to the FDIC Office of Communications in Washington, D.C., at (202) 898-6993 for response.

### Speaking Engagements

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

## 1.11 Cooperation with the FDIC Office of Inspector General (OIG)

It is the policy of the FDIC that there is full cooperation with the work of the OIG and prompt reporting to the OIG of fraud, waste, abuse, or criminal violations related to FDIC programs or operations. The duties of contractors and FDIC oversight personnel to report wrongdoing, comply with OIG requests, and maintain confidentiality are outlined in detail under [FDIC Directive 12000.01](#). However, apart from matters related to whistleblower reports of fraud, waste, or abuse by FDIC employees and FDIC contractor personnel in connection with FDIC programs or operations, you should coordinate production of information or documents through your Oversight Attorney.

**Note:** Contact the Office of Inspector General via the OIG Hotline at (800) 964-3342 or via email at: [oighotline@fdicoig.gov](mailto:oighotline@fdicoig.gov).

## 1.12 Whistleblower Protections

(a) All LSS Providers, including all employees and subcontractors, are subject to the whistleblower rights, remedies and whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) or any successor law.

(b) You must inform all employees and subcontractors **in writing** of employee whistleblower rights and protections under 41 U.S.C. 4712 for each assigned matter anticipated to generate fees in excess of \$100,000.

(c) Your firm must insert the language of this subsection 1.12 into all subcontracts anticipated to be in excess of \$100,000.

## 1.13 Role of FDIC Oversight Attorney

Attorneys in the Legal Division will act as "Oversight Attorneys" and are responsible for managing all legal assignments and litigation, including LSS Providers. LSS Providers must consult with the Oversight Attorney on all major strategic or tactical decisions.

### Beginning to Provide Legal Support Services

Before LSS Providers begin providing services for the FDIC, the FDIC Oversight Attorney will identify 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 roles and expected duties; and
- Discuss with the LSS Provider the scope of the case plan, the required budget, and a timeline designed to achieve the FDIC's goals and objectives in a cost-effective manner (refer to [Chapter 5](#) and [Chapter 6](#)).

### Performing Services

During the course of provision of services, the Oversight Attorney will:

- Review the expert's or LSS Provider's work;
- Monitor progress against the LSSA or the statement of work for the matter;
- Review and obtain approval of any significant changes in the case plan;
- Keep FDIC business personnel informed of developments; and
- Coordinate contacts between the LSS Providers and FDIC business personnel, as discussed below.

### Contacts with Other FDIC Offices

All contact with non-legal FDIC personnel (except the OIG, in circumstances described in 1.11 above) is only made through the Legal Division. This policy permits the most efficient utilization of resources and serves to avoid duplication of effort and minimize costs. Therefore, LSS Providers must direct all communications to the Oversight Attorney, except in the following circumstances:

- When the Oversight Attorney indicates otherwise;
- Immediate action is required and neither the Oversight Attorney nor his/her supervisor can be reached;
- Responding to an FDIC Legal Division review or audit request;
- When communicating with the FDIC's Office of Inspector General as described in 1.11; or
- Seeking limited factual information that can only be obtained in a relatively brief amount of time (such as pay off 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 insured depository institution's records.

The FDIC will not pay for fees or expenses related to contacts other than those authorized above.

### 1.14 Alternative Dispute Resolution ("ADR")

The FDIC is committed to the use of [Alternative Dispute Resolution](#) ("ADR") in appropriate situations. The FDIC views such techniques as potentially less costly, less time consuming, and a more effective means of resolving appropriate disputes.

### 1.15 Termination

The Legal Division reserves the right, in its sole discretion, to discontinue its relationship with any LSS Provider, with or without cause, if it is in the best interest of the FDIC. Terminations of services will be in writing. Verbal notification will also be confirmed in writing. The Legal Division will contact the LSS Provider and provide instructions concerning disposition of files and other FDIC property.

**Note:** The LSS Provider must forward, upon demand of the Legal Division, all files, workpapers, work product, and documents (whether on paper or electronically stored) concerning the terminated legal support services including all work product of the firm/business. It is important that the LSS Provider promptly forward materials at the direction of, and in consultation with, the FDIC Oversight Attorney. Failure to do so may delay or prevent payment of the final invoice. Under no circumstances may the LSS Provider improperly withhold files, documents, work product, or workpapers in the event of a dispute with the FDIC.

## Chapter 2 – Conflicts of Interest

### 2.1 FDIC Regulations and Policies

There are 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 LSS Providers or their

employees or agents who provide professional services on FDIC matters. For representations and certifications required by the FDIC in accordance with 12 C.F.R. Part 366, see the [General Counsel's Statement of Policy on Outside Counsel Conflicts of Interest](#).

## 2.2 Required Disclosures

The FDIC will screen all LSS Providers for conflicts of interest before they are eligible to provide services.

Mandatory reporting requirements are contained in the conflicts of interest regulations at [12 C.F.R. Part 366](#), as amended. The LSS Provider 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 they identify an actual or potential conflict. When in doubt about the existence of a conflict, immediately disclose the matter and seek a waiver. Even after the report of a conflict or the receipt of a waiver from the Legal Division, the LSS Provider must notify the Legal Division of any material change in facts.

## 2.3 Conflict Determination

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

The Legal Division will waive conflicts of interest in writing. Generally, the Legal Division grants or denies conflicts of interest through the Legal Division's Conflicts Committee.

The Legal Division considers requests for waivers on a case-by-case basis and does not supply prospective or advance waivers of conflicts of interest.

## 2.4 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:

- Termination of the 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.

LSS Providers may not go forward with legal support services on behalf of parties 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 the Legal Division terminates legal support services, the LSS Provider must follow FDIC policies and procedures, return all files, and otherwise fully cooperate in the orderly transfer of matters as the Legal Division directs.

## 2.5 Questions Concerning Conflicts

For information, contact the Legal Services & Special Contracts Group (formerly known as the Outside Counsel Management Group) in Washington, D.C., at (877) 275-3342.

# Chapter 3 – Information Security & Confidentiality

**Note:** Due to the extreme high importance of the security and confidentiality of FDIC information and records, LSS Providers should pay special attention to the contents of this Chapter. For questions regarding your responsibility for information security in FDIC Legal matters, you should contact the E-Discovery Group at [legal@fdic.gov](mailto:legal@fdic.gov).

## 3.1 Maintaining Confidentiality

- (a) In the course of assisting the FDIC, LSS Providers may have access to nonpublic, confidential information. The FDIC has defined a broad category of such information in any form, paper or electronic as "Sensitive Information" in [FDIC Directive System Circular 1360.9](#). LSS Providers, including all employees or contractors, must comply with FDIC Directive System Circular 1360.9. This includes an understanding of 1) all categories of Sensitive Information, as defined in the Circular and set forth below<sup>1</sup>; and 2) FDIC information security policies and procedures as set forth in the Circular.

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<sup>1</sup> Sensitive Information is defined in [Circular 1360.9](#) as:

- (1) Information that is exempt from disclosure under the Freedom of Information Act (FOIA) such as trade secrets and commercial or financial information, information compiled for law enforcement purposes, personnel and medical files, and information contained in bank examination reports (see FDIC Rules and Regulations, 12 C.F.R. Part 309, for further information);
- (2) Information under the control of FDIC contained in a Privacy Act system of record that is retrieved using an individual's name or by other criteria that identifies an individual (see FDIC Rules and Regulations, 12 C.F.R. Part 310, for further information);
- (3) PII about individuals maintained by FDIC that if released for unauthorized use may result in financial or personal damage to the individual to whom such information relates. Sensitive PII, a subset of PII, may be comprised of a single item of information (e.g., SSN) or a combination of two or more items (e.g., full name along with, financial, medical, criminal, or employment information). Sensitive PII presents the highest risk of being misused for identity theft or fraud;
- (4) Information about insurance assessments, resolution and receivership activities, as well as enforcement, legal, and contracting activities; and
- (5) Information related to information technology specific to the FDIC that could be misused by malicious entities (e.g., firewall rules, encryption and authentication mechanisms, and network architecture pertaining to the FDIC).

- (b) LSS Providers are responsible for the security and confidentiality of all Sensitive Information to which you may have access. As LSS Providers for the FDIC, you must take appropriate measures to ensure that all personnel are trained and familiar with this responsibility. Protecting the security and integrity of Sensitive Information extends to all personnel and any other subcontractors that you may hire (only with prior Legal Division approval) in any FDIC legal matter. Due to the role and mission of the FDIC in the United States monetary and banking systems, Sensitive Information may include a broad spectrum of disparate information and records from multiple sources. LSS Providers' adherence to a strong and effective client confidentiality and information security policy is a critical part of your FDIC relationship.
- (c) LSS Providers must supply the Legal Division with the name and contact information of your Chief Information Security Officer or equivalent as well as a backup contact, either of whom can be reached without delay.

**Note:** Failure to follow the directives outlined in this Chapter may result in termination of the firm's LSS Agreement (LSSA) or other sanctions that the FDIC deems appropriate under the contract, at law or in equity.

- (d) The FDIC may contact you to assess the strength of your company's cybersecurity measures, protections, policies or procedures. This may include telephone contacts, email questionnaires, review and evaluation of your Information Security directives, policies and procedures or on-site reviews by FDIC staff.
- (e) All LSS Providers must be in compliance with applicable standards of conduct with respect to confidentiality of client information. This duty of client confidentiality includes maintaining the security and integrity of records in paper or electronic format.
- (f) All LSS Providers must have in place a secure computer network. Your network must have significant resistance to intrusions and sensitive detection capability to identify possible attacks by any method. The FDIC may contact your firm regarding the security of your computer network, as set forth above in subsection 3.1(d). Any deficiencies noted, as defined in the sole discretion of the FDIC, must be promptly corrected. See the **Note** above subsection 3.1(d).
- (g) All LSS Providers must have internal policies and procedures on Information Security, data back-up, data breaches and the handling, use and disposition of confidential client information ("Security Plan"). The Security Plan should, at a minimum, require the following:
  - 1) Periodic Risk Assessments - LSS Providers should conduct and fully document periodic internal risk assessments in order to identify reasonably foreseeable threats to information security.
  - 2) Appropriate Security Programs - These should consist of reasonable physical, technical, and administrative security measures to manage and control identified risks.
  - 3) Periodic and Recurring Training & Education - Mandatory periodic employee training should be certified by the employee and documented by the firm. This training should enhance staff understanding of the roles and responsibilities regarding data, physical and administrative security.

- 4) Testing/Monitoring - LSS Providers should periodically test the sufficiency of security measures. This includes testing or monitoring of systems, as well as records review of system activity, audit logs, access reports and security incident tracking reports.
- 5) Review and Adjustment - LSS Providers must respond timely to any threats or risks that arise during these periodic internal reviews. This includes, when appropriate, FDIC notification, as further specified in this Deskbook.
- 6) Third Party Consultants - To comply with the obligations imposed by law, FDIC policy, or other applicable standards, LSS Providers may be required to engage technical consultants or Third-Party Assessment Organizations (3PAOs).

Each LSS Provider must customize its Security Plan to meet business, legal, and client needs. Every business is unique and may need additional security measures not referenced in this subsection 3.1(g). This subsection 3.1(g) is only intended to aid LSS Providers in considering their responsibilities for safeguarding FDIC Sensitive Information. This subsection does not create or expand on any formal FDIC Information Security policy, nor does it provide any safe harbor for LSS Providers. The Office of the Chief Information Security Officer will determine the proper level of access to FDIC Sensitive Information for LSS Providers.

- (h) Since LSS Providers are responsible to ensure the security and integrity of FDIC records, especially Sensitive Information, a copy or detailed explanation of the Security Plan must be supplied to the Legal Division or other FDIC component upon request. Any deficiencies noted, as defined in the sole discretion of the FDIC, must be promptly corrected. *See the Note* above subsection 3.1(d).
- (i) As stated above, **your firm is solely responsible to ensure the security of FDIC records, especially Sensitive Information that may be supplied or made available to you and all consultants, experts, or other contractors that you with Legal Division authorization may hire.** To better protect LSS Providers, the FDIC requires that your firm obtain the signature of all such third-party contractors on a Confidentiality Agreement in a form substantially identical to this [Confidentiality Agreement](#). Such agreements must be retained in your firm's records.
- (j) In order to adequately secure all FDIC electronically stored information ("ESI"), particularly Sensitive Information, whether it originated from the FDIC in any capacity, or was received from any other party in litigation, or from any third party, all such ESI must be hosted and produced utilizing an appropriate FDIC-approved vendor under the direction of and authorized by the FDIC Legal Division's Electronic Discovery Group. Further, all employees, consultants, experts or other contractors who will have access to any ESI must be properly credentialed with the vendor hosting and producing the ESI. If you have any questions concerning this subsection 3.1(j), please direct them to the Electronic Discovery Group at [legal@fdic.gov](mailto:legal@fdic.gov), as further described below in section 3.2.

### 3.2 Using FDIC's Electronic Discovery Group on Legal Matters

- (a) At the direction of the Oversight Attorney, all LSS Providers retained on an FDIC Legal matter must coordinate with the Electronic Discovery Group (EDG) of the Legal Information Technology Unit to conduct an early legal matter assessment to identify potential sources of responsive records,



custodians, screening criteria, search parameters, review processes, and scope of production. The early legal matter assessment must also consider the resources to be applied in responding to requests for FDIC records or testimony.

- (b) In addition, prior to any release or disclosure of FDIC records or information, all LSS Providers must first consult EDG, and diligent efforts must be made to assure that highly confidential or Sensitive Information has been identified and reviewed and appropriate protective measures taken, so that only the correct records will be produced or disclosed.
- (c) EDG will also work with you and help to coordinate any data hosting issues or requirements that may arise as to ESI described above in subsection 3.1(j). If ESI issues are present, it is important to coordinate early in the progress of the legal matter. Close communication with EDG is imperative in this situation.

### 3.3 Careful and Secure Handling of FDIC Information & Records

The Legal Division mandates that LSS Providers and related vendors exercise prudent care in their handling and use of FDIC information, including but not limited to:

- (a) **always using encryption technology when transmitting confidential "Sensitive" information to anyone outside of your internal network, including to the EDG, other sources inside of the FDIC or to your subcontractors or other consultants;**
- (b) promptly notifying the EDG (legal@fdic.gov) of any breach or possible breach or loss of FDIC information;
- (c) ensuring the physical security of FDIC information and records in any format, i.e. keeping Sensitive Information out of plain sight, locked in cabinets, behind password-protected screensavers, only on encrypted media, and using extreme caution when transporting any FDIC information away from your office; and
- (d) understanding that you are solely responsible for ensuring the security and integrity of FDIC information by all vendors and subcontractors your firm uses.

### 3.4 FDIC-Supported Resources for Using Encryption Technology to transmit Confidential "Sensitive" Information.

- (a) Zix Mail  
Contact LSG for further information on using Zix Mail.
- (b) PKZIP  
Your Information Technology staff should be able to instruct other staff members on how to receive and properly transmit secure documents using PKZip for Windows.

### 3.5 Secure Telecommunications and Video Surveillance or Equipment

- (a) *Definitions.* As used in this subsection 3.5—  
“Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

“Covered foreign country” means The People's Republic of China.

“Covered telecommunications equipment or services” means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered

(e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

“Reasonable inquiry” means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

“Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

- (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The LSS Provider is prohibited from providing to FDIC any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FDIC Procedures, Guidance, and Information (PGI) 1.214(b)(iv).
- (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FDIC PGI 1.214(b)(iv). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a FDIC contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement:*

- (1) In the event the LSS Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the LSS Provider is notified of such by a subcontractor at any tier or by any other source, the LSS Provider must report the information

in paragraph (d)(2) of this clause to the FDIC Oversight Attorney responsible for the underlying legal matter. For Basic Ordering Agreements (BOAs), Receivership BOAs (RBOAs) and Blanket Purchase Agreements (BPAs), the LSS Provider must also report to the Contracting Officer for the BOA/RBOA/BPA, and the Contracting Officer(s) for any affected order.

- (2) The LSS Provider must report the following information pursuant to paragraph (d)(1) of this clause:
- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the LSS Provider must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) *Subcontracts*. The LSS Provider must insert the substance of this clause, including this paragraph (e), and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

### 3.6 Other Resources

- (a) ESI is especially vulnerable due to its abundance, portability and the instant transferability of vast amounts of information. The ABA has therefore published resource materials and offers Continuing Education courses on cyber and data security at their web site: [www.americanbar.org](http://www.americanbar.org). These resources supply quality guidance for LSS Providers in taking reasonable steps to meet your responsibilities in securing FDIC information when providing legal support. All LSS Provider employees should be aware of ABA guidance and publications on cyber and data security.
- (b) The Association of Corporate Counsel and a group of its members has published a Model Information Protection and Security Controls for Possessing Company Confidential Information (the 2017 Model Controls). While the Legal Division has not adopted or sanctioned the 2017 Model Controls, LSS Providers may find them helpful in updating Security Plans, practices and procedures.

## Chapter 4 – Agreements

### 4.1 Purpose of Contract

The contract is an agreement for legal support services between the LSS Provider and the FDIC that contains terms and conditions applicable to the provided services.

### 4.2 Duration of Agreement for Services

The purpose of the LSS Agreement (“LSSA”) is to engage contractors for the provision of services in support of pending or on-going Legal matters, litigated or non-litigated.

The agreement is in effect for a specified period of time from the effective date set forth in the agreement (the Oversight Attorney may negotiate a longer period with approval of the appropriate delegated authority), but subject however, to earlier termination by the FDIC with or without cause or advance notice. If no effective date is indicated, the agreement is effective as of the date signed by the FDIC. Most LSSAs are for a term of three years. Unless unusual circumstances dictate otherwise, new LSSAs are effective on the first day of the month of execution.

The rates (hourly or flat) charged by the LSS Provider and its billable individuals must be listed on a rate schedule or other attachment and include all overhead.

A [Statement of Work](#) (SOW) describing the services to be performed, with quantities, delivery dates, and place(s) of delivery, is sometimes required. You will be notified if a SOW is required. The firm fixed price of any LSSA includes all taxes, insurance, transportation, and delivery charges, unless otherwise noted in the LSSA.

Individuals not listed on the rate schedule must be added through use of a rate schedule [amendment form](#) prior to performing services.

Absent compelling reasons, no increase in the rate schedule attached to the LSSA is permitted during its term, except as may be provided in the LSSA.

The LSSA may be extended or continued on its existing terms by mutual agreement of the parties.

If Legal Division approves a continuation of the LSSA, it will continue until the earliest of:

- All work on outstanding legal support services is complete;
- A new LSSA is executed; or
- FDIC exercises its right to terminate the LSSA.

Continuation of the LSSA is not the same as LSSA renewal. Continuation does not permit the LSS Provider to receive any new legal support matters.

### 4.3 Contract Amendment

It is the LSS Provider's responsibility to inform the FDIC of all new or changed information concerning the firm or business. Information that must be updated includes, but is not limited to:

- Structural changes in the firm or business;
- New addresses or contact information;
- New tax identification number; or
- Adding or removing billable individuals.

In addition, payment of invoices may be delayed if information is not up-to-date. You must immediately contact the Oversight Attorney if the LSS Provider is unsure of whether an amendment to the LSSA is required.

### Structural Changes

The LSS Provider may need to amend their LSSA when a structural change occurs in the firm or business. Structural changes may impact the LSS Provider's relationship with the FDIC in the area of conflicts of interest. In addition, structural changes may also impact the FDIC's invoice payment process.

Examples of structural changes include:

- Firm or Business dissolution;
- Merger or other ownership changes;
- Change from a partnership to a professional corporation, LLC, or other alternate structure;
- Name change; or
- Change of address or addition of a new branch office.

After reviewing information that the LSS Provider submits concerning any structural change, the Legal Services & Special Contracts Group (LSSCG) will determine what action is appropriate.

### New Tax Identification Number (TIN)

A new [tax identification number - PDF](#) (TIN) that does not include a structural change requires, at a minimum, an amendment to the LSS Agreement. The LSS Provider should submit an [amendment form](#). If LSSCG determines that a new agreement is necessary, the FDIC may permit the LSS Provider to continue to handle existing assignments or may suspend the work until the LSS Provider executes a new LSSA.

**Note: Structural changes that result in a new federal TIN require the execution of a new LSSA.** A new TIN also changes information used for payment of invoices by Electronic Funds Transfer ("EFT") and may require the execution of new EFT forms. See [EFT Guidelines](#).

The LSS Provider must inform the FDIC in writing when adding or removing billable individuals to a rate schedule. You must complete the amendment form when you add or remove any billable individual. No new billable individual may charge time under the LSSA until the FDIC executes the amendment.

#### 4.4 Byrd Amendment – Engagements Over \$100,000

If the amount of the approved budget(s) exceeds \$100,000, the LSS Provider must comply with the [Byrd Amendment](#). Your Oversight Attorney or the LSSCG can provide necessary forms.

#### 4.5 Budget

Once the Legal Division selects an LSS Provider, they must submit a [formal budget](#) indicating the approximate cost of the services, if applicable, to the Oversight Attorney.

The budget is a vital tool in cost control and oversight. Budget information controls costs and payment of invoices. Except in a case of extreme urgency, the FDIC Legal Division must approve the budget before the LSS Provider begins providing services.

All LSS Providers agree that budgets impose firm maximum amounts for fees and expenses. The FDIC will not pay for unauthorized cost or expense overruns. You must request advances in writing through the Oversight Attorney, and they must first be approved by FDIC delegated authority.

**Note:** The FDIC will not pay invoices until an approved budget is in place. The FDIC uses the cost estimates and other information provided in the budget to assess cost-effectiveness and measure progress. The Legal Division recognizes that changed circumstances may affect the budget. However, because the FDIC uses the budget in making business decisions, they must be as accurate as possible.

#### [Budget Form](#)

The budget form translates the case plan into financial expectations. The budget form must conform to the case plan for the services provided.

#### Completing the Budget Form

Following are the instructions for completing a budget form.

1. The LSS Provider completes all requested information on the budget form.
2. In particular, the LSS Provider indicates in the appropriate box whether the billing is at a flat or an hourly rate. Refer to the following table to determine information required for the type of billing entered.

Rate	Information Required
<b>Hourly</b>	Complete all phases of the budget in which fees and expenses are expected.

Rate	Information Required
<b>Flat</b>	Record the flat fee as a total without further itemization by phase. Submit the estimated completion date and allowable related expenses for each phase

3. If appropriate, the LSS Provider calculates the total estimated number of hours for all services for each action.
4. The LSS Provider must sign and date the budget form.

## 4.6 Budget Submission

The following steps outline the submission and approval process:

1. Once the budget and case plan are completed, they must be submitted to the Oversight Attorney for approval.

**Note:** If the budget is in excess of \$100,000, the LSS Provider must comply with the [Byrd Amendment](#) by submitting the [Byrd Amendment Certification](#) or [Disclosure form](#).

2. The Oversight Attorney will review the budget and case plan. If it is satisfactory, the Oversight Attorney will recommend approval by the FDIC delegated authority.
3. The Legal Division will notify the LSS Provider when the budget and case plan are approved.

## 4.7 Amended Budget

If the approved budget is not sufficient to complete all services, you must submit an amended budget. You must anticipate when the approved budget is not likely to be sufficient, and timely submit an amended budget to the Oversight Attorney before you exceed the approved budget.

Written approval from the Legal Division is required for any increase in the approved 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 is a serious breach of duty to the FDIC and may result in non-payment or disallowance of fees or expenses exceeding authorized amounts. The LSS Provider must report to the Oversight Attorney immediately any anticipated budget changes.

An amended budget and/or case plan contains:

- Amended case plan, or explanatory narrative; and
- Amended budget form.



**Note:** If the amended budget exceeds \$100,000, the LSS Provider must comply with the [Byrd Amendment](#). If the previous budget exceeded \$100,000, it is not necessary to submit another Byrd Amendment Certification.

## Completing and Submitting the Amended Budget

The Oversight Attorney will ensure that the LSS Provider properly completes the amended budget.

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 services.
3. Fill out all requested information on the amended budget form, in a manner similar to the original budget form.
4. Mark the appropriate box if the LSS Provider has submitted a previous amended budget.
5. Use the most recent approved figures in the column for "Current Budget."
6. Sign and date the amended budget.
7. Once completed, submit the amended budget to the Oversight Attorney for approval.
8. The Oversight Attorney reviews the amended budget and rate schedule. If it is satisfactory, the Oversight Attorney will recommend approval by FDIC delegated authority.
9. Upon approval, the Legal Division will notify the LSS Provider.

## Chapter 5 – Management of Services

### 5.1 General Management of Legal Support Services

The FDIC's goal is to utilize LSS Providers that possess the necessary knowledge, background, research capabilities, and other expertise in the particular field for which they will provide services. Consistent with this goal, the LSS Provider must manage time carefully.

Consistent with the terms of the LSS Agreement (LSSA), the FDIC will not pay for costs associated with:

- Excessive conferencing (including, but not limited to, billing for administrative instructions, billing for repetitive or daily meetings among contractors, staff, etc.);
- Unnecessary review of documents or files;
- Unnecessary polishing of documents (including, but not limited to, unnecessary reviews, updates, or amendments to documents or files);
- The "learning curve" for FDIC work;
- Unfocused research or research not required by the Oversight Attorney;
- Services, charges, or fees outside of the LSSA, absent written pre-approval from the Oversight Attorney.

- Rates or other pricing higher than that featured in the LSSA, absent written pre-approval from the Oversight Attorney.

LSS Providers are required to discuss staffing with the Oversight Attorney and assign only those employees necessary to properly fulfill the engagement. The LSS Provider must refrain from rotating assignments away from employees knowledgeable about FDIC or using FDIC projects for the purpose of training other personnel. You must list departures of personnel from your organization as a subtraction in the [Amendment form](#).

Providing services in a cost-effective manner requires that the LSS Provider:

- Consult the Oversight Attorney on all strategic, tactical, or cost-related decisions;
- Provide to Oversight Attorney, upon request, a copy of all contracts for expenses and orders with a value over \$100,000, with subcontractors, consultants, or other parties engaged by the LSS Provider to work on FDIC matters. All such subcontracts or orders must first be approved in writing by the Oversight Attorney;
- Have a clear understanding of the role of the LSS Provider, the outside counsel and the Oversight Attorney;
- Define the goals and objectives to be achieved;
- Develop a formal case plan, if required by the Oversight Attorney, that will achieve the FDIC's goals and objectives, which requires approval of the Oversight Attorney and FDIC delegated authority; and
- Be advised of all significant developments in the legal matter.

Certain decisions must only be made in consultation with the Oversight Attorney. Absent exigent circumstances, these include, without limitation:

- Secretarial overtime;
- Use of temporary employees or summer interns;
- Travel;
- Contacts with FDIC business staff;
- Research; and
- Staffing at conferences, court appearances, depositions, or meetings.

The Legal Division requires timely, cost-effective solutions. Failure to conform to the required cost-saving measures noted above may result in fee or expense disallowance.

## Reports

FDIC management procedures require that the LSS Provider keep the Oversight Attorney fully informed as to the status of provided services. When directed by the Oversight Attorney, submit a status report for each service called for in the LSSA.

Reports must:

- Be brief but meaningful;

- Emphasize developments since the last report;
- Discuss and compare case status to the budget and whether the service is proceeding in line with the case plan; and if not
- Explain in detail why actual costs differ from projected or budgeted amounts.

## 5.2 Case Plan

At the direction of the Oversight Attorney, LSS Providers must prepare a written case plan for each engagement, Task Order, or referral. The Oversight Attorney will closely monitor the case plan. The Oversight Attorney may develop a case plan for the services of each LSS Provider. The Oversight Attorney utilizes the case plan to summarize the strategy for the provided services.

Upon commencement of services, the LSS Provider must discuss the matter with the Oversight Attorney. The case plan and budget sets forth the major steps the LSS Provider will take to accomplish the service. The case plan also details the work to be performed, identifies the LSS Provider's staff that will perform the work, and indicates the total hours each person (or class of people) identified will spend on the work. The case plan is a vital tool in cost control and oversight.

## 5.3 Case Plan Submission

The following steps outline the submission and approval process:

1. Upon completion, submit it to the Oversight Attorney for approval. This package consists of the case plan and, when necessary the budget.
2. The Oversight Attorney will review the case plan and budget. If it is satisfactory, the Oversight Attorney will recommend approval by FDIC delegated authority.
3. The Legal Division will notify the LSS Provider when the case plan is approved.

## 5.4 Amended Case Plan Submission

Upon completion, submit the amended case plan and budget to the Oversight Attorney for approval.

Submit the amended case plan and budget in the same manner as the original case plan, as instructed in the retention letter. This package consists of the amended case plan and budget form. See steps 2 and 3 under 5.3 (Case Plan Submission) to complete the submission and approval process.

## 5.5 Criminal Referrals

The Legal Division has a responsibility to notify and, where appropriate, assist law enforcement officials, including the FDIC Office of Inspector General, in investigating conduct that may constitute a violation of criminal statutes. The LSS Provider must immediately report any information that indicates possible criminal behavior to the Oversight Attorney, subject to your duty to promptly report to the Office of the Inspector

General (OIG) all instances of actual or suspected fraud, waste, abuse, misconduct or mismanagement perpetrated in connection with the programs and operations of the FDIC, and to disclose and provide to the OIG information, documents, or other evidence that may indicate that fraud, waste, abuse, mismanagement, or any other wrongdoing has occurred or may occur. The Oversight Attorney may either file a Suspicious Activity Report Form or instruct the LSS Provider to do so under the Legal Division's guidance.

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 the LSS Provider agree to withhold from the OIG or law enforcement authorities any information relating to a possible criminal violation or investigation.

## 5.6 Cooperation with the FDIC Office of Inspector General

It is the policy of the FDIC that there is full cooperation with the work of the FDIC Office of Inspector General (OIG) and prompt reporting to the OIG of fraud, waste, abuse, or criminal violations related to FDIC programs or operations. **The duties of contractors and FDIC oversight personnel** under [FDIC Directive 12000.01](#) are:

### (a) Report Wrongdoing

- 1) Promptly report to the OIG all instances of actual or suspected fraud, waste, abuse, misconduct or mismanagement perpetrated in connection with the programs and operations of the FDIC.
- 2) Disclose and provide to the OIG information, documents, or other evidence that may indicate that fraud, waste, abuse, mismanagement, or any other wrongdoing has occurred or may occur.

### (b) Comply with Requests

- 1) Provide authorized representatives of the OIG complete, prompt, and unrestricted access to all files, documents, premises, and employees, including access to all FDIC and Receivership, contractor, and subcontractor personnel, facilities, equipment, hard copy and electronic records, information systems, and other sources of information available to any part of the FDIC when requested during the course of the OIG's official duties.
- 2) Provide complete and accurate information, including a signed sworn statement, to duly authorized representatives of the OIG when required to do so during an inquiry related to official matters; do not conceal information or obstruct audits, evaluations, investigations, or other official OIG matters. The Fifth Amendment to the U.S. Constitution may be invoked with respect to self-incrimination when matters of a criminal nature are involved. Under such circumstances, the individual will not be required to respond.

- 3) Immediately discuss with the OIG requester any reason for not promptly complying with the OIG request. If there are legal concerns with the request, consult with the Legal Division to help resolve the matter expeditiously with the OIG.

(c) Maintain Confidentiality

- 1) Keep confidential the requests made in an OIG investigation for records, files, and information unless otherwise authorized by the OIG, except to the extent disclosure is necessary to seek representation by an attorney or a union representative, or is otherwise necessary for the performance of official duties.
- 2) Refrain from commenting on or discussing ongoing OIG investigations with anyone (either within or outside the FDIC) other than the OIG staff who are conducting the investigation, unless authorized by the OIG or otherwise necessary for the performance of official duties.
- 3) Keep confidential any OIG records that have been provided to non-OIG components of the FDIC and refer requests for OIG records or information to the OIG General Counsel.

**Note:** Contact the Office of Inspector General via the OIG Hotline at (800) 964-3342 or via email at: [oi hotline@fdicoig.gov](mailto:oi hotline@fdicoig.gov).

## Chapter 6 – Invoice Package

### 6.1 Invoice Package

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

The LSS Provider must complete a separate Invoice Package for each assigned matter. The FDIC assigns each matter a different matter number. Therefore, each matter must have its own invoice.

The Invoice Package consists of the following:

- Expert Invoice for Fees and Expenses ([EIF&E - PDF](#)) Form or the Legal Support Services Provider Invoice for Fees and Expenses ([IF&E - PDF](#)) Form;
- Invoices generated from the firm/business' accounts receivable system;
- Necessary receipts; and
- Travel vouchers and/or other supporting documentation.

As discussed in [Chapter 3](#), there must be an FDIC-approved budget before the LSS Provider is paid. Once the budget is approved, the LSS Provider may begin to submit invoices.

## 6.2 Invoice Package Submission

You must submit Invoice Packages on a monthly basis, unless the amount (fees and expenses) is less than \$500. If the total amount is less than \$500, submit the Invoice Package on a quarterly basis, unless doing so would cause you undue hardship.

### When

Submit Invoice Packages for fees and expenses within 30 days of the last day of the billing period, except as noted above. **Submit all monthly billings only by calendar months.**

The Legal Division recognizes that LSS Providers may experience delays in receiving supporting documentation for expenses. In such a case, submit the Invoice Packages within 60 days of the last date in the billing period.

At the conclusion or termination of the matter, submit the final Invoice Package within 90 days of the matter's conclusion or termination (refer to [Chapter 7](#) and [Chapter 8](#)).

**Note:** Do not bill the FDIC more than once per month. Do not bill for overlapping service periods (e.g. May 1 through May 31 and then May 15 through June 15). Failure to submit invoices in a timely manner as set forth above may significantly delay the FDIC's invoice processing and payment. ABSENT EXTRAORDINARY CIRCUMSTANCES, THE FDIC WILL NOT PAY INVOICES SUBMITTED OVER ONE YEAR FROM THE DATE OF SERVICES.

### Where

LSS Providers should refer to the LSS Agreement (LSSA) or the referral letter for where to send the Invoice Package. The LSS Provider may also contact the Oversight Attorney for instructions.

## 6.3 Billable Fees and Expenses

Bill the FDIC reasonable charges for fees and expenses in accordance with the following guidelines.

Bill the FDIC reasonable fees at approved rates as stated on the approved rate schedule of the LSSA for:

- Legal support services on matters as approved; and
- Unless a different rate of reimbursement is set forth in the LSSA, travel time (when no substantive FDIC work is performed) must be billed at 50% of the approved hourly rate.

**Note:** The FDIC does not pay for Business Class or First Class travel or luxury hotel accommodations. The FDIC will pay for air travel at coach rates, and accommodations at the lower of the government or corporate discount rates. Travel-related expenses must be 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 [FDIC Contractor Travel Regulations](#). All travel must be preapproved by the Legal Division.

Contingent fee arrangements must be specifically approved in writing. Absent written Legal Division authorization, LSS Providers are only compensated for fees or expenses in accordance with the requirements of this Deskbook.

## Expenses

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

- Itemized In-house copy charges (**no more than** \$0.20 per page; no receipt necessary, but indicate the total number of copies.)
- Itemized international long distance telephone or multi-party conference call charges (receipts are necessary).
- Itemized overnight delivery (receipts necessary). Itemization must include name of the deliverer.
- Itemized electronic research (receipts or invoices necessary). Itemization must include person's name who is performing the research. In addition, first consult the FDIC Legal Research Bank before performing any legal research and note on the invoice that you have done so.

**Note:** Prior approval by the Oversight Attorney is required for electronic research.

- Itemized extraordinary postage (i.e., bulk or certified mail; receipts are necessary).
- Outside photocopying (receipts and/or invoices are necessary).
- Publication notices (receipts or invoices are necessary).
- Other case-specific (non-overhead) expenses (receipts or invoices are necessary). You must document the written approval in the case file.
- Allowable travel expenses (Refer to [Section 6.7](#) for submission and receipt requirements).

**Note:** State and local taxes on FDIC allowable expenses are reimbursed.

## 6.4 Non-Billable Fees and Expenses

You may not bill the FDIC for the following fees or expenses:

### Fees

- Services of billed individuals who have not been included on the FDIC-approved rate schedule;
- Services not included on the FDIC-approved rate schedule;
- Excessive number of employees performing services in a matter;
- Invoice preparation, review, or for corrections to the invoice required by the FDIC oversight attorney or Legal Fees Specialist;
- Secretarial or clerical overtime that has not been preapproved by the Oversight Attorney;
- Hourly fees for time spent photocopying, sending facsimiles, filing etc.;
- Local or long distance travel in excess of the 50% rate;
- Excessive intra-office conferences between employees for the purpose of providing instruction or status;
- Excessive time spent in “file review”;
- Block-billing of activities by merging different discrete activities within one period of time (refer to Section 6.6);
- Redundant billing for a single task, document, or activity;
- Travel expenses in violation of the [FDIC Travel Guidelines](#);
- Excessive time spent in “review and revision” of documents; or
- Billing for LSS Provider time for tasks that should be performed efficiently and effectively at less expense by a clerical worker or secretary;

### Expenses

- Ordinary postage;
- Expenses charged based on oral contracts with subcontractors, contractors, or other vendors;
- Charges related to word processing;
- In-house photocopying charges at more than \$0.20 per copy;
- Clerical time for photocopying, sending facsimiles, filing etc.;
- Charges for expense items when a seller’s discount was applied and the discounted percentage or amount was not passed along to the FDIC;
- Excessive or unnecessary overnight mail charges;
- Meals, except as provided for under the travel regulations;
- Daily commuting expenses;
- Sales tax (except for lodging) or surcharges imposed by utilities or phone services;
- Tax on services;
- Local travel expenses unrelated to approved travel;
- Any costs relating to filing fees in United States District Courts or Courts of Appeal, which the FDIC does not pay (pursuant to [12 U.S.C. 1819\(b\)\(4\)](#));



- A service that is customarily included in the normal overhead or administrative expense of running a business (e.g., rent, electricity, all telephone charges within the United States except for multi-party conference call charges, HVAC, storage, bill preparation); or
- Budget preparation.

## 6.5 Over-Budget Invoices

If the full payment of the Invoice Package exceeds the total of the approved budget, the Legal Division will send notice. The Invoice Package cannot be paid until you submit and obtain approval of an amended budget (refer to [Chapter 4](#)).

**Note:** The FDIC will return over-budget Invoice Packages with notice that an approved amended budget is required before the Invoice Package can be resubmitted.

## 6.6 Expert's and LSS Provider's Invoice Format

See below for Invoice format requirements.

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

### Fees

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/11/2021	JFB	Prepare for and provide testimony at trial.	\$220.00	5 hrs	\$1100.00

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

Service By	Title	Hours	Hourly Rate	Total
John Brown		10	\$350.00	\$3,500.00
Jane Green		20	\$210.00	\$4,200.00
Brian White		9.5	\$145.00	\$1377.00

### Block Billing of Services

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

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/18/2021	RJG	Telephone conference with J. Brown regarding filing brief (.2 hrs); Review jury list (.1 hrs.); Telephone conference with J. Brown regarding jury list (.2 hrs).	\$220.00	.5 hrs	\$110.00

### Description of Fees

The description of service or activity must be brief and informative.

Not Acceptable	Acceptable
“Research”	“Research on loan loss values.”
“Telephone calls”	“Telephone calls to J. James and M. Smith re: motion to dismiss.”

### Time Increments

All hourly billing must be in increments of only “tenths” of an hour (6 minutes). Nothing else is acceptable for hourly billings.

### Expenses

Use the following format for expenses:

- Copy charges (unit cost multiplied by unit amount).
- Overnight delivery (date and amount, name of recipient).
- Electronic research (subject, date, and amount, 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 Travel Voucher (refer to Section 6.7) and be in accordance with the FDIC’s Contractor Travel Guidelines.

### Example of Itemized Expenses

Expense	Amount
Photocopy (46@ .20 pp)	\$9.20
Overnight Delivery 02/19/2021	\$35.00
Extraordinary Postage - Certified 02/19/2021	\$10.00
J. Smith -- Expert Witness 02/19/2021 - 02/25/2021	\$10,500.00
Acme Reporting	\$425.00

Expense	Amount
<b>Panic Copying</b>	\$230.00
<b>Travel for J. Cox Washington, DC to Boston, MA</b>	02/05 - 02/06 Settlement Conference \$780.00

## 6.7 General Services Administration Travel Reimbursement Guidelines

The FDIC follows GSA Contractor Regulations for official travel reimbursement. A summary is set forth below.

### Eligibility for Reimbursement

To be entitled to travel reimbursement, the LSS Provider must be on a temporary assignment that is at least 50 miles in distance from the LSS Provider’s office or residence. If a temporary assignment concludes during the workday and is located within 100 miles of the office or residence, the LSS Provider must either return or stay over at their own expense.

### Travel Authorization

All travel on behalf of the FDIC must be necessary and approved by the Oversight Attorney.

### Air Travel

Air travel must be in coach class, unless the LSS Provider bears the cost of the difference between coach and business or first class. Plan travel 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 a change is required, you may claim a reasonable exchange fee. International air travel requires special approval by FDIC delegated authority.

### Rental Cars

Rent no car larger than a mid-size, unless there are three or more passengers or a larger vehicle is necessary to transport equipment, files, etc. Deviations from standard policy must be documented and preapproved by the Oversight Attorney. **Original receipts** must support claims for rental car gasoline. The FDIC will not reimburse for Personal Accident Insurance (PAI) or Personal Effects Coverage (PEC). You may bill the FDIC for the cost of Collision Damage Waiver (CDW) coverage only if you do not have insurance coverage for collision damage.

### Lodging

The LSS Provider should make use of government rates whenever possible. The FDIC will not reimburse hotel expenses considered excessive or unreasonable in the sole discretion of the Legal Division.

### Subsistence

On overnight travel status you will be reimbursed on a *per diem* basis. See below for the current FDIC prorated *per diem* percentages. Section 16.0 of the [Contractor Travel Reimbursement Guidelines contains the current allowable per diem rates](#). Specific *per diem* rates for different localities are on the General Services Administration (GSA) web site. If 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 covered by the *per diem*.

### Per Diem Allocation for Overnight Travel

Departing If you leave your office/residence between:	Prorated Per Diem Rates
12 Midnight to 5:59 AM	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 office/residence between:	Prorated Per Diem Rates
12 Midnight to 5:59 AM	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 directly to your residence, you may claim *per diem* 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, you may claim *per diem* from the time of departure from your official station until the time of return to your official station. The traveler 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 the LSS Provider is in non-overnight travel status and is away from their residence for at least 11 consecutive hours excluding mealtime, the LSS Provider is reimbursed on an actual expense-incurred basis with the meal costs limited to a \$10 charge (receipt required) or \$6.00 without a receipt.

### Use of Privately-Owned Vehicle

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

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

**Note:** FDIC does not provide liability coverage for privately-owned vehicles.

### Taxicabs or Rideshare Services

You may use taxicabs or rideshare services (e.g. Uber or Lyft) while on official travel for FDIC. To seek reimbursement, you must provide a receipt. You may also seek reimbursement for a tip up to 15%.

Taxi or rideshare 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 a residence, hotel or office while on official travel status; or for
- Traveling from a residence to the office to depart on an assignment requiring at least one night's lodging, and from the LSS Provider's office to the LSS Provider's residence upon returning from the trip.

**FDIC does not reimburse for taxi or rideshare fares for trips used to obtain meals.**

### Non-Reimbursable Travel Expenses

Examples of non-reimbursable travel expenses include the following; unless specifically agreed upon in writing in the LSS Agreement:

- Alcoholic beverages, entertainment;
- Laundry, dry cleaning, and pressing (covered by per diem reimbursement);
- Travel insurance;
- Parking fines;
- Gratuities or tips paid to service staff inside the lodging facility (covered by per diem reimbursement); or
- Under no circumstance does the FDIC reimburse for the cost of travel for spouses, other family members, other people, pets or service animals.

FDIC does not reimburse travelers for excess costs caused by:

- Taking 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.

### Travel Voucher Completion

After completion of travel, you must submit a properly completed [travel voucher](#) with the Invoice Package. Indicate the purpose of travel on the first line. You must show the dates and times of each departure from residence or office, arrival at the place of temporary assignment, and arrival at the office or residence on the travel voucher.

Except for *per diem* expenses, you must submit original receipts with the travel voucher for all travel expenditures. If a receipt is not normally provided for the expense (bus or subway token, etc.) the certification signed by the traveler on the travel voucher will justify the expense.

**Receipts submitted with the 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, you must submit the boarding passes for each flight with the Travel Voucher.**

**WARNING:** The penalty for submitting a Travel Voucher that knowingly falsifies any item in the claim can be three times the amount of the claim plus a civil money penalty of up to \$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 incarceration. A corporation that violates 18 U.S.C. 1001 is subject to a fine up to \$500,000. 18 U.S.C. § 3571.

## 6.8 Expert Invoice For Fees and Expenses (EIF&E) Form and LSS Provider Invoice For Fees and Expenses (IF&E) Form

The following provides guidance when completing the Expert Invoice For Fees and Expenses ([EIF&E - PDF](#)) Form or the LSS Provider Invoice For Fees and Expenses ([IF&E - PDF](#)) Form.

- Each invoice must have an invoice number unique to the LSS Provider submitting the invoice.

**Note:** If the LSS Provider is submitting multiple Invoice Packages, be sure to include a separate EIF&E Form or IF&E Form for each Invoice Package.

The invoice number can be no longer than 20 characters. Omit any dashes, slashes, spaces, leading zeros, or other special characters.

- The business and financial institution involved with the matter must be the same as identified in the retention letter or as identified in the LSS Agreement.
- The billing period must only be by calendar month. For example: FROM: 12/01/2021 THROUGH: 12/31/2021.
- The billing period should be quarterly when monthly fees and expenses are less than \$500. For example: FROM: 01/01/2021 THROUGH: 03/31/2021.
- If there are expenses incurred for anything other than the present billing period or the immediately preceding billing period, ensure that the expenses have not been previously reimbursed.
- **Sign at the bottom to certify that the EIF&E Form or the IF&E Form is true and correct. An original signature is required on the EIF&E Form and the IF&E Form.**

**Note:** If the Invoice grand total (plus all prior Invoice Package payments for that matter) exceeds the approved budget for the matter, an approved amended budget is required before FDIC can process the Invoice Package.

## 6.9 FDIC Invoice Package Review

Submit the Invoice Package in a timely manner and as directed in the retention letter or by the Oversight Attorney. Upon receipt, the FDIC Legal Fees Specialist reviews the package and either:

- Forwards it to the Oversight Attorney for review and/or approval;
- Rejects it. If the Invoice Package is rejected, the Oversight Attorney or the Legal Fees Specialist will notify the LSS Provider of the deficiencies to be corrected.

The Oversight Attorney performs a substantive review of the invoice. If they disallow any amounts, the FDIC will notify the LSS Provider at the time of payment; such information may appear on the EFT remittance form.

**Note:** FDIC invoice processing time is approximately thirty (30) days after receipt of a correct and proper Invoice Package. The FDIC generally does not make payments in less than thirty days. The FDIC makes all payments by [electronic funds transfer](#) (wire transfer) absent a written waiver (very rarely allowed).

## 6.10 Reconsideration of Disallowances

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

**Note:** (1) The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in civil or criminal sanctions. (2) Under no circumstances may the LSS Provider 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.

## 6.11 Audit and Records Retention

LSS Providers must permit the FDIC, the FDIC Office of Inspector General, the FDIC Legal Division's Risk Management & Records Group and the Government Accountability Office, or their representatives or successors, to conduct audits or reviews of the FDIC billings, including previously paid Invoice Packages.

For purposes of subsequent audits, LSS Providers must retain the following:

- Copies of all Invoice Packages;
- Original underlying support documentation not submitted with the Invoice Package; and
- Original time sheets, and time and expense adjustment records. Example of adjustment records includes documentation explaining differences between time sheet hours and invoiced hours for billable individuals.

See [Electronic Billing](#) for record keeping and time keeping system requirements.

The FDIC reserves the right to obtain additional information upon audit or review of any itemized fee bill or support documentation.

## 6.12 Frequently Asked Questions

Below are answers to questions often raised when submitting Invoice Packages.

**When should an LSS Provider submit an Invoice Package?**

On a monthly basis, if the total equals \$500.00 or more. If the total is less than \$500.00, submit the Invoice Packages quarterly, unless this causes undue hardship or is superseded by a written agreement with the FDIC. You must submit all Invoice Packages on a calendar month basis.

**Can clerical or secretarial overtime be billed?**

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 must supply written approval for clerical or secretarial overtime.

**The FDIC allows billing for extraordinary postage (e.g. bulk or certified mail). Can ordinary postage also be claimed?**

No.

**What common mistakes should we avoid when submitting an Invoice Package?**

LSS Providers should:

- Make sure each invoice has a different invoice number for each Invoice Package submitted.
- Ensure the totals on the Invoice Package equal the totals on the EIF&E Form or the IF&E Form.
- Submit all necessary receipts.
- Make sure the “billing from” and “billing through” dates do not overlap. Use only calendar months for each Invoice Package..
- Be sure to separately itemize each time biller’s fees.

**If a business charges \$0.30 per page for in-house photocopying, can it bill the FDIC for this amount?**

No, the allowable charge is currently \$0.20 per page.

**What information is required in connection with fax or phone charges?**

Domestic long distance calls are not a reimbursable expense. You may only seek reimbursement for international calls or domestic long distance conference calls.

**What happens if there is something wrong with the Invoice Package?**

An FDIC Legal Fees Specialist will notify the LSS Provider, usually via telephone or fax. The FDIC may also provide notice on the EFT remittance form.

## Chapter 7 – Closeout



## 7.1 Final Invoice Package

At the conclusion of providing the legal support service, the LSS Provider must submit a final Invoice Package within 90 days. You must note on the invoice and the EIF&E form or the IF&E form that this is a final Invoice Package. Refer to Chapter 6 for procedures for submitting the Invoice Package.

## 7.2 Forwarding Documents to FDIC

Before forwarding any paper or electronic records to the FDIC, consult with the Oversight Attorney. Upon completion of the delivery of services or termination, the LSS Provider must return any FDIC materials and forward all substantive work product not previously submitted. Failure to do so may delay or prevent payment of the final invoice and may cause the imposition of other sanctions to recover the FDIC materials, work papers, or work product.

# Chapter 8 – Post-Employment Responsibilities

## 8.1 Post-Employment Responsibilities

As former LSS Providers for the FDIC, you have responsibilities that continue after completion.

Former FDIC LSS Providers have a duty to protect confidential information and may not use or allow the use of confidential information to further a private interest other than as stated in the LSS Agreement.

### File Retention

Former LSS Providers have an obligation to preserve their files pertaining to the services they provided to the FDIC and those files concerning invoice support. You may not destroy any files or records without the written permission of the FDIC.

### Contacts with the Public and Media

All restrictions concerning public and media contacts applicable while providing services to the FDIC continue after conclusion of the services. See Chapter 1.

### Identifying FDIC as a Former Client

The LSS Provider may list FDIC as a former client in published materials provided the LSS Provider adheres to the guidance discussed in Chapter 1.

### Compliance with Subpoenas and Other Court Orders

LSS Providers served with a subpoena, court order, or other legal process documents relating to services provided to the FDIC, must immediately notify the FDIC's General Counsel, and may not disclose FDIC's records or provide testimony without authorization from the FDIC. See FDIC regulations at [12 C.F.R. §§ 309.7](#).

The LSS Provider agrees to cooperate with the FDIC, if the Legal Division decides to appeal or challenge the subpoena or order. Under no circumstances will the FDIC represent LSS Providers in the matter or generally reimburse for any legal fees or other expenses that may incur in complying with this requirement. However, FDIC will consider requests for reimbursement on a case-by-case basis.

## Appendices

### [Appendix A - Statutory Compliance](#)

Appendix A provides a list of certain provisions of federal law with which all LSS Providers must comply.

### [Appendix B - Contacts](#)

A list of key contacts at the FDIC.

### [Appendix C - Electronic Billing & Timekeeping Records](#)

Billing guidelines.