



Information for Prospective Outside Counsel

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Foreword

The Legal Division of the Federal Deposit Insurance Corporation (“FDIC”) is fully committed to equal employment opportunity and the affirmative implementation of a strong employment program without regard to race, sex, religion, color, national origin, age or disability. It is the policy of the Federal Deposit Insurance Corporation to provide equal opportunity for all persons and to prohibit discrimination in all aspects of its personnel policies, program practices and operations. We believe our goals and objectives should be shared by firms with a demonstrated commitment to promoting equal opportunity. We encourage others to share in this important endeavor.

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Message from the General Counsel

September 2017

The Federal Deposit Insurance Corporation promotes stability in the banking industry, and more broadly, for our economy as a whole. As a provider of deposit insurance for banks and savings associations and as manager or liquidator of the assets and liabilities of closed insured institutions, the FDIC strives to minimize costs to the federal deposit insurance funds associated with these efforts.

It is the role of the Legal Division to support the mission of the FDIC by providing high-quality legal representation and advice in the most practicable, efficient and cost-effective manner. While much of this work is handled in-house, the Legal Division may engage outside counsel to assist in the representation of the FDIC. During the banking “crises” of the 1980s, early 1990s and, 2008 the FDIC relied heavily on outside counsel given the large volume of legal work. With the current health of financial institutions and the anticipated decrease in legal work, the FDIC’s need for outside counsel may not increase in the near term. The Legal Division, does not, at present, anticipate an increased need for outside counsel in the future.

This publication outlines how outside counsel can become eligible to provide services to the FDIC. Thank you for your interest in representing the FDIC.

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The FDIC - Its History and Mission

The FDIC was chartered by the United States Congress in 1933 to promote and maintain public confidence in the nation’s banking system. The FDIC’s functions include: oversight of the safe and sound operation of insured depository institutions; resolution of financially troubled or insolvent institutions; managing the assets and liabilities of failed insured depository institutions; honoring the FDIC’s insurance obligations; prosecuting and defending litigation related to the FDIC’s operations; and ensuring compliance with applicable laws and regulations.

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Overview of FDIC Process for Retaining Outside Counsel

Outside counsel interested in representing the FDIC first must submit an application to the Legal Division. The Legal Division maintains a “List of Counsel Available” that includes law firms that have submitted completed applications that do not indicate the existence of conditions that would bar a firm from representing the FDIC. The Legal Division refers to the List of Counsel Available when seeking outside counsel.

Prior to referring a matter to outside counsel, the Legal Division enters into a Legal Services Agreement with the firm. The Legal Services Agreement governs the relationship between outside counsel and the FDIC. The FDIC issues a referral letter to outside counsel for the specific matters for which it retains a firm.

The process for retaining outside counsel is described in greater detail below. Outside Counsel may obtain additional information from the Contact List below, or on the inside back cover of the preprinted brochure.

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Type of Work That May Be Available to Outside Counsel

The Legal Division provides the FDIC with comprehensive legal services and support and may need the services of outside counsel in the following areas, among others: bankruptcy and creditor’s rights; collections; environmental law; federal, state and local taxation; foreclosures; real estate and financial transactions, including debt restructure work; general business and corporate law advice; commercial and other litigation, including director and officer liability litigation, accountant liability litigation, legal and other professional malpractice litigation, and lender liability litigation; appellate litigation; fidelity bonds; pension and profit-sharing plans; and liquidation of failed insured depository institutions

The FDIC generally does not engage outside counsel to assist with regulatory, legislative, or enforcement matters, but may do so in certain circumstances.

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Role of Outside Counsel

Role of Outside Counsel Management of all legal affairs of the FDIC rests with the Legal Division, which serves as outside counsel’s sole contact with the FDIC except in limited circumstances. The relationship between the Legal Division and outside counsel should be a cooperative relationship in which the resources of each may be utilized to achieve the most practicable, efficient, and cost-effective resolution of the matter.

The Legal Division places great importance on the professional skills and conduct of all attorneys representing the FDIC. Because the FDIC acts in the public interest, its attorneys and professional staff must observe the highest standards of ethical conduct and demonstrate the highest degree of professional competence and excellence.

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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 program, the Legal Division actively seeks to consider for engagement firms owned by minorities or women. These Minority and Women owned Law Firms or "MWOLFs" 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, Native American Indian, Hispanic American, or Asian American. "Women-owned firms" are those that are at least 51% owned and controlled (through day-to-day management) by non-minority women.

The Legal Division also seeks to consider MWOLFs for engagement to provide legal services in association with other majority firms' "co-counsel" arrangements.

The Legal Division supports MWOLFs and the FDIC's equal opportunity efforts by providing an MWOLF Coordinator to assist firms in the application process as well as attendance at minority and diversity bar association conferences and events nationwide.

Similarly, the FDIC supports all efforts on the part of our outside counsel to employ and engage companies, firms and individuals and veterans with disabilities, as well as individuals that qualify for veterans' preference.

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Application Procedures

Outside counsel (*including law firms and solo practitioners*) interested in representing the FDIC can obtain application materials from the FDIC's website at <https://www.fdic.gov/buying/legal/outsidecounsel/appackage.html>.

The Legal Division requires an applicant to provide information about itself including: the areas of expertise for which the firm is offering its services, together with a description of work recently performed and a list of client references; an extensive disclosure of conflicts of interest or potential conflicts of interest; an identification of the firm's malpractice carrier and description of the coverage; and a statement that the firm will absorb the cost of developing an understanding of the FDIC's specialty areas of the law.

The application includes a standard form Legal Services Agreement that both outside counsel and the FDIC must sign in order for the firm to receive referrals. Outside counsel must identify on the fee schedule attached to the Legal Services Agreement the following information as to each attorney or paraprofessional in the firm who may provide services to the FDIC: state licenses; years in practice; status within the firm as partner, associate, or paraprofessional; billable rate under the firm's usual rate structure; proposed hourly rate to the Legal Division; the percentage of discount the firm is offering to the FDIC from its usual rates; and a timekeeper ID number chosen by the firm.

Each office of a multiple office law firm that wishes to be considered for retention must provide the required information. For multiple office firms, even an office that does not wish to be considered for FDIC work must comply with the requirement to provide conflict of interest information. The FDIC may request additional information concerning the firm.

Outside counsel is responsible for updating or correcting information submitted in the application materials.

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Conflicts of Interest

Outside counsel must disclose in writing to the Legal Division any actual or potential conflict, or appearance of a conflict, as part of its application. In accordance with 12 C.F.R. Part 366, outside counsel must submit a form as part of its application in which it makes representations and certifications concerning its fitness and integrity to enter into a Legal Services Agreement with the FDIC. Outside counsel must be free of any conflict of interest unless the Legal Division waives the conflict in writing. The FDIC furnishes outside counsel with its policies and procedures relating to conflicts of interest with the application materials, or they may be accessed from the FDIC's website at https://www.fdic.gov/buying/legal/outsidecounsel/oc_conflicts_procedures.html.

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List of Counsel Available

If the Legal Division determines that the information submitted by outside counsel in its application is complete and does not indicate the existence of any conditions that would bar retention of the firm by the FDIC, the Legal Division will enter the firm on its List of Counsel Available.

Neither submission of the application by outside counsel nor review of the materials by the Legal Division guarantees that the firm will be added to the List of Counsel Available or subsequently receive any referral of work. In order to remain on the List of Counsel Available longer than two years, outside counsel must update its application prior to the expiration of two years. A firm may not represent that it has been "approved" as outside counsel for the FDIC.

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Legal Services Agreement

If rates, abilities, areas of expertise, conflicts of interest and other factors used in evaluating outside counsel on a competitive basis are acceptable to the Legal Division, and there is a need for additional outside counsel in a particular geographical area, the Legal Division may contact the firm to negotiate the proposed fee schedule attached to the Legal Services Agreement that the firm executed and submitted with its application materials.

The Legal Services Agreement governs the relationship between the FDIC and outside counsel. Absent compelling reasons, no increase in the fee schedule attached to the Legal Services Agreement will be permitted during its two year term. The terms of FDIC policies and procedures, including the *Outside Counsel Deskbook*, are incorporated by reference into the Legal Services Agreement. Prospective outside counsel may download the *Outside Counsel Deskbook* from the FDIC's website at <https://www.fdic.gov/buying/legal/outsidecounsel/deskbook.pdf>. Execution of a Legal Services Agreement by outside counsel constitutes the agreement by the firm to be bound by the terms of FDIC's policies and procedures, as may be updated or amended.

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Selection of Potential 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 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.
- If the firm previously worked for the FDIC, whether it has a verifiable reputation for competence, integrity, cost effectiveness and cooperativeness.

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FDIC Policies and Procedures

Outside counsel retained by the FDIC must comply with the Corporation's policies and procedures, including the *Outside Counsel Deskbook*. The *Outside Counsel Deskbook* as well as other important FDIC policies and procedures relating to outside counsel may be downloaded from the FDIC's Outside Counsel Home Page at <https://www.fdic.gov/buying/legal/outsidecounsel/index.html>. For example, outside counsel must prepare a budget at the commencement of a matter and must submit detailed fee bills on a regular basis in accordance with the budget. The FDIC pays outside counsel electronically. It requires outside counsel to provide information necessary for this form of payment. The details of these and other requirements, as well as the Legal Division's billing procedures, are set forth in the *Outside Counsel Deskbook*.

In the event of a conflict or inconsistency between this brochure and other FDIC policies and procedures, or other documents governing the retention of outside counsel or referral of particular matters to outside counsel, the terms of the other documents govern.

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Contact and Resource List

FDIC Website <https://www.fdic.gov>

FDIC Outside Counsel Home Page <https://www.fdic.gov/buying/legal/outsidecounsel/index.html>

Telephone Inquiries for Outside Counsel Matters

1(877)-275-3342 (ask for the Legal Services & Special Contracts Group, formerly the Outside Counsel Management Group)

TDD: (800)-925-4618

If calling from the Washington, D.C. area:

(703) 562-2331

Email Inquiries:

LSSCG@fdic.gov

Written Inquiries:

FDIC Legal Division

Attn: Legal Services & Special Contracts Group

3501 Fairfax Drive

Room-VS-E-6097

Arlington, VA 22226

FDIC Legal Division

MWOLF Program

3501 Fairfax Drive

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Arlington, VA 22226

The Outside Counsel Application Package is available at

<https://www.fdic.gov/buying/legal/outsidecounsel/appackage.html>.

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