



# Outside Counsel Deskbook

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## Chapter 1: Representing the FDIC

### 1.1 Scope of the Outside Counsel Deskbook

The **Outside Counsel Deskbook** describes the policies and procedures that must be followed by Outside Counsel beginning with the execution of a Legal Services Agreement (“LSA”) (refer to [Chapter 4](#)) continuing through retention and concluding with post-representation responsibilities. “Inherited” counsel who do not execute an LSA with the FDIC are not subject to all the provisions of this **Outside Counsel Deskbook**, but are subject to the terms of Legal Division Directive 5250.2 as it may be amended. “Inherited” counsel may obtain a copy of the Directive by contacting the [Legal Services & Special Contracts Group](#).

### 1.2 Identifying the FDIC as a Client

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

- You may not represent that you have been "approved" as Outside Counsel for the FDIC.
- As Outside Counsel, you are required to comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of "expert" status, expertise, or specialization.
- You may not quote FDIC materials or staff comments as to performance evaluations, if any. If you wish for FDIC personnel to participate in surveys or interviews regarding your performance, you must first submit the survey or interview questions to the FDIC Legal Services & Special Contracts Group (“LSSCG”) for review and approval.

### 1.3 Statutory Compliance

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

### 1.4 Equal Employment Opportunity and Diversity

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

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

- African American;
- Hispanic American;

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- Native American;
- Asian Pacific American;
- Sub-Continent Asian American; and
- Other groups, recognized from time to time by the U.S. Small Business Administration.

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

### **Compliance with the Dodd-Frank Act**

Pursuant to [Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (Dodd-Frank Act, Public Law 111-203), Outside Counsel must confirm its commitment to equal opportunity in its own employment and in any subcontracting for FDIC legal matters. To implement this commitment, the Outside Counsel shall make a good faith effort to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in FDIC legal matters. Outside Counsel shall insert the language of this paragraph in all subcontracts in FDIC legal matters where the subcontractor dollar value is expected to exceed \$100,000. A good faith effort should include actions by Outside Counsel intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, implementing diversity and inclusion policies, or other activity.

Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (Dodd-Frank Act), a failure to demonstrate to the Legal Division good faith efforts to include minorities and women in the firm's workforce may result in termination of the firm's Legal Services Agreement.

### **1.5 Ethical Considerations**

The FDIC expects you to maintain the highest ethical standards and to comply with all applicable laws, rules and regulations governing ethical conduct. In particular, you should be cognizant of the following:

To avoid any appearance problem, neither you nor any person associated with your firm shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of monetary value to any employee of the FDIC which is not in conformity with [5 C.F.R. Part 2635, Subpart B](#), of the Standards of Ethical Conduct for Employees of the Executive Branch. While private firms may host social or holiday functions for business associates and others with whom they do business, there are limitations on attendance at these events by FDIC employees. With few exceptions, FDIC employees may not solicit or accept gifts from anyone who does, or seeks to do, business with the FDIC.

Determining how the standards of conduct, conflict of interest, and post-employment statutory restrictions and bar requirements apply to FDIC employees can be complex, and we encourage current and former FDIC employees to consult with the FDIC Ethics Unit of the

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Executive Secretary Section (Ethics Unit) about the statutory requirements that apply to their situation. Because of the significant consequences involved from violating these restrictions, all current and former employees are advised to seek guidance from the Ethics Unit before engaging in communications that may run afoul of the prohibitions.

### *Former FDIC Employees-Post Employment Restrictions*

Your firm may hire former FDIC employees, but as former employees they are subject to the government-wide post-employment statute, [18 U.S.C. § 207](#), which affects what they can do for your firm. 18 USC 207(a)(1) bars all former FDIC employees from knowingly making, with the intent to influence, any communication to, or appearance before a federal agency or any court on behalf of anyone other than the United States on a particular matter involving specific parties in which they participated personally and substantially while in government. Generally, however, former FDIC employees may work for the United States on matters that they worked on personally or which were under their supervision while at the FDIC, with special consideration and caution given to representing these matters before the FDIC or the Federal government.

### *Current FDIC Employees*

Please note that current FDIC employees are not allowed to engage in discussions about the possibility of post-FDIC employment *via* a Legal Services Agreement or any other contractual arrangement. Any current Legal Division employee contacted by a current or former FDIC employee regarding a new or amended Legal Services Agreement or other contractual arrangement with the FDIC, must notify the inquiring employee that no further conversation regarding an LSA or other contractual arrangement can take place until the Legal Services & Special Contracts Group (LSSCG) has received notification from the Ethics Unit that the employee has been cleared to make such contact by determination of the Ethics Program Manager.

The LSSCG staff member must then advise the Ethics Unit, [ethics@fdic.gov](mailto:ethics@fdic.gov), of the employee's expression of interest in contracting with the FDIC, and request that the Ethics Unit notify the LSSCG if and when the former employee is cleared to proceed. Until the Ethics Unit notifies the LSSCG of the former employee's clearance and the date upon which discussions or negotiations can begin, no LSSCG personnel will provide any LSA application materials to, or enter into any agreement with, the former employee. Substantive discussions with the former employee regarding the application process are also forbidden before this clearance has been obtained. Unless explicitly approved by the Ethics Unit as a result of the clearance process, discussions and/or negotiations with the former employee or entering directly into an LSA or other contractual arrangement involving such former employee may violate federal post-employment restrictions and are therefore prohibited.

Note also that, under [18 USC 208](#), FDIC employees who are negotiating with you or have an agreement with you for future employment cannot participate personally and substantially in matters in which your firm has any financial interest.

If an FDIC employee was involved in negotiating your firm's current LSA, on behalf of the FDIC, that individual upon joining your firm may not, during the duration of the LSA, renegotiate the rate schedule, request changes, or be involved in any matter pertaining to questions regarding the services provided by your firm under the LSA.

For more information, contact the Ethics Unit, FDIC Legal Division, Washington, D.C. at (877) 275-3342 or at [ethics@fdic.gov](mailto:ethics@fdic.gov).

### 1.6 File Retention

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

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

Upon completion or termination of the matter, you are responsible for the preservation of the files until the FDIC authorizes the files' destruction or the FDIC orders their transfer to the FDIC or another organization. Refer to [Chapter 9](#) and [Chapter 10](#).

**NOTE:** There are separate records retention requirements for underlying support documentation related to your FDIC invoices. Refer to [Section 1.7](#)

### 1.7 Audit Rights

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

For purposes of subsequent audits, you must retain Invoice files, original underlying support documentation for expenses, subcontractor invoices, and original or electronic time sheets and time and expense adjustment records, for at least three years after final payment under the legal referral.

The recordkeeping requirements for electronic timekeeping systems are covered in [Appendix C, Record Retention Guidelines for E-billing](#). The FDIC reserves the right to obtain additional information upon review of any electronic invoice package submission or support documentation.

### 1.8 Fees and Expenses

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

You must include in your fees or hourly rates for legal services your costs of doing business, including all "overhead," general and administrative costs, fringe benefits, and profit. You may not submit, and the FDIC will not pay, invoices for such costs of doing business. "Markups" above any costs actually incurred by you for any supplies or services obtained by

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you for the Legal Division may not be charged to the FDIC; any discounts you receive must be passed on to the FDIC.

The FDIC will only pay reasonable costs for services rendered or supplies provided in the course of representation. The invoice process is discussed in [Chapter 8](#).

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

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

### 1.9 Malpractice Insurance

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

### 1.10 Contacts with the Media and the Public

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

### FDIC Office of Communications

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

### Speaking Engagements

If you address the public at seminars or other functions on topics pertaining to the FDIC or

laws and regulations affecting the FDIC, you must disclose to the audience that you are making the presentation on your own behalf and not on behalf of the FDIC. You will not disclose any confidential FDIC information in any such address. When you provide written materials at seminars or other functions on topics pertaining to the FDIC or laws and regulations affecting the FDIC, you must submit a copy of such materials to the FDIC Legal Services & Special Contracts Group (“LSSCG”) for their review in advance of your speaking engagement.

### **1.11 Role of FDIC Oversight Attorney**

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

On routine cases the Legal Division does not expect to be involved in every decision.

**However, important decisions always should be raised with your Oversight Attorney in sufficient time to allow for meaningful review and consideration of the issues, especially if a case involves policy issues or substantial sums.**

### **At the Beginning of the Legal Matter**

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

- Define the goals and objectives to be achieved.
- Outline your role and expected duties.
- Discuss with you the scope of the required case plan and budget designed to achieve the FDIC's goals and objectives in a cost-effective manner. Refer to [Chapter 7](#).

### **During the Course of the Legal Matter**

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

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

### **Contacts with Other FDIC Offices**

Generally, all contact with non-legal FDIC personnel should be made through the Legal Division. This policy permits the most efficient utilization of resources and serves to avoid

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duplication of effort and to minimize costs. Therefore, you are expected to direct all communications to your Oversight Attorney, except in the following circumstances:

- When referring a media inquiry to the FDIC Office of Communications;
- When submitting seminar or other program materials to the FDIC LSSCG in advance of a speaking engagement;
- When your Oversight Attorney indicates otherwise;
- When immediate action is required and neither your Oversight Attorney nor his/her supervisor can be reached;
- When responding to the FDIC's Office of Inspector General;
- When responding to the FDIC Legal Division's Risk Management Group; or
- When seeking limited factual information that can be obtained in a relatively brief amount of time (such as payoff figures for a loan or the address of a borrower).

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

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

### **1.12 Termination**

The Legal Division reserves the right to discontinue or limit its relationship with you for any or no stated reason. In such an event, notification of termination of your LSA or removal of individual legal matters will be confirmed in writing. You will be contacted and provided instructions concerning disposition of files and other FDIC property. Your cooperation during transition is a contractual and ethical obligation, and is necessary for an orderly transfer of legal matters.

**You must forward upon demand of the FDIC Legal Division all files, documents, original underlying support documentation for expenses, subcontractor invoices, and electronic time sheets concerning the terminated legal matter(s), including copies of all related work product of your firm. It is important that you promptly forward files as instructed. Failure to do so may delay or prevent payment of your final invoice. Under no circumstances may you withhold files in the event of a dispute with the FDIC.**

### **1.13 Written Notices**

All notices to and agreements with the FDIC that are required to be in writing may be forwarded electronically to the appropriate contact identified in this Deskbook, but the original of any document on firm letterhead or containing a signature must be received by FDIC within five (5) business days following the date of electronic notice for the same to have legal effect. Notices from the FDIC are effective when sent electronically to your Contact Attorney as designated in your LSA application or any subsequent Amendments. If an FDIC contact is not specified by this Deskbook and incorporated materials, notice is

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to be directed to the FDIC Legal Division, Attn: Legal Services & Special Contracts Group, 3501 Fairfax Drive, Room E-6097, Arlington, VA 22226. To contact us by telephone, please call (877) 275-3342 and ask to speak with “the Legal Division, Outside Counsel staff.”

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## Chapter 2: Conflicts of Interest

### 2.1 Legal Division Conflicts Policies and Procedures

FDIC policies and procedures governing Outside Counsel conflicts of interest are found in the ["Statement of Policies Concerning Outside Counsel Conflicts of Interest"](#) and ["Outside Counsel Conflicts of Interest Procedures"](#) (collectively, "Conflicts Policies and Procedures"). You should refer to the Conflicts Policies and Procedures, as they may be amended, for specific guidance regarding conflicts of interest and confidentiality issues. Be sure to refer to the hyperlinked online version of each, as that will be the most up-to-date version.

### 2.2 FDIC Regulations and Policies

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

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

### 2.3 Rules of the Legal Profession

You must also observe applicable bar rules of professional responsibility with respect to conflicts of interest and confidentiality for your jurisdiction, and the [American Bar Association Model Rules of Professional Conduct](#) to the extent that they are also applicable.

### 2.4 Required Disclosures

In general, Outside Counsel must disclose, in writing on firm letterhead to the Legal Division, information concerning actual or potential conflicts of interest and matters that may present the appearance of a conflict. Disclosure should be made to the Oversight Attorney or to his/her supervisor in the office or section that oversees the matter giving rise to the conflict. If you are not actively representing FDIC at the time a possible conflict is discovered, you should make your written disclosure to the FDIC Legal Services & Special Contracts Group (LSSCG) at FDIC Headquarters using the address provided in [Section 1.13](#).

Required disclosures include but are not limited to the following:

- Whether your firm currently represents any interest adverse to the FDIC in any capacity or adverse to a subsidiary of a failed insured depository institution.
- Whether your firm previously represented an open insured depository institution that subsequently failed or previously represented any interest adverse to such an institution.

Whether there exists an actual or potential conflict or the appearance of a conflict of interest between your firm and the:

- Board of Governors of the Federal Reserve System;
  - Office of the Comptroller of the Currency;
  - National Credit Union Administration;
  - Consumer Financial Protection Bureau; or
  - Department of Justice (on matters involving failed insured depository institutions or their directors, officers or related third parties).
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- Whether your firm or any attorney of your firm currently has any outstanding debt, whether performing or in default, owed to any failed insured depository institution.
  - Whether any attorney of your firm has served or serves as an officer, director or substantial shareholder of any insured depository institution.
  - Whether any attorney of your firm has served or serves as a trustee in bankruptcy or as a receiver in any federal or state court or administrative proceeding.
  - Whether your firm has represented or represents a debtor-in-possession, trustee in bankruptcy, or a receiver in a proceeding in which the FDIC in any capacity has an interest.
  - Whether your firm represents a creditor in a bankruptcy, receivership, or other litigation proceeding where the FDIC in any capacity has asserted claims against the same debtor in either the same or an unrelated proceeding.
  - Whether your firm represents any insurance carrier or any stockholder or class of stockholders in an action against a director or officer of an insured depository institution.
  - Whether your firm represents any insured depository institution in regulatory matters or assistance transactions.
  - Whether your firm represents a prospective bidder for a troubled or failed institution or the assets of such an institution.
  - Whether your firm represents any officer, director, debtor, creditor, or stockholder of any failed or assisted insured depository institution in a matter relating to the FDIC in any capacity.
  - Whether any attorney of your firm is closely related to any person employed by the FDIC, is in litigation with the FDIC in any capacity, has outstanding debt owed to any failed depository institution, or an ownership interest in such an institution. This includes a spouse, dependent child or member of the immediate household.
  - Whether your firm or any attorney of your firm has been or is currently subject to any prior or pending claims or investigations by the FDIC in any capacity.
  - Whether your firm or any management official of your firm has been charged with the commission of a felony or is currently a party to an administrative or judicial proceeding in which fraudulent activity is alleged.

### **2.5 Duty to Disclose at Application and Thereafter**

At the time of application for or renewal of your LSA, the Legal Division requires that you disclose all actual or potential conflicts of interest and matters that may present the appearance of a conflict. You are further required at that time to comply with all applicable

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requirements of [12 C.F.R. Part 366](#). Information about your system for tracking conflicts and your policies and procedures regarding the resolution of conflicts must also be provided at that time.

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

### 2.6 Conflict Determination

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

Conflicts of interest may only be waived by the Legal Division in writing. Requests for waivers of conflicts of interest are granted or denied on behalf of the FDIC by the FDIC Outside Counsel Conflicts Committee (or “Committee”) at FDIC Headquarters.

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

#### Conflict of Interest for Waiver Request Process:

- (a) Written disclosure and request for waiver of conflict of interest from your law firm to the appropriate Oversight Attorney or supervisor, forwarded (or initially directed, if you have no active FDIC matters) to the LSSCG at FDIC Headquarters.
- (b) LSSCG contacts Oversight Attorney(s) who make(s) a recommendation regarding resolution of the conflict.
- (c) LSSCG seeks additional Legal Division comments, consideration or recommendations.
- (d) LSSCG submits the request to the FDIC Outside Counsel Conflicts Committee.
- (e) The Committee makes determination regarding conflict.
- (f) LSSCG notifies you and interested FDIC office(s) or section(s) in writing of Committee’s decision.

### 2.7 Noncompliance

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

- Imposition of a bar to application or renewal;
- Termination of your legal services;
- Suspension of new referrals;

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- Disallowance in whole or in part of invoice(s) for services rendered;
- Denial of a conflict waiver; or
- Other corrective actions, including referral to the appropriate licensing authorities, or civil or criminal actions.

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

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

### **2.8 FDIC as Former Client**

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

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

You are also expected to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation. Refer to [Chapter 10](#) for additional information on your post-representation responsibilities.

### **2.9 Questions Concerning Conflicts of Interest and Confidentiality Requirements**

For information concerning any aspect of conflict disclosure or resolution, contact the Legal Services & Special Contracts Group at FDIC Legal Division, Attn: Legal Services & Special Contracts Group, 3501 Fairfax Drive, Room E-6097, Arlington, VA 22226, or via email at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

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### Chapter 3: Information Security & Confidentiality

#### 3.1 Maintaining Confidentiality

**NOTE:** Due to the extreme high importance of the security and confidentiality of FDIC information and records, Outside Counsel should pay special attention to the contents of this Chapter. Questions regarding your firm's responsibility for Information Security in FDIC Legal matters should contact the E-Discovery Group at [legal@fdic.gov](mailto:legal@fdic.gov).

(a) In the course of representing the FDIC, Outside Counsel 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](#). Outside Counsel, 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.

(b) Outside Counsel is responsible for the security and confidentiality of all Sensitive Information which your firm may have access to. As Outside Counsel for the FDIC, your firm 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 legal and non-legal personnel of the firm, and any experts or other subcontractors that your firm may hire 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. Outside Counsel's adherence to a strong and effective client confidentiality and information security policy is a critical part of your FDIC representation.

(c) Outside Counsel must supply the Legal Division with the name and contact information of the firm's Chief Information Security Officer or equivalent as well as a backup contact, either of whom can be reached without delay.

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<sup>1</sup> **Sensitive Information is defined in Circular 1360.9 as (To ensure the latest update, check this link: [Circular 1360.9](#)):**

(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).

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(d) The FDIC may contact your firm to assess the strength of your firm's cybersecurity measures, protections, policies or procedures. This may include telephone contacts, email questionnaires, review and evaluation of your firm's Information Security directives, policies and procedures or on-site reviews by FDIC staff.

(e) All Outside Counsel must be in compliance with the [American Bar Association \(ABA\) Model Rules of Professional Conduct, Rule 1.6](#), which mandates minimal 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.

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

(f) All Outside Counsel must have in place a secure computer network. Your network should 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 will need to be promptly corrected. See the **Note** above this subsection 3.1(f).

(g) All outside Counsel 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** – Outside Counsel 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** – Outside Counsel 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** – Outside Counsel 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, the Model Rules of Professional Conduct (or state equivalent) or other applicable standards,

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Outside Counsel should consider the engagement of technical consultants, when necessary. Each Outside Counsel must customize your firm's Security Plan to meet business, legal and client needs. Each firm's situation is unique, so you may need additional security measures not

referenced in this subsection 3.1(g). This subsection 3.1(g) is only intended to aid Outside Counsel in considering your 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 Outside Counsel.

(h) Since Outside Counsel is 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, will need to be promptly corrected. See the **Note** above subsection 3.1(f).

(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 your firm and all consultants, experts, or other contractors that your firm may hire.** To better protect Outside Counsel, 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 should 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's E-Discovery Group. Further, any and all employees, consultants, experts or other contractors who will have access to any ESI must be properly credentialed with the vendor hosting and producing said ESI. If you have any questions concerning this subsection 3.1(i), please direct them to your Oversight Attorney and to [legal@fdic.gov](mailto:legal@fdic.gov), as further described below in section 3.2.

### 3.2 Using FDIC's E-Discovery Group on Legal Matters

(a) All Outside Counsel retained on an FDIC Legal matter must coordinate with the E-Discovery Group (E-Disc) of the Legal Information Technology Unit (LITU) to conduct an early case assessment to identify potential sources of responsive records, custodians, screening criteria, search parameters, review processes, and scope of production. Further, the early case assessment will consider the resources to be applied in responding to requests for FDIC documents and testimony. In addition, prior to production or disclosure of any FDIC records or information, all Outside Counsel must consult with E-Disc, and diligent efforts must be made to assure that highly-confidential or Sensitive Information has been identified and reviewed and appropriate protective measures taken, and that only records and information that are properly discoverable under [Fed. R. Civ. P. 26](#) will be produced or disclosed.

(b) Outside Counsel should consult with their Oversight Attorney about the early case assessment. The Oversight Attorney can place your attorney in contact with the E-Disc. You may also reach the E-Disc at [legal@fdic.gov](mailto:legal@fdic.gov) but always copy your Oversight Attorney on any

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communications your firm has with the E-Disc.

(c) The E-Disc will also work with your firm and help to coordinate any data hosting issues or requirements that may arise as to ESI described above in subsection 3.1(i). If ESI issues are present, it is important to coordinate early in the progress of the legal matter. Close communication with your Oversight Attorney is imperative in this situation.

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

The Legal Division mandates that Outside Counsel 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 firm’s internal network, including to the FDIC Oversight Attorney, other sources inside of the FDIC or to your firm’s subcontractors;**

**(b)** promptly notifying the Oversight Attorney and the LITU ([legal@fdic.gov](mailto: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 this 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 your firm is 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 your Oversight Attorney for further information on using Zix Mail.

**(b)** PKZIP

Your law firm’s Information Technology Group should be able to instruct staff members on how to receive and properly transmit secure documents using PKZip for Windows.

### 3.5 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 Legal Education courses on cyber and data security at their web site:

[www.americanbar.org](http://www.americanbar.org). These resources supply quality guidance for Outside Counsel in taking reasonable steps to meet your responsibilities in securing FDIC information. All of your firm’s employees should be familiar and conversant with 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 Outside Counsel Possessing Company](#)

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[Confidential Information](#) (the 2017 Model Controls). While the Legal Division has not adopted or sanctioned the 2017 Model Controls, Outside Counsel may find them helpful in updating your firms' Security Plans, practices and procedures.

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## Chapter 4: Legal Services Agreement

### 4.1 Application

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

Application procedures are set forth in the brochure titled [Information for Prospective Outside Counsel](#).

The information and disclosures requested, some of which are statutorily mandated, are needed for the Legal Division to determine whether the FDIC can retain your services. The Legal Division considers rates, abilities, areas of expertise, conflicts of interest, need for additional Outside Counsel in a particular geographic area, and other factors when determining whether to negotiate a Legal Services Agreement (LSA) with a firm. Your firm must propose a **single** [Rate Schedule](#) identifying every employee of the firm that may provide billable services. Your firm must also provide a Substitute Form W-9 Request for Taxpayer Identification Number and Certification for the primary office and a separate Payee Information for Automatic Deposit of Payment Form for each office from where an employee will be providing billable services. Included in the application package are the FDIC standard [LSA Forms](#). All relevant fields must be completely filled out and returned with your application to the FDIC Legal Division, Attn: Legal Services & Special Contracts Group, 3501 Fairfax Drive, Room E-6097, Arlington, VA 22226. For questions, please call (877) 275-3342 and ask to speak with the Legal Division's "outside counsel group."

**NOTE:** All rates must be in whole dollar amounts (e.g. \$250.00 per hour), and a timekeeper ID must be provided for each billing professional.

### 4.2 Purpose of LSA

The LSA is an agreement between you and the FDIC that contains terms and conditions applicable to referrals of FDIC legal matters and is incorporated into all referral letters. The **Outside Counsel Deskbook**, as it may be amended from time to time, is expressly incorporated into the LSA and the referral letter.

**NOTE:** FDIC's execution of an LSA with your firm is not a guarantee that you will receive legal referrals from the FDIC.

You are hereby notified that the FDIC does not treat the standard LSA and rate schedule forms as confidential under any exemption from the [Freedom of Information Act \("FOIA"\)](#). FDIC generally treats outside counsel rates charged to the FDIC as public information releasable pursuant to the FOIA.

### 4.3 LSA Duration

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

If at the end of the term you are working on a legal referral and do not renew your LSA, your LSA will continue, in the sole discretion of the FDIC, for the sole purpose of completing existing work under the same terms and conditions. If you continue to represent the FDIC in any matter after the expiration of your LSA that representation will continue until the earliest of:

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

Continuation of your LSA is not the same as renewal of your LSA; continuation does not permit you to receive any new referrals. Continuation may require you to submit additional documentation.

If your LSA is not renewed or continued, you must make provision for transfer of all outstanding legal matters to the FDIC Legal Division or its designated substitute Outside Counsel prior to the expiration of your LSA's term.

### 4.4 LSA Renewal

When your LSA is within **90 days** of expiration, you **must** contact the Legal Division's Legal Services & Special Contracts Group ("LSSCG") if you wish to renew your LSA. LSA renewal is necessary to receive new referrals. The FDIC will review and contact your firm's representative regarding any renewal requests with rate increase markups for any billing professional. That process may result in a delayed decision on your firm's renewal. The FDIC has a limited need for Outside Counsel and does not guarantee that it will agree to the renewal of your LSA, even if you are working on one or more legal referrals at its expiration. If you do not wish to renew your LSA, you must notify the LSSCG of that fact,

**NOTE:** If your LSA is not timely renewed, you will be removed from any database of Outside Counsel which the FDIC Legal Division may use to assist in the selection of outside counsel for legal matters.

so that decisions regarding disposition of any outstanding legal matters can be made and implemented before your LSA expires.

### LSA Amendment

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

- Structural changes in your firm; and
- Addition or removal of billable individuals.

In addition, payment of your invoices may be delayed if any needed information is not up-to-date, including your Federal Tax Identification Number. If you are unsure whether you need to amend your LSA, contact the LSSCG immediately.

### Structural Changes

You may need to amend your current LSA or execute a new LSA when a structural change occurs in your firm. Structural changes may impact your relationship with the FDIC in areas such as conflicts of interest or malpractice insurance coverage. In addition, these changes may also impact the FDIC's invoice payment process. Examples of law firm structural changes requiring LSA amendment include, without limitation:

- Firm dissolution;
- Merger or other ownership changes;
- Change of firm ownership type, such as converting an LLP or becoming a partnership or professional corporation;
- Law firm name change\*; or
- Change of address or addition of a new branch office.

After reviewing information that you submit concerning any structural change, the FDIC Legal Division will determine what action is appropriate and notify you.

**NOTE:** If your firm has multiple offices, identify the branch office(s) in which any structural change occurred by entering the city and state in which the office is located on the [Payee Information for Automatic Deposit of Payment Form](#).

**\*NOTE:** A law firm name change alone, without any other changes to the structure of the firm, may only require an amendment to your LSA. You should submit an LSA Amendment Form and a new Substitute Form W9 under the new firm name using the current TIN as supporting documentation. If the new law firm name includes other structural changes to the firm, the FDIC will review submitted information to determine what action is appropriate.

### New Federal Tax Identification Number (“TIN”)

A new federal TIN requires execution of a new LSA.

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

### Adding and Removing Billable Individuals

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

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

- Each case matter number for which such attorney is responsible; and
- New proposed law firm contact attorney for each matter.

### 4.5 Completion of LSA Amendment Form

When completing an [LSA Amendment form](#):

9.1 Make changes, as appropriate, to the law firm name, address, telephone number, fax number, e-mail address, and contact attorney.

10.1 For each billable individual, listed alphabetically, type A to add or D to delete and provide the following information:

- Biller’s Full Name;
- Biller's Timekeeper ID;
- State License, if applicable;
- Position; and
- Years in Practice.

11.1 Complete the gender field, and if indicated, the minority status.

12.1 Enter the standard rate, percent of discount, and the resulting proposed FDIC rate in whole dollar amounts.

13.1 Sign and date the completed LSA Amendment form.

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**NOTE:** Billing rates must be denominated in whole dollar amounts, *e.g.* \$250.00 per hour, not \$249.50.

14.1 Mail a copy of the original Amendment form to all current Oversight Attorneys.

15.1 Mail the original form to the FDIC Legal Division at:

FDIC Legal Division  
Attn: Legal Services & Special Contracts  
3501 Fairfax Dr., Room E-6097  
Arlington, VA 22226

16.1 The LSSCG will notify you if your request to amend your LSA is approved. You will receive an electronic copy of the fully-executed LSA Amendment. If your request to amend your LSA is not approved, the LSSCG will notify you in writing. You may not bill the FDIC for the services of any individuals who have not been included on the FDIC- approved rate schedule.

17.1 After approval of any changes, the updated information will be entered into the electronic systems of the FDIC and its contractors. Once this approval is complete, only then may you submit invoices under the amendment.

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## Chapter 5: Legal Referral

### 5.1 Legal Referral

When the Legal Division retains your firm to provide legal services for a particular case or matter, a legal referral will be made to you. A legal referral generally covers only one matter, but it may encompass one or more “legal matters.” For example, a legal referral may encompass litigation of a particular case, assistance with a subsequent appeal, and/or a related bankruptcy case. Note that some sections of the FDIC Legal Division within their discretion may send out invitations to multiple law firms to submit written proposals on a matter prior to initiating a legal referral. As stated in [Chapter 4](#), **FDIC’s execution of an LSA with your firm does not constitute a legal referral and is not a guarantee that you will receive legal referrals from the FDIC.**

The FDIC Legal Division reserves the right to terminate a legal referral or legal matter for any or no stated reason. Refer to [Chapter 1, Section 1.12](#). You may not subcontract any legal work referred to you without the prior written authorization of your Oversight Attorney.

### 5.2 Referral Letter

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

<p><b>NOTE:</b> If an attorney who is primarily responsible for any legal matter is to be removed At the time the legal referral is made, you must confirm in writing to the Oversight Attorney that no material changes have occurred that affect the representations and conflicts certifications contained in the application package that your firm submitted to the FDIC Legal Division.</p>
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### 5.3 Byrd Amendment – Legal Referrals Over \$100,000

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

### 5.4 Legal Division Participation

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

### 5.5 Selection of Outside Counsel

The FDIC 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.

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- 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, in the sole discretion of the FDIC Legal Division, current FDIC payments to the firm are already substantial or excessive.
- Whether provision of legal services by Outside Counsel would constitute or give rise to an actual or potential conflict of interest or the appearance of a conflict of interest. Refer to [Chapter 2](#).
- Whether the firm has a reputation for competence, integrity, cost effectiveness and cooperation.

Whenever possible, the FDIC Legal Division considers a diverse list of law firms (**including minority- and women-owned law firms**) in selecting Outside Counsel for a legal referral. The FDIC also encourages co-counseling arrangements between majority and minority- and women-owned law firms. If you have questions regarding co-counseling arrangements, please contact the [Legal Services & Special Contracts Group](#) (“LSSCG”).

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### Chapter 6: Case Management

#### 6.1 General Case Management

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

The FDIC will not pay for costs associated with:

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

You are required to discuss staffing with your Oversight Attorney and assign no more nor fewer attorneys or paraprofessionals than are necessary to adequately represent the FDIC. You must refrain from rotating assignments away from attorneys knowledgeable about FDIC matters or using FDIC projects for the purpose of training firm personnel.

Cost-effective representation on every matter requires that you:

- Consult with your Oversight Attorney on strategic, tactical, or cost-related decisions on a matter, including pre-filing review of pleadings by your Oversight Attorney.
- Conduct an early case assessment (ECA) with the Oversight Attorney and the FDIC's E-Discovery Group (the E-Disc) to identify sources of information and likely custodians, scope costs and create a discovery plan.
- Have a clear understanding of your role and the role of your Oversight Attorney.
- Insist that your Oversight Attorney define the goals and objectives to be achieved.
- Send your Oversight Attorney copies of all correspondence, pleadings and other filings promptly upon receipt unless instructed otherwise.
- Make effective use of Legal Division resources, including its attorneys and the FDIC Legal Research Bank described in Section 6.4, to the greatest extent possible.
- Develop a case plan and budget that will achieve the FDIC's goals and objectives, and obtain the written approval of the Legal Division for it, as well as for any needed increase in the total budget amount.
- Promptly advise your Oversight Attorney of all significant developments.

#### Reports

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

Reports should:

- Be brief but meaningful;
- Emphasize developments since the last report;
- Review whether the case is proceeding in line with the case plan and budget; and, if

not

- Explain why actual costs differ from projected or budgeted amounts.

### 6.2 Special Issues

Certain legal issues are of special interest to the FDIC, either because they are peculiarly related to FDIC activities and rights, or because of the need for a uniform, nationwide approach, or otherwise in the sole discretion of the FDIC Legal Division. These “special issues” include such matters as interpretation of the [Federal Deposit Insurance Act](#), certain aspects of the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#), or other federal statutes, as well as matters involving the status of the FDIC in its conservatorship, receivership, or corporate capacities.

Outside Counsel representing the FDIC, FDIC asset servicers, or other FDIC-related interests are required to be alert to these issues in matters referred for representation. You must contact the FDIC Oversight Attorney before undertaking any research or drafting with respect to these issues. Relevant research or statements of agency policy concerning “special issues” will frequently be provided to you and, in many cases, the Legal Division may wish to handle portions of a matter that involve special issues directly, or in cooperation with your firm.

### Special Issues List

FDIC Special Issues include, without limitation:

- Actions involving the Federal Deposit Insurance Corporation and another state or federal financial institution regulator or federal agency.
- Agency status of FDIC, RTC, OTS, FHLBB, or any predecessor agency.
- Comparative Fault/Contributory Negligence.
- Conflicts between insolvent institutions, including but not limited to conservatorships, receiverships, and bridge banks.
- Constitutional challenges to statutes and to actions taken by FDIC officials that affect the FDIC.
- [Crime Control Act of 1990 \(“CCA”\)](#) Pub.L.No. 101-647, 104 Stat. 4789.
- Department-of-Justice-initiated subpoenas (Grand Jury or Trial) and requests for information.
- [Deposit Insurance Funds Act of 1996, part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996](#).
- [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 \(“Dodd-Frank”\)](#).
- Employee benefit and [ERISA](#) litigation; employee lawsuits involving any agency personnel, whether as named parties, deponents, or witnesses. Environmental issues including, but not limited to: [CERCLA \(Superfund\)](#), [RCRA](#), Underground Storage Tanks, asbestos, lead-based paints, wetlands, endangered species, or the [National Environmental Policy Act](#).
- [Federal Deposit Insurance Corporation Improvement Act of 1991 \(“FDICIA”\)](#).
- [Financial Institutions Reform, Recovery, and Enforcement Act of 1989 \(“FIRREA”\)](#).
- [Freedom of Information Act \(“FOIA”\)](#).
- [Gramm-Leach-Bliley Act \(“GLBA”\)](#).

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- Indemnification of employees, officers or directors of failed institutions.
- Interpretation of FDIC statutes, regulations, or policy statements.
- Involuntary Sale of FDIC Property or [12 U.S.C. 1825\(b\)](#).
- Judicial Restraints of Receivers' Powers or [12 U.S.C. 1821\(j\)](#).
- National depositor preference and/or prudential mootness.
- [Privacy Act of 1974](#) or the [Right to Financial Privacy Act](#).
- Pro-rata vs. pro tanto settlement barrule.
- Publicity: any case likely to generate publicity.
- Punitive damages.
- Qualified Financial Contracts, including derivatives, repurchase agreements, and swaps.
- [Racketeer Influenced and Corrupt Organizations Act \("RICO"\)](#).
- Repudiation of contracts or [12 U.S.C. 1821\(e\)](#).
- Securities acts: [Securities Act of 1933](#) or [Securities Exchange Act of 1934](#).
- Standard of Liability of Directors and Officers or [12 U.S.C. 1821\(k\)](#).
- Tax matters – state or Federal or Bank Holding Companies.
- Third party hosting costs, scanning, the use of analytics and managed review firms, and related discovery expenses should be decisions made in consultation with the Oversight Attorney (who can then consult with the LSG).
- Tort Claims ([Federal Tort Claims Act](#)).
- Unrecorded Agreements, [D'Oench, Duhme, 12 U.S.C. 1823\(e\)](#) or [1821 \(d\)\(9\)\(A\)](#).

You should maintain diligent communication with your Oversight Attorney in order to identify Special Issues that may not be listed above.

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

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

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

### **6.3 Outside Counsel Must Have Advanced Knowledge of Electronic Discovery**

The Legal Division recognizes that quality legal representation from our Outside Counsel can only be achieved with an advanced understanding of electronic discovery, including trends in the case law, processes and procedures for all phases of the Electronic Discovery Reference Model, and knowledge of and experience with sophisticated e- discovery tools. Such

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knowledge and understanding by Outside Counsel is essential to the successful and cost-effective resolution of FDIC legal matters. Outside counsel must be adept at evaluating e-discovery issues at the outset of a matter and develop a case specific, cost-effective, strategy to address those issues. This expertise is critical for the FDIC to more effectively and efficiently comply with their discovery obligations, including making and responding to requests for electronically stored information (“ESI”) in lawsuits, regulatory matters, and internal investigations/audits. Prior to being retained by the FDIC, Outside Counsel must demonstrate it has the requisite experience and competence.

### **The Legal Division’s E-Discovery Group**

The E-Discovery Group (the E-Disc) is available to provide the Legal Division (as well as others Divisions within the FDIC) and Outside Counsel with advice, solutions and support on e-discovery issues. The E-Disc must be consulted in preparing an early case assessment in each matter. The E-Disc’s attorneys and e-discovery specialists are trained specifically to advise and assist attorneys, paralegals, and other responsible parties in managing their e-discovery obligations from early case assessment to trial presentation.

The E-Disc should be consulted as early as possible in any major investigation, litigation or third party matters involving significant e-discovery issues. Outside Counsel should obtain approval from the Oversight Attorney before contacting anyone in the E-Disc.

### **E-Discovery Policies, Processes and Technologies**

The Legal Division and E-Disc have developed and established a coordinated and interrelated set of policies, processes, and technologies that support FDIC- wide legal e-discovery obligations and related corporate records and information management functions. Please address all questions concerning these policies and processes, including the Discovery Response Plan Guidelines and information on Legal Holds, to [ALIS@fdic.gov](mailto:ALIS@fdic.gov).

### **6.4 FDIC Legal Research Bank**

To avoid duplication of legal research and to obtain the benefits of previous legal research, the Legal Division established the FDIC Outside Counsel Legal Research Bank (“OCLRB”), designed to centralize substantive briefs, unpublished opinions, and other legal research materials that may be utilized in FDIC matters.

The OCLRB is intended to assist you in representing the FDIC by making legal research materials readily available to you and thereby to reduce the FDIC's legal research costs. Documents in the OCLRB are available in private FDIC content areas on Westlaw. Law firms with current LSA’s are eligible to open an account for on-line research in OCLRB content area.

You are required to minimize legal research costs on FDIC matters. Thus, you **must** refer to the OCLRB at the beginning of every authorized legal research project by researching in it directly or indirectly through your Oversight Attorney. Failure to consult it may result in disallowance of associated charges for unnecessary legal research. See, [Section 8.3 Billable Fees and Expenses](#).

You are required to promptly submit your final, substantive FDIC legal work product (e.g., briefs, legal research memoranda, as well as significant court opinions in FDIC cases)

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directly to the OCLRB staff at the email address indicated below for inclusion in the OCLRB.

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

**Inquiries about and work product for the Outside Counsel Legal Research Bank should be directed to the Outside Counsel Legal Research Bank staff at (877) 275-3342 or [LegalResearchBankDC@fdic.gov](mailto:LegalResearchBankDC@fdic.gov).**

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

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

When contemplating the use of ADR, contact the Oversight Attorney to request a consultation with the FDIC's ADR Counsel. The ADR Counsel can advise you on ADR options that may be appropriate for your situation and factors to consider when hiring a neutral. Before entering into an agreement with a third-party neutral, you must share the proposed agreement with the Oversight Attorney who reviews it with the ADR Counsel. The review ensures consistency across all FDIC ADR agreements.

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

### Claims between FDIC-controlled institutions

Claims between FDIC-controlled institutions (including receiverships, conservatorships, acquired or assisted institutions, asset servicers, and bridge banks) must immediately be brought to the attention of your Oversight Attorney. These claims **must** be resolved through the use of the FDIC's internal ADR program unless otherwise directed by your Oversight Attorney. Costs and fees incurred in the litigation of such claims without prior Oversight Attorney approval may be disallowed.

### 6.6 FDIC as a Litigant

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

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

The FDIC Legal Division discourages burdensome motion practice unless there is a clear strategic advantage to be gained. Where appropriate, however, motions to dismiss, for judgment on the pleadings, or for summary judgment should be employed to resolve or refine as many of the issues in dispute as possible at an early stage of the proceedings.

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

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

### **Discovery Requests - FDIC, Other Federal or State Agencies**

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

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

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

### **Filing Fees**

In the United States District Courts and Courts of Appeals, the FDIC is not required to pay filing fees or post any bond to pursue an appeal. See [12 U.S.C. 1819\(b\)\(4\)](#). Unless otherwise stated in the LSA or referral letter, Outside Counsel is expected to advance filing fees and deposits required by other courts and bill same to FDIC as provided in [Chapter 8](#). If the amount required exceeds \$500.00, you should consult your Oversight Attorney for instructions unless you cannot reach him/her or a supervisor and are faced with exigent circumstances.

### **Experts and Other Professional Service Providers**

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

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

If a professional service provider that is required to be retained is a law firm, that firm can either be an FDIC LSA approved firm (preferable) or a non-LSA law firm. The compensation you pay the LSA approved law firm that is retained cannot be greater than that firm's FDIC-approved LSA rates. If a non-LSA law firm is retained to act as counsel for the particular matter, then the non-LSA firm's rates must be agreed upon by the Oversight Attorney for the particular matter and the main LSA law firm requesting the subcontracting arrangement.

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

### **Settlements**

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

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

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

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

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

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

Attach to any settlement offer a written description of any material changes that relate to acceptance of the offer (e.g., a change in your estimate of success or timing). When there

are no such changes since your last status report, say so.

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

### **Appeals**

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

### **6.7 Criminal Referrals**

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

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

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## Chapter 7: Case Plan & Budget

### 7.1 Budget Package

When you receive a referral from the FDIC on a legal matter, you must prepare a plan (the “Case Plan”) to explain how you anticipate accomplishing the work for which you have been retained, along with a case/matter budget (the “Budget”) showing the anticipated cost to FDIC of such legal representation, including professional fees and all anticipated expenses.

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

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

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

If you need to later amend your approved Budget, you must submit an [Amended Budget Package](#) (see [Section 7.6](#)). If you have questions or need clarification on in the submission of your Budget Package, check with your assigned Oversight Attorney.

### 7.2 Case Plan

You and the Oversight Attorney must agree upon a Case Plan that sets forth the major steps you will take to accomplish asset recovery, or successful defense or prosecution of the assigned legal matter. For litigation matters, the Case Plan outlines the anticipated course of action based on the assumption that the case will go to trial. It also proposes a plan for settlement, unless settlement is clearly inappropriate. Each Case Plan should contemplate and include likely and foreseeable e-discovery costs.

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

### 7.3 Budget

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

- Conform to the Case Plan; and

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- Estimate the total cost of fees and all anticipated expenses.

### 7.4 Budget Forms

There are two types of budgets, as follows:

- Litigation
- Non-Litigation

Outside Counsel subscribed to the FDIC's third-party billing service providers may be required to use an alternative method to submit their budget packages.

**NOTE:** Make sure the Budget conforms to the Case Plan for the legal matter. Your oversight attorney may require you to submit budget forms on an approved FDIC form. If so, instructions will accompany the form.

### 7.5 Completing the Budget Form

The following are the instructions for completing a Budget form.

- Select the Budget form appropriate for your legal matter.
- Fill out all requested information on the Budget form.
- In particular, indicate in the appropriate box whether you are billing at the hourly rates specified in your LSA Rate Schedule, or if the FDIC has approved any type of Alternative Fee Arrangement, such as fixed fee, capped fee or other payment arrangement.
- Refer to the following table to determine information required for the type of billing you entered.

Rate	Information Required
Hourly	<ul style="list-style-type: none"><li>• Complete the budget sections in which legal fees and expenses are expected</li></ul>
Fixed Fee (very rare and only with FDIC authorization)	<ul style="list-style-type: none"><li>• Record the fixed fee as a total without further itemization.</li><li>• Submit the estimated completion date and allowable related expenses</li></ul>

**NOTE:** Any payment arrangement other than the hourly billing rates specified in your LSA Rate Schedule must be approved in writing by the FDIC prior to your provision of any legal services. If you have an approved Alternative Fee Arrangement, contact your Oversight Attorney for any necessary special instructions on Budget Form preparation.

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

### 7.6 Budget Package Submission

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

- Submit the Budget Package (completed Case Plan and Budget Form) as instructed in your referral letter.

**NOTE: If the Budget amount is in excess of \$100,000, ensure that you are in compliance with the [Byrd Amendment](#) by submitting the [Byrd Amendment Certification](#) or [Disclosure form](#) with your Budget Package.**

- Your Oversight Attorney reviews the Budget. If it is satisfactory, your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
- You will be notified when the Budget is approved.
- If the Budget that you submit is apparently excessive for the scope of the referral, the Legal Division may request that you provide additional information to justify the requested Budget amount or that you make changes to and re-submit the Budget. In rare instances, the legal referral may be withdrawn or transferred if you are unable to submit a Budget acceptable to the Legal Division.

### 7.7 Amended Budget Package

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

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

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

An Amended Budget Package contains:

- Amended Case Plan, or explanatory narrative.

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

- [Amended Budget form](#).

### Completing the Amended Budget Package

Following are the instructions for completing an amended Budget Package using approved forms.

- Prepare a separate narrative explaining the reasons for the amendment.
- If necessary, prepare an amended Case Plan that provides detail commensurate with the significance of the legal matter. For Litigation and Professional Liability matters, the amended Case Plan should summarize the revised strategy and circumstances giving rise to the amendment and project the schedule for preparing and trying the case under those circumstances, including all expected litigation events. Contact your Oversight Attorney if there is any doubt about whether an amended Case Plan is needed.
- Fill out all requested information on the Amended Budget form, in a manner similar to that employed in completing the original Budget form.
- Mark the appropriate box if you have submitted a previous amended budget.
- Use the most recent approved figures in the column for “Current Budget.”
- Sign and date the Amended Budget.

Outside Counsel subscribed to the FDIC’s third-party billing service providers may be required to use an alternative method to submit their budget packages.

### 7.8 Amended Budget Package Submission

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

- Submit the Amended Budget Package in the same manner as your original Budget Package, as instructed in your referral letter. The Amended Budget Package consists of the Amended Case Plan (or explanatory narrative) and the Amended Budget (Form). Also include the [Byrd Amendment Certification](#) or [Disclosure form](#) if fees and expenses now exceed \$100,000.
- Your Oversight Attorney reviews the Amended Budget Package. If it is satisfactory, your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
- The Legal Division will notify you when the Amended Budget Package is approved.
- As with the original Budget Package, you may be asked for supplements or changes before the Amended Budget Package is approved. **Do not perform any work not authorized by the original Budget Package until the Amended Budget Package is approved.**

### 7.9 Alternative Fee Arrangements

The FDIC will consider employing Alternative Fee Arrangements for particular matters or groups of matters only when such arrangements are expected to provide significant cost savings that justify a departure from the rates negotiated in the LSA, and when it is not practical to amend the LSA Rate Schedule. In appropriate cases, such arrangements may include fixed fees for a matter or class of matters (e.g., foreclosures), discounts to the LSA

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rate for a particular matter, capped total amounts, or “blended rates” where the firm and the FDIC agree that all attorneys assigned to the matter will bill at a single rate. Any Alternative Fee Arrangement must be documented in an agreement signed by the appropriate representative of the law firm and an FDIC official with authority to enter into and modify an LSA. The agreement should specify the service providers and billing rates included in the Alternative Fee Arrangement (for matters that will be billed at hourly rates) or the negotiated fee for matters that will be billed at non-hourly rates (e.g., foreclosures; unlawful detainers, requests for legal opinion). The agreement memorializing the Alternative Fee Arrangement must be made a part of the referral letter for the assigned legal matter.

No Alternative Fee Arrangement shall be effective, and no invoices shall be submitted under such an Arrangement, until the referral letter with the attached Alternative Fee Arrangement signed by both parties is received and confirmed in writing by the Legal Division’s Legal Information Technology Unit (“LITU”) at FDIC Headquarters or the equivalent group in a regional, field, or satellite office. LITU can be reached by contacting your Oversight Attorney.

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## Chapter 8: Invoice Preparation & Submission

### 8.1 Overview for all Outside Counsel

This chapter covers the procedures for preparing and submitting an invoice to the FDIC. The FDIC uses a third-party service provider to provide electronic billing services.

Outside Counsel is encouraged to sign-up with the designated third-party vendor in order to fully utilize the FDIC's Advanced Legal Information System (ALIS). This includes the electronic submission of case budgets and monthly invoices through the third-party vendor's secure collaborative portal. See § 8.11 below for more information on electronic billing.

Outside Counsel may also submit monthly paper invoices if they choose not to use the electronic billing services, the cost of which is not a reimbursable expense. Paper invoices must be submitted according to the provisions of §8.12. **All Outside Counsel firms that use paper billing must change over to the FDIC's electronic billing service provider once they have invoiced an aggregate \$100,000 in fees and expenses during a two-year LSA period.**

NOTE: Outside Counsel **must bill on a monthly basis (e.g. May 1 through May 31)** and may not bill the FDIC more than once per month. Outside Counsel also may not bill for overlapping service periods (e.g., May 1 through May 31 and then May 15 through June 15).

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

**ABSENT EXTRAORDINARY CIRCUMSTANCES, THE FDIC IN ITS SOLE DISCRETION WILL NOT PAY INVOICES SUBMITTED OVER ONE YEAR FROM THE DATE UPON WHICH THE LAST SERVICES WERE RENDERED.**

As discussed in [Chapter 7, Case Plan and Budget](#), you must have an approved Budget from the FDIC Legal Division before you can be paid. An approved Budget authorizes you to begin submitting invoices for your services.

At the conclusion or termination of the matter, you should prepare the final invoice for fees and expenses for submission within 90 days of the matter's conclusion or termination. Refer to [Chapter 9](#) and [Chapter 10](#).

### 8.2 Fees

#### Block Billing of Services

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

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### Description of Fees

The description of the service provided should be brief and informative, as in the following examples.

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

### Rates

Timekeeper rates must be billed in whole dollars, excluding cents, e.g. 200.00 and not 200.25.

### Time Increments

Billing in increments other than 0.1 billing hour (6 minutes) is unacceptable, e.g. billing in increments of .15 or .25 hours is not acceptable. Experts or other subcontractors of your firm must also bill time only in 6-minute increments, unless an exception is pre-approved.

### Expenses

Supply the following information for expenses:

- Paper copy charges (unit cost multiplied by unit amount) up to \$.20 per page.
- International FAX charges (date, phone number, and amount); telephone long distance charge (line charge) is the only acceptable charge.
- International long distance telephone charges (date, phone number, and amount).
- Domestic long distance conference call charges (length of call, names of participants, amount billed to your firm by conference provider).
- Overnight delivery (date, amount, name of vendor and name of recipient).
- Electronic research, including the FDIC Legal Research Bank, (date, amount, name of the service provider and name of person performing research).
- Extraordinary postage (e.g., bulk or certified mail) (date and amount).

**NOTE:** Domestic long distance charges within the United States for land lines or cell phones are considered overhead to your firm and should not be billed.

Claims for travel-related expenses must be made using the [FDIC's Law Firm Travel Voucher](#) (see also the [sample travel voucher](#)).

### 8.3 Billable Fees and Expenses

You may bill the FDIC reasonable charges for fees and expenses in accordance with the following guidelines. These guidelines may be varied by the terms of any alternative fee arrangements agreed upon in your referral letter.

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### Fees

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

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

**NOTE:** The FDIC requires law firms to reduce the hourly rate charged by 50% while an attorney is traveling unless legal work is being performed for the FDIC. The FDIC does not pay for First or Business Class fares or luxury hotel accommodations. The FDIC will pay only for air travel coach rates, and accommodations at the lower of the government or corporate discount rates. Travel-related expenses must be incurred in a prudent manner and in accordance with the guidelines set forth in the **Outside Counsel Deskbook**. Outside Counsel is required to keep on file all original Receipts and other supporting documentation for any and all expenses billed to the FDIC.

Compensation cannot be based upon a contingent fee or other Alternative Billing Arrangement unless specifically approved in writing. Refer to [Section 7.9, Alternative Fee Arrangements](#). Absent express FDIC Legal Division permission, experts and other professional service providers may only be compensated for fees and expenses in accordance with the requirements of this **Outside Counsel Deskbook**.

### Expenses for Experts and Other Professionals

From time to time, it may be necessary for Outside Counsel to engage the services of other professionals, for example, experts, local counsel, consultants, etc. Absent express FDIC Legal Division permission, experts and other professional service providers may only be compensated for fees and expenses in accordance with the requirements of this **Outside Counsel Deskbook**. The FDIC Legal Division considers your oversight of experts and other professional service providers an important duty under your legal referral. Outside Counsel should document in writing with subcontracted professionals that they will comply with the billing and expense requirements in the Deskbook. Outside Counsel is required to keep on file all subcontractor invoices and original receipts for expenses submitted by subcontractors for review in the event the FDIC performs an audit of the matter, or if otherwise requested at any time by the FDIC Legal Division. ANY EXCEPTIONS OR QUESTIONS ABOUT INVOICING, FEES, AND EXPENSE REQUIREMENTS FOR SUBCONTRACTED PROFESSIONALS SHOULD BE RESOLVED AND DOCUMENTED BETWEEN OUTSIDE COUNSEL AND THE FDIC BEFORE EXPENSES ARE INCURRED.

### Expenses

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

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expenses for audit purposes or if otherwise requested at any time by the FDIC Legal Division.

- Itemized in-house paper copy charges (no more than \$.20 per page, subject to [current published FDIC rate schedule](#) (FOIA))
- Itemized international FAX charges (international long distance charge (line charge) is the only acceptable charge).
- Itemized international long distance telephone charges.
- Itemized domestic or international long distance **conference** call charges.
- Itemized overnight delivery. Itemization should include name of person to whom the delivery was sent and the name and type of delivery service used.
- Itemized electronic research, including the FDIC Legal Research Bank on Westlaw. Itemization should include person's name who is performing the research, name of the service provider, and brief description of the research. Consult the FDIC Legal Research Bank at the commencement of research projects. See [Section 6.4 FDIC Legal Research Bank](#). Prior approval by the Oversight Attorney is required for electronic research.
- Out-of-pocket expenses relating to providing training to FDIC
- Itemized extraordinary postage (e.g., bulk or certified mail).
- Expert witnesses or other professional service providers.
- Sales taxes on items that Outside Counsel pays, such as on lodging or utilities.
- Investigators.
- Court reporters.
- Outside photocopying (requires prior approval from your Oversight Attorney).
- Publication notices.
- Other Subcontractors, if approved. The name of the subcontractor, the name of the person that performed the work, a description of the work performed, the date, and the charge must be noted in the description for that entry on the invoice. The invoice format must be the same as for the Outside Counsel firm, and subcontractors must also bill on a monthly basis.
- Filing Fees. Generally, only for state court matters. Please note that you may not bill for and should not pay for federal district or appellate court fees when filing on behalf of the FDIC. A description of any other filing fees, including the court and type of fee, must be noted in the description for that entry on the invoice.
- Other case-specific (non-overhead) expenses. A description of the expenses must be noted in the description for that entry on the invoice. Approval must be documented in the case file for audit purposes.
- Allowable travel expenses. Refer to [Section 8.7](#) for submission and receipt requirements.

**NOTE:**

- (a) State and local taxes on FDIC allowable expenses will be reimbursed.
- (b) Domestic long distance telephone or FAX charges are considered overhead by the FDIC and will NOT be reimbursed.

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### Non-Billable Fees and Expenses

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

#### Non-Billable Fees

- Services of billable individuals who have not been included on the [FDIC approved Rate Schedule](#) attached to your LSA.
- Excessive number of attorneys performing services in a matter.
- Invoice and/or budget preparation, review, or for corrections to the invoice and/or budget required by the FDIC Oversight Attorney or Financial Specialist.
- Secretarial or clerical overtime that has not been approved by your Oversight Attorney.
- Hourly fees for time spent photocopying, sending facsimiles, etc.
- Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status.
- Excessive time spent in “filer review.”
- Excessive time spent in “review and revision” of documents that you prepare.
- Educational or development costs for you to become generally familiar with statutory and case law affecting the FDIC.
- Charging attorney time for tasks that should be performed efficiently and effectively at a lower expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers.
- Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney.
- Routine budget preparation.
- Charging attorney time for preparing and presenting training to the FDIC.
- Sales taxes that are billed directly to the FDIC.
- Retainer fees.

#### Non-Billable Expenses

- Ordinary postage.
- Charges related to word processing.
- Charges other than “actual time” charges for electronic research (e.g., Westlaw or Lexis). The FDIC Legal Research Bank should be consulted at the commencement of research projects.
- In-house paper photocopying charges at more than \$0.20 per page.
- Clerical time for photocopying, sending facsimiles, filing etc.
- Excessive/unnecessary overnight mail charges.
- **Meals, unless you are on approved travel.** Further information about meal expenses when travelling for the FDIC is set forth below in §§ 8.7 (Travel Reimbursement—Subsistence) and 8.14 (Frequently Asked Questions).
- Daily commuting expenses.
- Sales tax (except for lodging) or surcharges imposed by utilities or phone services.
- Tax on services or costs relating to filing fees in United States District Courts or United States Courts of Appeal, which fees, taxes or costs the FDIC is not required to pay pursuant to [12 U.S.C. 1819\(b\)\(4\)](#).
- Domestic long distance telephone or FAX charges on land lines or cell phones. Cell

phone roaming charges are also NOT billable to the FDIC.

- A service that is customarily included in the normal overhead or administrative expense of running a law firm (e.g., rent, electricity, routine telephone charges, HVAC, bill preparation, or electronic billing registration or membership fees).
- Travel agent fees.
- Routine scanning.

### 8.4 Over Budget Invoices

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

### 8.5 Correcting Invoices

**After** submission but **prior to** payment of an invoice, omissions to an invoice for fees and expenses incurred during a specific billing period may be added to an invoice. You will request the FDIC to reject the submitted invoice. A new complete invoice with the previously omitted fees and expenses for the billing period will then be submitted. The original invoice number will be used in connection to the corrected invoice.

### 8.6 Amending Invoices

**After both** submission **and** payment of an invoice, omissions to an invoice for fees and expenses incurred during a specific billing period may only be included by submitting an amended invoice. The originally-submitted invoice will remain valid and unchanged. A separate amended invoice will serve only to add any omitted fees and expenses. You will submit a separate amended invoice as needed. The invoice will contain the original invoice number for the same billing period followed by the letter “A” to indicate that it is an amended invoice. No fees and/or expenses that have been previously billed or paid are allowed.

**NOTE: Amended invoices are not expected to be used as a standard billing practice but merely a courtesy for inadvertent omission. Every effort is expected to be made to bill all fees and/or expenses on the original invoice. Any submitted amended invoices will be approved or rejected at the discretion of the approving attorney.**

### 8.7 Travel Reimbursement

The following is provided to assist you in complying with requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement regulations. The invoice file that Outside Counsel submits to FDIC for payment will not include receipts, except as indicated below in § 8.12 (Specific Procedures for Submitting Monthly Invoices in Paper Format). Supporting documentation for any authorized meal purchase must, however, always be included. For audit or other purposes, Outside Counsel must prepare an FDIC travel voucher for all travel relating to FDIC matters, and the hard-copy travel voucher, along with original receipts and all other supporting documentation, must be maintained by the firm. Note that this back-

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up documentation may also be requested by the FDIC Legal Division during the pendency of the legal matter. If you receive such a request, you must immediately deliver copies of the requested back-up documentation to the requesting FDIC Legal Division employee. The invoice description must also contain detailed information about your travel expenses. A separate travel voucher must be prepared for each traveler. Your up-front compliance with FDIC travel expense requirements will help ensure more prompt remittances on submitted monthly invoices. The following is a sample Travel Voucher for Outside Counsel: [Sample Travel Voucher](#).

### Eligibility for Reimbursement

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

### Travel Authorization

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

### Air Travel

**Air travel is in coach class only**, unless you bear the cost of the difference between coach and business or first class. Travel should be planned as far in advance as possible to take advantage of discounted fares, especially if reasonable certainty exists that the event will take place. If a restricted fare is booked and you require a change, a reasonable exchange fee may be claimed. Special approval is required for international air travel. Original receipts must be maintained in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC. The invoice description must include the traveler's name, ticket number, class of travel, date of travel, departure and destination(s) and price paid. Travel agent fees will not be reimbursed.

### Rental Cars

Rental cars should only be used if necessary and if cost-effective compared to the other means of transportation during the authorized travel. No car larger than a mid-size should be rented, unless there are three or more passengers or a larger vehicle is necessary to transport equipment, files, etc. Deviations from standard policy should be documented and maintained along with original receipts in Outside Counsel's files. The invoice description must include the traveler's name, name of the rental car company, the rental company's invoice number, the dates of rental, type of car, the number of passengers, miles driven, gas usage, and any other relevant information.. The FDIC will not reimburse you for Personal Accident Insurance ("PAI") or Personal Effects Coverage ("PEC"). The cost of Collision Damage Waiver ("CDW") coverage is allowed if you do not already have insurance coverage for collision damage. Note that most corporate charge cards automatically provide for the CDW.

### Lodging

You should make use of government rates whenever possible. Any hotel expenses

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considered excessive or unreasonable will not be reimbursed. Original receipts must be maintained in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC. The invoice description must include the date, hotel name, type of room, rate charged, and should itemize any other hotel charges that are billed by your firm to the FDIC. Hotel Wi-Fi service costs require advance approval and listing on the travel voucher.

### Subsistence

On overnight travel status you are reimbursed only on a *per diem* basis. The current FDIC prorated *per diem* rates allowable are listed below in ¼ day increments. The current FDIC *per diem* rates are also listed in Section 16.0 of the [Contractor Travel Reimbursement Guidelines](#). Specific *per diem* rates for different localities may be found on the General Services Administration's (GSA) web site [Per Diem Look-up page](#). Where the information contained on the GSA web site and FDIC Guidelines differ, the GSA web site controls. When you are on *per diem*, meals or incidental expenses such as laundry and cleaning are considered to be covered by the *per diem* allowance. Note also that any group meals provided while on *per diem* subsistence must be deducted from the *per diem* allowance of each meal recipient. See § 17.0 of the [Contractor Travel Reimbursement Guidelines](#). Your *per diem* allowance is the standard reimbursement for meals while on FDIC travel, and group meals are only for limited, appropriate occasions in the Legal Division's sole discretion. No group meal will be considered as an expense unless accompanied by the contemporaneous written approval of the Oversight Attorney and the itemized listing of each recipient. See also the FAQ on group meals in § 8.14.

### Per Diem for Overnight Travel

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

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

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

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If you depart from and/or return directly to your residence, per diem is allowed from the time of departure from your residence until the time of return to your residence. If departure is from and/or return is to your office, per diem is allowed from the time of departure from your official station until the time of return to your official station. Outside Counsel must provide start and return times with their supporting travel documentation to and from the time of departure from your official station until the time of return to your official station. Outside Counsel must provide start and return times on the invoice and retain all supporting travel documentation to support the claimed quarter days of per diem for all travelers.

### **Miscellaneous Meal Expense**

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

### **Use of Privately-Owned Vehicle**

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

If you choose to use your vehicle in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or mileage reimbursement and the additional per diem, if any. Appropriate documentation should be maintained in Outside Counsel's files to show the actual cost of coach air travel compared to mileage reimbursement.

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

### **Taxicabs or Rideshare**

The use of taxicabs or rideshare businesses (e.g. Uber or Lyft) is permitted while you are on official travel for the FDIC. Reimbursement for such fares (plus the customary 15% tip) is allowed. The invoice description must include the traveler's name, the name of the taxi service, the to and from location, the date, and the charge. Original receipts must be maintained in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC Legal Division.

Taxi or rideshare hire is appropriate when:

- Public transportation and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances;
- Traveling between transportation terminals and your residence, hotel or office while on official travel status; or for
- Traveling from your residence to your office to depart on assignment requiring at least one night's lodging, and from your office to your residence on the day you return from that trip.

Note that you may not seek reimbursement for taxi or rideshare fares for trips used to obtain meals or for taxi or rideshare "wait fees."

### Non-Reimbursable Travel Expenses

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

- Alcoholic beverages, entertainment;
- Laundry, dry cleaning and pressing (covered by per diem reimbursement);
- Travel insurance;
- Meals, which are covered by *per diem* reimbursement, with a limited exception for group meals purchased by your firm on appropriate occasions. Any group meal your firm intends to submit to the FDIC as an expense must be approved by your Oversight Attorney at or before the time of purchase. Additionally, in order to comply with FDIC Travel Regulations, your firm must deduct all approved meal expenses from the *per diem* claim of each meal recipient. See §§ 8.7 (Subsistence) and 8.14 (FAQ). See also § 17.0 of the [Contractor Travel Reimbursement Guidelines](#) for further information;
- Parking or traffic fines;
- Gratuities or tips paid to service staff inside the lodging facility (covered by per diem reimbursement);
- Cost of travel for spouses, other family members, or friends is not allowable under any circumstances.

Travelers will not be reimbursed 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.

### Firm Travel Voucher Completion

A [Law Firm Travel Voucher](#) must be prepared after completion of travel and maintained along with original receipts in Outside Counsel's files for audit purposes or otherwise upon request by the FDIC. Indicate the purpose of travel on the first line. Dates and times of each departure from residence or office, arrival at the place of temporary assignment, and arrival at the office or residence must be shown on the [Law Firm Travel Voucher](#) (see also the [sample travel voucher](#)).

### Receipts

Except for per diem expenses, you must maintain valid original receipts for all travelers along with the Law Firm Travel Voucher for all travel expenditures regardless of cost. If a receipt is not normally provided for the expense (bus or subway token, etc.) the certification signed by the traveler on the Firm Travel Voucher will justify the expense. The receipts (boarding pass, hotel, parking, etc.) should be taped to a blank piece of paper and attached to the travel voucher.

Receipts attached to the Firm Travel Voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. Altered receipts will not be reimbursed.

### Penalties

**WARNING: The penalty for knowingly submitting falsified travel charges on an invoice**

can be three times the amount of the claim plus a civil money penalty of \$10,000 under the False Claims Act, [31 U.S.C. § 3729](#). Also, false statements may be criminally prosecuted under [18 U.S.C. § 1001](#). The penalty can be up to 5 years in jail. A corporation that violates [18 U.S.C. 1001](#) can be fined up to \$500,000 per occurrence. See [18 U.S.C. § 3571](#).

### 8.8 FDIC Invoice Review

Invoice files should be submitted in a timely manner (refer to [Section 8.1](#)), and as directed in your referral letter or by your Oversight Attorney. Upon receipt, the invoices are forwarded to the Oversight Attorney for review and approval. The Oversight Attorney performs a substantive review of your invoice, makes adjustments if necessary, and approves it for payment or rejects the invoice.

**NOTE: FDIC invoice processing time is a minimum of thirty (30) days after receipt of a valid invoice file. Payment is generally not made in less than thirty (30) days.**

The FDIC makes all payments by Electronic Funds Transfer (AKA “wire transfer”) under [FDIC EFT Guidelines](#) in accordance with the information your firm provides on the [Payee Information for Automatic Deposit of Payment Form](#) that is part of the [Outside Counsel Application package](#).

### 8.9 Reconsideration of Disallowances

You must submit all requests for reconsideration of disallowances by preparing a new invoice file for the amount to be reconsidered. The new invoice file must have the original invoice number followed by the letter “R” along with justification for reconsideration. The new invoice file should be submitted to the Legal Division 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: The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in sanctions. Under no circumstances may Outside Counsel attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment.**

### 8.10 Audit and Records Retention

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

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For purposes of subsequent audits, Outside Counsel must retain the following for at least three years after final payment under the legal referral:

- Copies of all invoice file submissions;
- Original receipts and underlying support documentation not submitted with the Invoice file;
- Subcontractor invoices;
- Original or electronic time sheets and time and expense adjustment records. Example of adjustment records includes documentation explaining differences between time sheet hours and invoices hours for billable individuals; and
- Signed copies of all budget and amended budget forms, as well as signed copies of the Legal Services Agreement (LSA) and the LSA Amendments form.

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

### 8.11 Specific Procedures for Submitting Monthly Invoices Electronically

This option is available only to Outside Counsel subscribed with the FDIC's third-party electronic billing services provider. For Outside Counsel interested in signing up for the third-party electronic billing, you may contact the LSSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) to receive further instructions.

For Outside Counsel already subscribed, Wolters Kluwer, our third-party electronic billing services provider has established a web site at <https://www.wkelmsolutions.com/> (website is external to FDIC.gov), which contains the detailed, monthly invoice instructions. Outside Counsel may also contact Wolters Kluwer/ELM Solutions at <https://www.wkelmsolutions.com/services/support-services> or via telephone at 1 (800) 770-5121 (Toll-free) or 1 (832) 369 6000.

### 8.12 Specific Procedures for Submitting Monthly Invoices in Paper Format

For Outside Counsel not subscribed to the third-party electronic billing services provider that will send in paper invoices, you must follow the guidelines below:

- [Legal Invoice for Fees and Expenses \(LIF&E\) form](#) should be completed and signed and placed on top of the invoice;
- The invoice needs to be on the firm's letterhead, in proper format, and dated. Task-based billing is not acceptable;
- Fees must be in chronological order;
- Fees must have the name of the Timekeeper;
- Fees must have the Timekeeper ID;
- Include a Timekeeper Summary;
- Include Expenses (if there are any);
- Receipts for expenses should be attached; and
- The invoice and all supporting documentation (receipts) need to be submitted in original form and forwarded through the U.S. Mail to the attention of:

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[Name of Financial Specialist assigned to matter]  
 Legal Information Technology Unit  
 Federal Deposit Insurance Corporation  
 3501 Fairfax Drive  
 Arlington, VA 22226

NOTE: Each firm must use the FDIC's electronic billing service provider once the firm has submitted invoices totaling \$100,000 during the two-year LSA period. Once the \$100,000 ceiling has been reached, all further invoices will only be accepted by the FDIC if they are submitted via electronic billing. See § 8.11 above for information on the electronic billing services provider.

### 8.13 Law Firm Paper Invoice Format

Law firm invoice format requirements are discussed below. Timekeeper and Timekeeper ID's are both required for all Fee line items and for the Timekeeper Summary.

#### *Fees*

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

Date of Service	Time Keeper	Service/Activity Description	Time Charged	Approved Hourly Rate	Amount (Rate x Time)
8/11/20	JFG	Draft Motion to Dismiss Complaint	5.00 Hrs.	\$360.00	\$1800.00

#### *Timekeeper Summary*

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

Service By	Title	Time Keeper IDs	Hours	Hourly Rate	Total
John Brown	Partner	JFB	16.10	\$600.00	\$9,660.0
Jane Green	Associate	JGG	31.50	\$360.00	\$11,340.0
Brian White	Paralegal	BDW	10.00	\$180.00	\$1,800.0

#### *Example of Itemized Expenses*

Date	Expense	Amount
2/28/2020	Photocopy - 46 pages at \$.20	\$9.20
2/2/2020	Conference call - 617-262-8119	\$28.80
2/19/2020	Overnight Delivery – FedEx to JGG	\$31.75
2/27/2020	Electronic Research - Westlaw, consulted with the FDIC Legal Research Bank, by Brian White	\$254.00
2/5/2020	Extraordinary Postage - Certified	\$12.75
02/01/20 - 02/28/20	Jack DaMony- Expert Witness	\$8,500.00
2/28/2020	Acme Reporting, deposition of J. Brilliant, FDIC bank examiner	\$925.00
2/28/2020	Panic Copying, submission of Reply brief	\$120.00
02/05/20 - 02/06/20	Travel for JFB, 2/5 - 2/6, Washington DC to Settlement Conference in Boston, MA	\$1280.50

### 8.14 Frequently Asked Questions

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

No, any expert or other entity hired or retained by your firm is your subcontractor and should address all payment questions to you. Their invoices are included as expenses in your invoice to the FDIC. The FDIC will not pay them directly. Outside Counsel must maintain subcontractor invoices, receipts, and proof of payment in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC.

#### **When should I submit an invoice?**

On a monthly basis, if the total equals \$500.00 or more. If your total is less than \$500.00, submit your invoice quarterly, unless this causes undue hardship (January-March; April-June; July-September; October-December).

#### **May I bill for clerical or secretarial overtime?**

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

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

No.

#### **What common mistakes should I avoid when submitting my invoice?**

Make sure you use a different invoice number for each invoice you submit unless instructed otherwise.

Always be mindful that you must maintain all original receipts and other supporting documentation in your FDIC files and that it must be made available to the FDIC upon request.

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

Be sure to itemize attorney and non-attorney fees separately.

#### **Our firm charges \$0.25 per page for in-house photocopying. May I bill the FDIC for this amount?**

No, the maximum charge for necessary photocopying is \$0.20 per page.

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

Due to widespread use of cell phones, inexpensive universal business calling plans, and the lower costs for domestic long distance FAX and phone charges, these charges are considered overhead and are not reimbursable by the FDIC. Necessary Conference Calling services and international long distance phone and FAX charges (line charges/actual costs

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only) are reimbursable as expenses on your monthly invoices. You need to include the date, phone number and charge for each call in the invoice description. The bill from the carrier must be retained in your firm's files for three years after final payment.

### **May our firm submit a group meal expense while we are providing services to the FDIC?**

Subsistence allowance (*per diem*) is only available to authorized travelers and is a daily allowed amount claimed on each recipient's travel voucher. Your *per diem* allowance includes the cost of meals. **No meals are billable as an expense by a firm whose members are not in travel status.**

Under some circumstances, such as during depositions, hearings or trials, it may be prudent to have a group meal brought in and to work in place, usually with your FDIC Oversight Attorney. If your firm intends to bill such a group meal to the FDIC, all recipients of the meal must deduct the meal's cost from their daily *per diem* allowance in accord with FDIC travel regulations. The Oversight Attorney must approve the group meal expense AT OR BEFORE THE TIME OF THE MEAL and, if present should sign the bill to indicate authorization. If the Oversight Attorney is not present, your firm must obtain his or her other contemporaneous written approval or pre-approval, such as an email. Alternatively, your firm may pay for the group meal and then refrain from making the otherwise-required *per diem* reduction for each recipient.

Alcoholic beverages, meals that exceed *per diem* amounts, meals for other guests, or meals when your employees are not in approved travel status may not be billed to the FDIC.

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### Chapter 9: Legal Matter Closeout

#### 9.1 Final Invoice Package

You should submit your final Invoice Package within 90 days of the conclusion or termination of each matter. Refer to Chapter 8, Invoice Preparation & Submission.

#### 9.2 Returning FDIC Property to FDIC Upon Conclusion of a Matter

No records, as described below in § 9.3 or FDIC Property as described in this subsection, may be destroyed without the FDIC's specific direction. All information contained in FDIC legal matter files, whether supplied by the FDIC or third parties or created by you, including attorney work product, belongs to the FDIC. Refer to Section 1.6, File Retention.

Upon completion of the legal matter and only upon receipt of written authorization from the Oversight Attorney, you must return or destroy all FDIC Property (that is, all media formats of pre-receivership information of a financial institution or any other information obtained from the FDIC that contains personally-identifiable private or business-confidential information provided to you by the FDIC, its e-discovery vendors or other contractors). Once the FDIC Oversight Attorney authorizes the return or destruction of such FDIC Property, all of it must be removed from your computer systems, servers, individual work stations, back-up media, file drawers and all other locations, and certified by you as returned or destroyed. Removal of FDIC Property from your electronic and paper systems, and its return or destruction, must be certified as true, accurate and complete by the attorney who signed your firm's Legal Services Agreement with the FDIC, their successor, or the equity owner in your firm that is supervising the firm's handling of the FDIC legal matter. The Certification and/or any returned FDIC Property must be delivered to the FDIC Oversight Attorney. Click the following web link to access the Certification: [Certification of Removal and Return or Destruction](#). If your firm was supplied with any access tokens, security keys or passwords to view FDIC Property, those items must also be included and certified as destroyed or returned.

Any such FDIC Property, however, extracted and used to create work product by your firm in a FDIC legal matter becomes part of the case record for that matter and is subject to the record maintenance requirements of Section 9.3 below.

#### 9.3 Record Maintenance Procedures for Concluded or Terminated Matters

Subsequent to the procedures specified in § 9.2 above regarding the disposition of FDIC Property, you must contact the FDIC to obtain authorization before any case records of a FDIC legal matter in your possession are destroyed pursuant to the FDIC's record retention requirements. A case record may consist of FDIC Property extracted and used in a legal matter, the firm's work product (including that which uses or references FDIC Property), and adequate documentation of the nature, handling, significant developments or outcome of the matter. Your requests for such authorization are to be directed to the Risk Management & Records Group at: FDIC Legal Division, Attn: Risk Management & Records Group, 3501 Fairfax Drive, Mail Stop VS-E-6112, Arlington, VA 22226; via email at [thcurtis@fdic.gov](mailto:thcurtis@fdic.gov) or at (877) ASK-FDIC (275-3342) (ask the operator to speak with the Legal Division, Contracts and Risk Management Unit, Risk Management & Records Group. No records may be destroyed without the written permission of the Risk Management & Records Group.

If the FDIC cannot authorize destruction of records in your possession, the FDIC will take custody of them. The FDIC will provide for the shipment of the records to a FDIC storage facility or to the FDIC directly. Only those fees that are documented and submitted on your final Invoice Package as incurred to permanently withdraw records from a private records storage vendor are reimbursable by the FDIC. Prior to shipping the records, you must provide the FDIC with an inventory for all the records being shipped. Refer to 9.4, Requirements and Shipping Instructions for Records Taken Into the FDIC's Custody, and 9.5, Record Inventory Format. The FDIC will not pay for creation of inventories.

If, however, you prefer to retain matter records, you may, with approval of the FDIC's Risk Management & Records Group ("RM&RG") at [thcurtis@fdic.gov](mailto:thcurtis@fdic.gov), continue to preserve them at your own cost. Your request to the RM&RG should be made promptly when matters are concluded. If retention is approved, the RM&RG will require an inventory of the records and instruct the date when the records being kept by you must be destroyed, in compliance with the FDIC's record retention requirements. Inventory requirements are set out in Section 9.5, Record Inventory Format, below. You will be responsible for all storage costs during the time that you retain the records. All costs and fees associated with destruction of the records will be at your own expense. Neither the Oversight Attorney nor the RC&RG can commit to pay for storage costs, permanent withdrawal fees, destruction charges, or any other expenses related to the records that you retain. While the records are being preserved by you, they shall not be intermingled with non-related matters pertaining to other FDIC assignments or other clients.

### **9.4 Requirements and Shipping Instructions For Records Taken Into the FDIC's Custody.**

Each box to be taken into the FDIC's custody must be boxed correctly and inventoried before it can be accepted. The FDIC will not pay for the creation of inventories. A box should contain matters of like media (paper or electronic) and like kind only (e.g., either litigation or asset disposition) that were closed in the same year. Contact the RM&RG at [thcurtis@fdic.gov](mailto:thcurtis@fdic.gov) for specific inventory and boxing instructions. The box inventories are provided to the RM&RG electronically [inventories can be in Word (no tables), Excel, or PDF format] and a copy must be included in each corresponding box. Thereafter, the FDIC will send you a box label encoded with a tracking number matched to the box's inventory. Once box labels are correctly applied by you to their corresponding boxes, the boxes will be ready for shipment to a FDIC storage facility. In rare instances, the FDIC may send you pre-paid, pre-addressed mailing labels to have inventoried boxes shipped directly to the FDIC.

### **9.5 Record Inventory Format.**

Each box of FDIC records transferred to the FDIC or retained by you must have an inventory of its contents. A box should contain matters of like media (paper or electronic) and like kind only (e.g., either litigation or asset disposition) that closed in the same year. The inventory should include the: name of your law firm; number that you assign to each box and recorded on the box; matter name; pertinent banking institution; date that the matter was completed and closed; FDIC matter number; and type of matter (e.g., litigation or asset disposition). To the extent possible, include further identifying information for each matter, such as the type of documents (e.g., pleadings or settlement). When boxes contain multiple matters, all matters in any one box must have closed in the same year and be of like kind. Inventories for electronic records retained on your network with RM&RG's authorization should reflect similar information.

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NOTE: The FDIC will not pay for the creation of inventories pursuant to procedures set forth in Section 9.3, Record Procedures for Concluded Matters.

NOTE: For purposes of subsequent audits or upon the request of the FDIC, Outside Counsel must retain certain documentation. Refer to Chapter 1 (Section 1.7), and Chapter 8 (Section 8.11.) If your firm fails to maintain the required documentation, the FDIC may disallow those previously paid fees and expenses.

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### Chapter 10: Post-Representation Responsibilities

#### 10.1 Responsibilities as Former Outside Counsel

This chapter identifies some of the responsibilities that continue after your representation of the FDIC concludes. The FDIC recognizes that as a lawyer you are also subject to requirements imposed by the jurisdiction in which you practice. The provisions of [12 C.F.R. Part 366](#), may also apply to you as former Outside Counsel of the FDIC.

#### 10.2 Conflicts of Interest and Confidentiality

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

When in doubt about the existence of a conflict, you should nevertheless disclose the matter to the FDIC and seek a waiver. If you have questions concerning conflicts, please contact the Legal Services & Special Contracts Group (“LSSCG”) in Washington, DC at (877) 275-3342 during normal business hours. You may also send an email with conflicts questions to [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

#### 10.3 File Retention

As former FDIC counsel, if you decide to retain the files related to the legal matter(s) for which you represented the FDIC, for your own purposes as described in [Section 9.2](#), you have an obligation to preserve such files until the files are either returned to the FDIC or properly destroyed in accordance with FDIC records management policies and retention schedules. Those files may not be destroyed without the express permission of the FDIC as described in [Section 9.2](#).

#### 10.4 Contacts with the Public and Media

All restrictions concerning public and media contacts applicable during your representation of the FDIC continue after your representation concludes. These restrictions are discussed in Chapter 1, Section 1.10 and prescribe the exclusive role of the FDIC Office of Communications in discussing FDIC matters with the media.

#### 10.5 Identifying FDIC as a Former Client

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

#### 10.6 Compliance with Subpoenas and Other Court Orders

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

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

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

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## Chapter 11: Foreign Law Firms

### 11.1 Definition

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

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

### 11.2 Outside Counsel Deskbook Compliance

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

### 11.3 Application Requirements

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

- A firm brochure or a narrative statement about the firm, including information regarding the areas of law in which the firm practices and highlighting areas of expertise.
- A statement acknowledging the requirements of FDIC’s policies and procedures governing Outside Counsel conflicts of interest and completion of the related [Representations and Certifications Form](#).

### 11.4 Legal Services Agreement

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

Incorporated in and attached to the LSA is an [Hourly Rate Schedule Form](#) listing each attorney and paraprofessional assigned to work on FDIC matters (“approved billable individuals”).

A foreign law firm is required to complete the following information on the [Hourly Rate Schedule Form](#) for each approved billable individual:

- Full name

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- Timekeeper ID (if the foreign law firm is subscribed to electronic billing, these numbers will be supplied to the foreign law firm by the FDIC's third-party billing service provider)
- Position or title within the firm
- Years in practice
- Standard hourly rate (in US currency)
- Percent (%) discount
- Proposed FDIC hourly rate (in US currency)

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

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

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

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

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

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

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

### 11.5 Electronic Funds Transfer Payments

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

### 11.6 LSA Amendment

An amendment to the LSA may be necessary when there has been a change in the

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

The following fields of the [LSA Amendment form](#) are not required for foreign law firms:

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

The completed LSA Amendment form must include the effective date of the amendment and be signed by an authorized representative of the foreign law firm. The original LSA Amendment form should be submitted to the FDIC Legal Division, Attn: Legal Services & Special Contracts Group, 3501 Fairfax Drive, Room E-6097, Arlington, Virginia 22226, as well as to the Oversight Attorney for any matters the foreign law firm is presently handling. You may also submit Electronic LSA Amendments to [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov). Once a request to amend the LSA has been approved, a copy of the LSA Amendment form, approved and signed by FDIC delegated authority, will be sent to the foreign law firm. A foreign law firm may not bill the FDIC for services of any individual unless and until the individual has been approved and included on the Hourly Rate Schedule form or the LSA Amendment form.

### 11.7 Legal Referral

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

When a legal referral is made, the FDIC Legal Division will send a referral letter to the foreign law firm. The referral letter will identify the specific services requested and the terms and conditions of the legal referral. The referral letter incorporates several documents, including the LSA, applicable portions of the **Outside Counsel Deskbook**, and the case plan and budget(s), which are required to be submitted by the foreign law firm and approved by the Legal Division prior to providing legal services on any referred matter. The referral letter, as well as the incorporated documents, may subsequently be amended or modified by the Legal Division. The Oversight Attorney sends an e-mail message to [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) notifying LSSCG of a referral to a foreign law firm, so that LSSCG can ensure that any special requirements are met.

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

### 11.8 Invoice Preparation and Submission

The Legal Division has specific policies and procedures relating to submission, processing and payment of invoices. A foreign law firm is required to adhere to the requirements for

preparing an invoice and submitting it to the FDIC as set out in [Chapter 8](#) of the **Outside Counsel Deskbook**. In addition to the requirements identified in [Chapter 8](#), **any invoices submitted by a foreign law firm must be in English and in U.S. dollars, calculated at the exchange rate published in the Wall Street Journal at the time the services are rendered.**

It is important that the principal members of a foreign law firm, particularly the accounting department, understand and adhere to the required policies, procedures and forms relating to preparation and submission of an Invoice. This includes Timekeeper ID numbers for every billing individual in the foreign law firm. Failure to properly employ these policies and procedures may result in delayed remittances from the FDIC and would be considered as a negative factor for possible future referrals.

### **11.9 Other Applicable Outside Counsel Deskbook Chapters**

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

- [Chapter 1: Representing the FDIC](#)
- [Chapter 2: Conflicts of Interest](#)
- [Chapter 6: Case Management](#)
- [Chapter 7: Case Plan and Budget](#)
- [Chapter 8: Invoice Preparation and Submission](#)
- [Chapter 9: Legal Matter Closeout](#)
- [Chapter 10: Post-Representation Responsibilities](#)

### **11.10 Value Added Tax (VAT)**

For issues related to the Value Added Tax (VAT) please contact the Legal Services & Special Contracts Group at +1 (877) 275-3342, or via email to [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

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