

Legal Support Services Deskbook

- Purpose 4
- Forms & Related Links 4
 - Alternative Dispute Resolution/Binding Arbitration 4
 - Budget Forms 4
 - Byrd Amendment 4
 - Conflicts of Interest 4
 - Electronic Funds Transfer (EFT) Guidelines..... 4
 - Expert/Legal Support Services Agreement Forms 4
 - Invoice Forms 5
 - Travel 5
- Related Information 5
- Effective Date 5
- Organization 5
- Inquiries 5
- Chapter 1 - Working for the FDIC Legal Division 5
 - 1.1 Scope of the Legal Support Services Deskbook ("LSS Deskbook")..... 5
 - 1.2 Identifying the FDIC as a Client 6
 - 1.3 Statutory Compliance..... 6
 - 1.4 Equal Employment Opportunity and Diversity 6
 - 1.5 Ethical Considerations 6
 - 1.6 Workpapers and Document Ownership - Assignment of Rights 7
 - 1.7 Audit Rights 7
 - 1.8 Fees and Expenses..... 7
 - 1.9 Contacts with the Media and the Public..... 8
 - 1.10 Role of FDIC Oversight Attorney 8
 - 1.11 Alternative Dispute Resolution ("ADR") 9
 - 1.12 Termination 9
- Chapter 2 - Conflicts of Interest 10
 - 2.1 FDIC Regulations and Policies..... 10
 - 2.2 Required Disclosures 10
 - 2.3 Conflict Determination 10
 - 2.4 Noncompliance..... 10

2.5 Questions Concerning Conflicts	11
Chapter 3 - Information Security & Confidentiality	11
3.1 Maintaining Confidentiality	11
3.2 Using FDIC’s Litigation Support Group on Legal Matters	13
3.3 Careful and Secure Handling of FDIC Information & Records	13
3.4 FDIC-Supported Resources for Using Encryption Technology to transmit Confidential "Sensitive" Information.	13
3.5 Other Resources	14
Chapter 4 - Agreements	14
4.1 Purpose of Contract	14
4.2 Duration of Agreement for Services.....	14
4.3 Duration of Agreement for Services.....	15
4.4 Contract Amendment.....	15
4.5 Completion of Amendment Form	16
4.6 Byrd Amendment -- Engagements Over \$100,000.....	17
4.7 Budget and Schedule.....	17
4.8 Budget and Schedule Submission	18
4.9 Amended Budget.....	18
4.10 Amended Budget and Schedule Submission	19
Chapter 5 - Management of Services.....	19
5.1 General Management of Legal Support Services.....	19
5.2 Case Plan.....	21
5.3 Case Plan Submission	21
5.4 Amended Case Plan Submission	21
5.5 Criminal Referrals	21
Chapter 6 - Invoice Package	22
6.1 Invoice Package	22
6.2 Invoice Package Submission	22
6.3 Billable Fees and Expenses	23
6.4 Non-Billable Fees and Expenses.....	24
6.5 Over Budget Invoices.....	25
6.6 Expert's and LSS Provider's Invoice Format	25
6.7 Travel Reimbursement Guidelines	26
6.8 Expert Invoice For Fees and Expenses (EIF&E) Form and LSS Provider Invoice For Fees and Expenses (IF&E) Form.....	29
6.9 FDIC Invoice Package Review	30

6.10 Reconsideration of Disallowances	30
6.11 Audit and Records Retention	31
6.12 Frequently Asked Questions	31
Chapter 7 - Closeout.....	32
7.1 Final Invoice Package.....	32
7.2 Forwarding Documents to FDIC	32
Chapter 8 - Post-Employment Responsibilities	32
8.1 Post-Employment Responsibilities	32
Appendices	34
Appendix A - Statutory Compliance	35
Appendix B - Contacts	39
Appendix C - Electronic Billing/Timekeeping	40
Appendix D - Legal Services - Delegations of Authority	41

Purpose

The Legal Support Services Deskbook ("LSS Deskbook") has been prepared by the FDIC Legal Division ("Legal Division" or "Division") to provide policies and procedures, shell contracts, and standard forms for in-house attorneys, experts, and legal support services ("LSS") providers. It sets forth many of the FDIC's requirements that govern the relationship between the FDIC and experts or LSS providers. It is important that in-house attorneys, experts, and LSS providers read, maintain familiarity with, and adhere to the provisions in the LSS Deskbook.

The LSS Deskbook includes policies and procedures and forms that the FDIC requires its experts and LSS providers to follow and use. Each chapter covers a key area or interest. Appendices provide additional information, forms, and worksheets. In-house attorneys will ensure that experts and LSS providers are provided copies of the LSS Deskbook.

Links on this page reference Portable Document Format (PDF) or MS Word files. Adobe Acrobat, a reader [available for free on the Internet](#), is required to display or print PDF files. For assistance with either format please visit [Word help](#) or [PDF help](#).

Forms & Related Links

Alternative Dispute Resolution/Binding Arbitration

- [Binding Arbitration - FDIC Directive 5310.1 \(June 5, 2001\) - Word](#) 109k
- [Final Statement of Policy Regarding Binding Arbitration](#)

Budget Forms

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

Byrd Amendment

- [Byrd Amendment Implementation Statement](#)
- [Certification Form - PDF](#) (pages 8, 9 & 10 of FDIC Certification Form 3700/04A)
- [Disclosure of Lobbying Activities Form - PDF](#) (gsa.gov)

Conflicts of Interest

- [12 C.F.R. Part 366 - Minimum Standards of Integrity and Fitness for an FDIC Contractor](#)
- [Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues With the FDIC](#)
- [Oral Representations and Certifications for Expert Legal Support Services Telephone Authorization for Expenditures Under \\$5,000 - PDF](#)
- [Representations and Certifications for Expert Legal Support Services Provider - PDF](#)

Electronic Funds Transfer (EFT) Guidelines

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

Expert/Legal Support Services Agreement Forms

- [Agreement for Expert Services \(Goodwill\) - Word](#)
- [Agreement for Expert Services \(Non-Goodwill\) or LSS Providers \(Hourly Rates\) - Word](#)
- [Agreement for Legal Support Services \(Firm Fixed Price-Long Format\)- Word](#)
- [Agreement for Legal Support Services \(Firm Fixed Price-Short Format\)- Word](#)
- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Amendment - PDF](#)
- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Amendment \(Continuation Sheet\) - PDF](#)
- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Rate Schedule - PDF](#)
- [Agreement for Services \(Expert/Legal Support Services \(LSS\) Provider\) Rate Schedule \(Continuation Sheet\) - PDF](#)

Invoice Forms

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

Travel

- [Travel Voucher - PDF](#)
- [Travel Voucher \(Continuation\) - PDF](#)
- [FDIC's Contractor Travel Reimbursement Guidelines \("Guidelines"\) - Word 71k](#)
- [GSA Per Diem Rates](#) (gsa.gov)

Related Information

- [OutsideCounsel Deskbook](#)

Effective Date

The effective date of the LSS Deskbook is December 2005. The Legal Division may amend the LSS Deskbook from time to time. Amendments shall be effective on the dates specified by the Legal Division.

Organization

The LSS Deskbook contains the following three (3) primary parts:

- **Policies and Procedures** - Establishes guidance that contains three primary parts that must be followed when performing services for the FDIC. Some of these policies and procedures were written for outside counsel but also apply to experts and LSS providers.
- **Forms** - Forms are provided in the appendices and are referenced within the text of the corresponding LSS Deskbook chapter. Blank forms are provided as well as some completed forms that are provided as samples. The forms can also be printed from the FDIC Internet site: www.fdic.gov/regulations/laws/forms/index.html.
- **Shell Contracts** - Shell contracts provide minimum standard terms that must be used for experts and LSS providers when contracts are greater than \$5,000. The shell contracts are optional for contracts less than \$5,000.

Inquiries

For further assistance with FDIC's LSS Deskbook policies and procedures, contact the FDIC Oversight Attorney administering the agreement.

Chapter 1 - Working for the FDIC Legal Division

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

The Legal Support Services Deskbook ("LSS Deskbook") describes the policies and procedures that must be followed by experts and legal support service ("LSS") providers engaged by the Federal Deposit Insurance Corporation ("FDIC") Legal Division.

1.2 Identifying the FDIC as a Client

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

Experts and LSS providers may not represent that they have been “approved” as experts or LSS providers for the FDIC. Experts and LSS providers are required to comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of “expert” status, expertise, or specialization. Experts and LSS providers may not quote FDIC materials or staff comments concerning performance evaluations.

1.3 Statutory Compliance

The Legal Division requires all experts and LSS providers to comply with all applicable statutes and regulations, as well as orders, policies, procedures, and directives. Refer to [Appendix A](#) 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 a part of the FDIC’s Minority and Women Outreach program, the Legal Division seeks to actively consider for engagement firms owned by minorities and/or women. Moreover, the FDIC expects its contractors and sub-contractors to take affirmative action to ensure that all individuals have equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a qualified covered veteran as defined by 38 U.S.C. § 4212(a)(3). The Legal "Minority-owned businesses" are those that are at least 51% owned and controlled (through day-to-day management) by one or more persons who are members of one or more of the following groups:

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

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

The Legal Division works to ensure the inclusion of minorities and women to the maximum extent possible. (See [12 C.F.R. Part 361](#)) The FDIC provides assistance to minority- or women-owned businesses and minorities and women within other businesses with request for waivers of conflicts of interest or other matters relating to the retention of experts and LSS providers. If interested in such assistance, contact the [Office of Minority and Women Inclusion](#).

1.5 Ethical Considerations

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

- To avoid any appearance of an ethical conflict, neither the expert, LSS provider, nor any person associated with the potential or engaged expert or LSS provider shall provide any gift, gratuity, favor,

entertainment, loan, or other thing of monetary value to any employee of the FDIC. ([See 5 C.F.R. § 2635, Subpart B, Standards of Ethical Conduct for Employees of the Executive Branch.](#)) While private businesses may host social or holiday functions for business associates and others with whom they do business, there are limitations on attendance at these events by FDIC employees. With few exceptions, FDIC employees may not solicit or accept gifts or loans from anyone who does, or seeks to do, business with the FDIC.

- Experts and LSS providers may hire former FDIC employees, but as former employees they are subject to the government-wide post-employment statute, [18 U.S.C. § 207](#), which affects what they can do for firms/businesses. Generally, however, former FDIC employees may work on matters that they worked on personally or which were under their supervision while at the FDIC, only when their post-employment employer is not in a position adverse to the FDIC.
- If an FDIC employee was involved in negotiating the firm's/business' current FDIC agreement for services, that individual, upon joining the firm/business may not, during the duration of the agreement renegotiate the rate schedule, request changes in billable individuals, or be involved in any matter pertaining to questions of the competence of the services provided by the firm/business under the agreement for services.

For more information, contact the Ethics Unit of the FDIC Executive Secretary Section in Washington, D.C. at (202) 898-7287.

1.6 Workpapers and Document Ownership - Assignment of Rights

Workpapers and other work product (whether in paper or on magnetic or electronic media, e.g. including but not limited to tapes or disc) ("workpapers"), prepared by experts and/or LSS providers or accomplished under their direction or control are the property of the FDIC.

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

1.7 Audit Rights

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

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

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

1.8 Fees and Expenses

The Legal Division expects to receive expert and legal support services at competitive fixed prices or hourly rates.

The expert and LSS provider must include in their fixed prices or hourly rates, its costs for doing business, including all "overhead," general and administrative costs, fringe benefits, and profit. The expert or LSS provider may not

submit (and the FDIC will not pay) invoices for such costs of doing business. "Markups" above any costs actually incurred by the expert or LSS provider for any supplies or services obtained for the Legal Division shall not be charged to the FDIC. Any discounts received are expected to be passed on to the FDIC.

The FDIC will only pay reasonable costs for services rendered or supplies provided in the course of engagement for expert or legal support services. All invoices for services rendered and expenses to be reimbursed must be consistent with the agreement for expert or legal support services. The invoice process is discussed in [Chapter 6](#). The FDIC will not pay inflated hours or other artificially inflated prices

Note: (1) The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in civil or criminal sanctions. (2) Under no circumstances may experts or LSS providers attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment for services rendered.

1.9 Contacts with the Media and the Public

Under no circumstances shall experts or LSS providers comment to the media on FDIC matters.

Media Inquiries

Instead, experts and LSS providers shall promptly advise the FDIC Oversight Attorney of all media inquiries concerning FDIC matters. The Oversight Attorney shall refer the inquiry to the FDIC Office of Public Affairs in Washington, D.C., at (202) 898-6993 for response.

Speaking Engagements

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

1.10 Role of FDIC Oversight Attorney

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

Beginning to Provide Legal Services

It is important that before experts and LSS providers begin providing services for the FDIC, that the FDIC Oversight Attorney identify clearly the objectives to be achieved and possible alternative courses of action. As a general matter (depending in part on the scope of the assignment), the Oversight Attorney will:

- Define the goals and objectives to be achieved;
- Outline roles and expected duties; and
- Discuss with the expert or LSS provider the scope of the optional case plan, and/or the required budget, and schedule designed to achieve the FDIC's goals and objectives in a cost-effective manner (refer to [Chapter 5](#) and [Chapter 6](#)).

Performing Services

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

- Review the expert's or LSS provider's work;
- Monitor progress against the agreement for legal support services;
- Review and obtain approval of any significant changes in the agreement for legal services or case plan;
- Keep FDIC business personnel informed of developments; and
- Coordinate contacts between experts and LSS providers and FDIC business personnel, as discussed below.

Contacts with Other FDIC Offices

All contact with non-legal FDIC personnel should be made through the Legal Division. This policy permits the most efficient utilization of resources and serves to avoid duplication of effort and to minimize costs. Therefore, experts and LSS providers are expected to direct all communications to the Oversight Attorney, except in the following circumstances:

- When the Oversight Attorney indicates otherwise;
- Immediate action is required and neither the Oversight Attorney nor his/her supervisor can be reached;
- Responding to an FDIC Legal Division review request;
- Responding to the FDIC's Office of Inspector General; or
- Seeking limited factual information that can only be obtained in a relatively brief amount of time (such as pay off figures for a loan or the address of a borrower).
- Under special circumstances or in certain types of litigation your Oversight Attorney may make arrangements for more extensive direct contact with FDIC business personnel. This might occur, for example, in a case involving an in-depth investigation of an institution's records.

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

1.11 Alternative Dispute Resolution ("ADR")

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

1.12 Termination

The Legal Division reserves the right to discontinue its relationship with the expert or LSS provider, with or without cause, if it is determined that it is in the best interest of the FDIC. Terminations of services will be in writing. Verbal notification will also be confirmed in writing.

The expert or LSS provider will be contacted and provided instructions concerning disposition of files and other FDIC property.

Note: The expert or LSS provider must forward, upon demand of the Legal Division, all files, workpapers, work product, and documents (whether in paper or on magnetic or electronic media, e.g. including but not limited to tapes or discs) concerning the terminated expert or legal support services including all work product of the firm/business. It is important that the expert or LSS provider promptly forward materials as instructed. Failure to do so may delay or prevent payment of the final invoice. Under no circumstances may the expert or LSS provider withhold files, documents, work product, or workpapers in the event of a dispute with the FDIC.

Chapter 2 - Conflicts of Interest

2.1 FDIC Regulations and Policies

There are specific reporting requirements contained in the regulations at [12 C.F.R. Part 366](#), as amended or superseded. These regulations prescribe minimum standards of fitness and integrity for experts or LSS providers or their employees or agents who are used to provide professional services on FDIC matters. *For representations and certifications required by the FDIC in accordance with 12 C.F.R. Part 366, see [Conflicts of Interest](#).*

In addition, experts and LSS providers 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 all experts and LSS providers may be deemed to have a conflict of interest as a result of unresolved audit issues with the FDIC.

2.2 Required Disclosures

It is important that the expert or LSS provider is screened for conflicts of interest and is eligible to provide services.

Mandatory reporting requirements are contained in the conflicts of interest regulations at [12 C.F.R. Part 366](#), as amended or superseded. The expert or LSS provider must disclose in writing all actual or potential conflicts and matters that may present the appearance of a conflict to the Legal Division as soon as an actual or potential conflict has been identified. When in doubt about the existence of a conflict, immediately disclose the matter and seek a waiver. Even after a conflict has been reported or a waiver has been granted, the expert or LSS provider must notify the Legal Division of any material change in facts.

2.3 Conflict Determination

It is solely within the discretion of the Legal Division to determine whether an actual or potential conflict exists. 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 be waived by the Legal Division in writing. Generally, requests for waivers of conflicts of interest are granted or denied on behalf of the FDIC by the Legal Division’s Conflicts Committee in Washington, D.C.

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

2.4 Noncompliance

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

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

Experts and LSS providers are not permitted to go forward with legal support services on behalf of parties adverse to the FDIC until the conflict has been waived or the situation otherwise resolved to the satisfaction of the Legal Division.

In the event legal support services are terminated, the expert or LSS provider must follow FDIC policies and procedures, return all files, and otherwise cooperate fully in the orderly transfer of matters as the Legal Division directs.

2.5 Questions Concerning Conflicts

For information, contact the Legal Services Group in Washington, D.C., at (877) ASK-FDIC or (877) 275-3342.

Chapter 3 - Information Security & Confidentiality

Note: Due to the extreme high importance of the security and confidentiality of FDIC information and records, LSS Providers should pay special attention to the contents of this Chapter. For questions regarding your responsibility for Information Security in FDIC Legal matters, you should contact the Litigation Support Group at legal@fdic.gov.

3.1 Maintaining Confidentiality

- (a) In the course of assisting the FDIC, LSS Providers may have access to nonpublic, confidential information. The FDIC has defined a broad category of such information in any form, paper or electronic as "Sensitive Information" in [FDIC Directive System Circular 1360.9](#). LSS Providers, including all employees or contractors must comply with FDIC Directive System Circular 1360.9. This includes an understanding of 1) all categories of Sensitive Information, as defined in the Circular and set forth below¹; and 2) FDIC Information Security policies and procedures as set forth in the Circular.
- (b) LSS Providers are responsible for the security and confidentiality of all Sensitive Information which you may have access to. As LSS Providers for the FDIC, you must take appropriate measures to ensure that all personnel are trained and familiar with this responsibility. Protecting the security and integrity of Sensitive Information extends to all personnel and any experts or other subcontractors that you may hire (with prior Legal Division approval only) in any FDIC legal matter. Due to the role and mission of the FDIC in the United States monetary and banking systems, Sensitive Information may include a broad spectrum of disparate information and records from multiple sources. LSS Providers' adherence to a strong and effective client confidentiality and information security policy is a critical part of your FDIC relationship.

¹ **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).

- (c) LSS Providers must supply the Legal Division with the name and contact information of your Chief Information Security Officer or equivalent as well as a backup contact, either of whom can be reached without delay.

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

- (d) The FDIC may contact you to assess the strength of your company's cybersecurity measures, protections, policies or procedures. This may include telephone contacts, email questionnaires, review and evaluation of your Information Security directives, policies and procedures or on-site reviews by FDIC staff.
- (e) All LSS Providers must be in compliance with the [American Bar Association \(ABA\) Model Rules of Professional Conduct, Rule 1.6](http://americanbar.org) (americanbar.org), 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.
- (f) All LSS Providers 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 subsection 3.1(d).
- (g) All LSS Providers must have internal policies and procedures on Information Security, data back-up, data breaches and the handling, use and disposition of confidential client information ("Security Plan"). The Security Plan should, at a minimum, require the following:
 - 1) Periodic Risk Assessments - LSS Providers should conduct and fully document periodic internal risk assessments in order to identify reasonably foreseeable threats to information security.
 - 2) Appropriate Security Programs - These should consist of reasonable physical, technical, and administrative security measures to manage and control identified risks.
 - 3) Periodic and Recurring Training & Education - Mandatory periodic employee training should be certified by the employee and documented by the firm. This training should enhance staff understanding of the roles and responsibilities regarding data, physical and administrative security.
 - 4) Testing/Monitoring - LSS Providers should periodically test the sufficiency of security measures. This includes testing or monitoring of systems, as well as records review of system activity, audit logs, access reports and security incident tracking reports.
 - 5) Review and Adjustment - LSS Providers must respond timely to any threats or risks that arise during these periodic internal reviews. This includes, when appropriate, FDIC notification, as further specified in this Deskbook.
 - 6) Third Party Consultants - To comply with the obligations imposed by law, FDIC policy, or other applicable standards, LSS Providers should consider the engagement of technical consultants, when necessary.

Each LSS Provider must customize your Security Plan to meet business, legal and client needs. Every business 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 LSS Providers 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 LSS Providers.

- (h) Since LSS Providers are responsible to ensure the security and integrity of FDIC records, especially Sensitive Information, a copy or detailed explanation of the Security Plan must be supplied to the Legal Division or other FDIC component upon request. Any deficiencies noted, as defined in the sole discretion of the FDIC, will need to be promptly corrected. See the **Note** above subsection 3.1(d).

- (i) As stated above, **your firm is solely responsible to ensure the security of FDIC records, especially Sensitive Information that may be supplied or made available to you and all consultants, experts, or other contractors that you with Legal Division authorization may hire.** To better protect LSS Providers, the FDIC requires that your firm obtain the signature of all such third-party contractors on a Confidentiality Agreement in a form substantially identical to this [Confidentiality Agreement](#) - PDF. 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 Legal Division's Litigation Support 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(j), please direct them to the Litigation Support Group at legal@fdic.gov, as further described below in section 3.2.

3.2 Using FDIC's Litigation Support Group on Legal Matters

- (a) All LSS Providers retained on an FDIC Legal matter must coordinate with the Litigation Support Group (LSG) of the Legal Information Technology Unit to conduct an early legal matter assessment to identify potential sources of responsive records, custodians, screening criteria, search parameters, review processes, and scope of production. The early legal matter assessment must also consider the resources to be applied in responding to requests for FDIC records or testimony.
- (b) In addition, prior to any release or disclosure of FDIC records or information, all LSS Providers must first consult LSG, and diligent efforts must be made to assure that highly-confidential or Sensitive Information has been identified and reviewed and appropriate protective measures taken, so that only the correct records will be produced or disclosed.
- (c) LSG will also work with you and help to coordinate any data hosting issues or requirements that may arise as to ESI described above in subsection 3.1(j). If ESI issues are present, it is important to coordinate early in the progress of the legal matter. Close communication with LSG is imperative in this situation.

3.3 Careful and Secure Handling of FDIC Information & Records

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

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

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

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

3.5 Other Resources

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

Chapter 4 - Agreements

Links on this page reference Portable Document Format (PDF) or MS Word files. Adobe Acrobat, a reader [available for free on the Internet](#), is required to display or print PDF files. For assistance with either format please visit [Word help](#) or [PDF help](#).

4.1 Purpose of Contract

The contract is an agreement for legal support services between the expert or LSS provider and the FDIC that contain terms and conditions applicable to experts and legal support services. The four (4) types of contracts and their purposes are:

1. Agreement for Legal Support Services (General Usage – For Firm-Fixed Price, services, Long Format) - Word
The purpose of this agreement is to engage contractors for the provision of services in support of pending or on-going litigation/transactional matters.
2. Agreement for Expert Services (Goodwill Cases) - Word
The purpose of this agreement is to establish terms and conditions for the engagement of Experts to provide expert services in support of litigation in the Winstar related cases pending (or that may be brought) against the United States.
3. Agreement for Expert or Legal Support Services (Experts (Non-Goodwill) or Legal Support Services (Hourly Rates)) - Word
The purpose of this agreement is to engage contractors for the provision of services in support of pending or on-going legal matters.
4. Agreement for Legal Support Services (General Usage – For Firm-Fixed Price, Non-“Expert” Services, Short Format) - Word

4.2 Duration of Agreement for Services

The purpose of this agreement is to engage contractors for the provision of services in support of pending or on-going litigation/transactional matters.

The agreement shall remain in effect for a specified period of time from the effective date set forth in the agreement (the Oversight Attorney may negotiate a longer period with approval of the appropriate delegated

authority), but subject however, to earlier termination by the FDIC with or without cause or advance notice. If no effective date is indicated, the agreement is effective as of the date signed by the FDIC.

4.3 Duration of Agreement for Services

The rates (hourly or flat) charged by the expert and LSS provider and their billable individuals should be listed on a rate schedule and should include all overhead. Hourly or flat rates, for example, are listed on rate Schedule A and should be submitted by the expert as Schedule A to the Agreement for Expert Services.

The Agreement for Legal Services for a specified service or product defines the agreed firm fixed price under Section 1 (Sale and Purchase of Services). A [Statement of Work](#) (SOW) describing the services to be performed with quantities, delivery dates, and place(s) of delivery should be submitted by the expert or LSS provider as Schedule A to the Agreement for Legal Services. The firm fixed price includes all taxes, insurance, transportation, and delivery charges.

The Oversight Attorney shall review the schedule and ensure that the expert or LSS provider meets the needs of the subject case. Individuals not listed on the rate schedule should be added to the rate schedule amendment form prior to performing services.

Absent compelling reasons no increase in the rate schedule attached to the agreement will be permitted during its term, other than as may be provided in the agreement.

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

If the continuation agreement is approved, the agreement will continue until the earliest of:

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

Continuation of the agreement is not the same as renewal of the agreement. Continuation does not permit the expert or LSS provider to receive any new legal support matters.

4.4 Contract Amendment

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

- Structural changes in the firm/business;
- New tax identification number; and
- Adding or removing billable individuals.

In addition, payment of invoices may be delayed if information is not up-to-date. The Oversight Attorney should be contacted immediately if the expert or LSS provider is unsure whether or not an amendment to the agreement is required.

Structural Changes

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

Examples of structural changes include:

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

After reviewing information that the expert or LSS provider submits concerning any structural change, the FDIC office or section that oversees the agreement for services will determine what action is appropriate.

Note: If the expert or LSS provider's firm/business has multiple offices, identify the branch office(s) in which the structural change occurred by entering the city and state in which the office is located on the Amendment Form

New Tax Identification Number (TIN)

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

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

The expert or LSS provider must inform the FDIC in writing when adding or removing billable individuals to a rate schedule. Complete the amendment form when any billable individual is added or removed.

4.5 Completion of Amendment Form

1. When completing an [amendment form - Word](#):
 - a. Complete a separate form for each branch office of a multiple office firm/business. Enter the federal tax identification number, name of firm/business, and branch office location;
 - b. Make changes, as appropriate, to the name of firm/ business, address, telephone number, fax number, e-mail address, and contact person;
 - c. If the individual has a minority status, type:
 - A for Asian American
 - B for Black American
 - H for Hispanic American
 - N for Native American Indian;
 - d. Type M for male or F for female in the gender field;
 - e. Type the hourly or flat rate; and
 - f. Sign and date the completed amendment form.

Note: The expert or LSS provider may attach continuation sheets if necessary to document changes to the agreement.

2. If the expert or LSS provider submits a letter rather than the amendment form, the letter must include all of the information requested on the amendment form.
3. The expert or LSS provider should mail the original form or letter to the Oversight Attorney.

4. Except for experts or LSS providers retained by the Receivership Goodwill Section, the expert or LSS provider should mail a copy of the form or letter to the Legal Division:
5. Experts and LSS providers retained by the Receivership Goodwill Section should mail a copy of the form or letter to:
Federal Deposit Insurance Corporation
Receivership Goodwill Section
550 17th Street, NW, Room MB-3120
Attn: Mike Condon
Washington, D.C. 20429-9900
6. The expert or LSS provider should send a copy of the form or letter to any other Legal Division office with which the expert or LSS provider does business.
7. The FDIC will notify the expert or LSS provider if the request to amend the agreement is approved. The expert or LSS provider will receive a copy of the fully-executed amendment form in the mail. The expert or LSS provider may not bill the FDIC for the services of billable individuals who have not been included on the FDIC-approved rate schedule or Schedule A.

Note: When the expert or LSS provider request an amendment to an agreement, the Legal Division may elect to:

- Amend the existing agreement;
- Require the expert or LSS provider to enter into a new agreement; or
- Take other actions to protect the interests of the FDIC.

4.6 Byrd Amendment -- Engagements Over \$100,000

If the amount of the approved budget(s) exceeds \$100,000, the expert or LSS provider must comply with provisions of the [Byrd Amendment](#) and its requirements.

4.7 Budget and Schedule

Once the expert or LSS provider has been selected to provide services for the FDIC, the expert or LSS provider must submit a [formal budget](#) and [rate schedule - Word](#) indicating the approximate cost of the services, if applicable, to the Oversight Attorney.

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

Experts and LSS providers must contractually agree that budgets impose firm maximum amounts for fees and expenses. Unauthorized cost or expense overruns will not be reimbursed or otherwise paid. Advances must be obtained through the Oversight Attorney by approved delegated authority.

Note: Invoices cannot be paid unless an approved budget and rate schedule is in place.

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

[Budget Form](#)

The budget form translates the case plan into financial expectations. The budget form should conform to the case plan for services rendered.

Completing the Budget Form

Following are the instructions for completing a budget form.

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

Rate	Information Required
Hourly	<ul style="list-style-type: none">• Complete all phases of the budget in which fees and expenses are expected.
Flat	<ul style="list-style-type: none">• Record the flat fee as a total without further itemization by phase.• Submit the estimated completion date and allowable related expenses for each phase

3. If appropriate, the expert or LSS provider should calculate the total estimated number of hours for all services for each action.
4. Expert or LSS provider must sign and date the budget form.

4.8 Budget and Schedule Submission

The following steps outline the submission and approval process:

1. Once the budget, schedule, and case plan are completed, it is submitted to the Oversight Attorney for approval.

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

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

4.9 Amended Budget

If the approved budget is not sufficient to complete all services, an amended budget and rate schedule is to be submitted. When it is anticipated that the approved budget is not likely to be sufficient, the expert or LSS provider should not wait until after the approved budget is exceeded.

Written approval from the Legal Division is required for any increase in the approved budget. Make sure the amendment has been approved before the budget is exceeded. 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 duty to the FDIC and may result in non-payment or disallowance of fees or expenses exceeding authorized amounts. The expert or LSS provider must report to the Oversight Attorney immediately any anticipated budget changes.*

An amended budget, rate schedule, and case plan contains:

- Amended case plan, or explanatory narrative; and
- Amended budget form and/or an amended rate schedule.

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

Completing the Amended Budget and Schedule

The Oversight Attorney should ensure that the expert or LSS provider completes the following instructions for completing an amended budget and rate schedule.

1. Prepare a separate narrative explaining the reasons for the amendment.
2. If necessary, prepare an amended case plan that provides detail commensurate with the significance of the services.
3. Fill out all requested information on the amended budget form, in a manner similar to the original budget form.
4. Mark the appropriate box if the expert or LSS provider has submitted a previous amended budget.
5. Use the most recent approved figures in the column for “Current Budget.”
6. Sign and date the amended budget.

4.10 Amended Budget and Schedule Submission

The following steps outline the submission and approval process:

1. Once completed, the amended budget and rate schedule should be submitted to the Oversight Attorney for approval. This package consists of the amended case plan and budget form.
2. The Oversight Attorney reviews the amended budget and rate schedule. If it is satisfactory, the Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
3. The Legal Division will notify the expert or LSS provider when the amended budget, rate schedule, and case plan are approved.

Chapter 5 - Management of Services

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5.1 General Management of Legal Support Services

The FDIC's goal is to utilize experts and LSS providers that possess the necessary knowledge, background, research capabilities, and other expertise in the particular field for which the provider will be providing services. Consistent with this goal, the FDIC expects the expert or LSS provider to manage time carefully. Expert and LSS provider costs should be competitive.

Consistent with the terms of the executed agreement with the FDIC, the FDIC will not pay for costs associated with:

- Excessive conferencing (including, but not limited to, billing for administrative instructions, billing for repetitive or daily meetings among contractors, staff, etc.);

- Unnecessary review of documents or files;
- Unnecessary polishing of documents (including, but not limited to, unnecessary reviews, updates, or amendments to documents or files);
- The "learning curve" for FDIC work; and
- Unfocused research or research not required by Oversight Attorney.

Experts or LSS providers are required to discuss staffing with the Oversight Attorney and assign no more employees than are necessary to adequately provide services to the FDIC. The expert or LSS provider must refrain from rotating assignments away from employees knowledgeable about FDIC or using FDIC projects for the purpose of training other personnel. Departures of personnel from expert's or LSS provider's organization must be listed in a contract amendment.

Providing services in a cost-effective manner requires that the expert or LSS provider:

- Consult the Oversight Attorney on strategic, tactical, or cost-related decisions concerning the services that are being provided;
- Provide to Oversight Attorney, upon request, a copy of all contracts for expenses and orders with a value over \$100,000, with subcontractors, consultants, and other parties engaged by expert or LSS provider to work on FDIC matters. Furnish a copy of the contract or order under a letter confirming permission to use the particular third party;
- Have a clear understanding of the role of the expert, LSS provider, the Oversight Attorney;
- Define the goals and objectives to be achieved;
- Develop a formal case plan, if required by the Oversight Attorney, that will achieve the FDIC's goals and objectives, which requires approval of the Oversight Attorney and his delegated authority when appropriate; and
- Be advised of all significant developments.

Decisions that should be made by consultation with the Oversight Attorney (absent exigent circumstances) include, without limitation:

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

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

Reports

FDIC management procedures require that the expert or LSS provider keep the FDIC Oversight Attorney fully informed as to the status of services that are being handled. A status report may be submitted as often as directed to the Oversight Attorney for each service the expert or LSS provider is providing.

Reports should:

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

5.2 Case Plan

A formal case plan and schedule shall be prepared for each matter handled by experts and shall be closely monitored by the Oversight Attorney. If required, the Oversight Attorney may develop a formal case plan for each LSS provider. The case plan will be utilized by the Oversight Attorney to summarize the strategy for the services.

Upon commencement of services the expert or LSS provider should discuss the matter with the Oversight Attorney. If required by the Oversight Attorney, a case plan and budget should be prepared that sets forth the major steps the expert or LSS provider will take to accomplish the service. The case plan should also detail and schedule the work to be performed, identify the expert or LSS provider and support staff that will perform the work, and indicate the total hours each person (or class of people) identified will spend on the work. The case plan is a vital tool in cost control and oversight.

5.3 Case Plan Submission

The following steps outline the submission and approval process:

1. Once the case plan is completed, it is submitted to the Oversight Attorney for approval. This package consists of the case plan and when necessary the budget.
2. The Oversight Attorney will review the case plan and budget. If it is satisfactory, the Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
3. The Legal Division will notify the expert or LSS provider when the case plan is approved.

5.4 Amended Case Plan Submission

Once completed, the amended case plan and budget should be submitted to the Oversight Attorney for approval.

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

5.5 Criminal Referrals

The Legal Division has a responsibility to notify and, where appropriate, assist law enforcement officials including the Office of Inspector General in investigating conduct that may constitute a violation of criminal statutes. The expert or LSS provider should report any information that indicates possible criminal behavior to the Oversight Attorney. The Oversight Attorney may either file a [Suspicious Activity Report Form - Word](#) or instruct the expert or LSS provider to do so under Legal Division's 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 the expert or LSS provider agree to withhold from law enforcement authorities any information relating to a possible criminal violation or investigation.

Chapter 6 - Invoice Package

Links on this page reference Portable Document Format (PDF) or MS Word files. Adobe Acrobat, a reader [available for free on the Internet](#), is required to display or print PDF files. For assistance with either format please visit [Word help](#) or [PDF help](#).

6.1 Invoice Package

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

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

The Invoice Package consists of the following:

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

As discussed in [Chapter 3](#), there must be an approved budget from the FDIC before the expert or LSS provider can be paid. An approved budget gives the “all clear” to submit an Invoice Package for payment of services.

6.2 Invoice Package Submission

Invoice Packages should be submitted on a monthly basis, unless the amount (fees and expenses) to be invoiced is less than \$500. If the amount (fees and expenses) is less than \$500, the Invoice Package should be submitted on a quarterly basis, unless doing so would cause undue hardship to the firm/business.

When

Invoice Packages for fees and expenses should be submitted within 30 days of the last day of the billing period, except as noted above.

The Legal Division recognizes that firms/businesses may experience delays in receiving supporting documentation for expenses included in the Invoice Package to the FDIC. Therefore, invoice packages should be submitted for such expenses within 60 days of the last date in the billing period.

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

Note: Do not bill the FDIC more than once per month. Do not bill for overlapping service periods (e.g. May through May 31 and then May 15 through June 15).

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

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

Where

The distribution and mailing instructions are unique to the Legal Division office or section supervising the matter. Experts or LSS providers should refer to the agreement for services. The expert or LSS provider may also contact the Oversight Attorney for instructions.

6.3 Billable Fees and Expenses

The FDIC may be billed reasonable charges for fees and expenses in accordance with the following guidelines.

The FDIC may be billed reasonable fees at approved rates as stated on Schedule A of the agreement for services or other billing arrangements approved by the FDIC in writing for:

- Legal support services on matters as approved; and
- Unless a lesser rate of reimbursement is set forth in the agreement, travel time (when no substantive FDIC work is performed) should be billed at 50% of approved rate on Schedule A of the agreement for services.

Note: The FDIC does not pay for First Class airfares or luxury hotel accommodations. The FDIC will pay only for air travel at coach rates, and accommodations at the lower of the government or corporate discount rates. Travel-related expenses must be 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 Deskbook.

Compensation cannot be based upon a contingent fee arrangement unless specifically approved in writing. Absent express Legal Division permission, experts and other professional service providers may only be compensated for fees and expenses in accordance with the requirements of this Deskbook.

Expenses

The FDIC may be billed reasonable charges for the following expenses. Requirements for submitting copies of receipts are indicated below. These requirements do not alter the duty to maintain original receipts and other supporting documentation for all expenses for audit and review purposes.

- Itemized In-house copy charges (**no more than** \$.20 per page; no receipt necessary, but indicate the total number of copies.)
- Itemized international long distance telephone or multi-party conference call charges (receipts necessary).
- Itemized overnight delivery (receipts necessary). Itemization should include name of person to whom the delivery was sent.
- Itemized electronic research (receipts and/or invoices necessary). Itemization should include person's name who is performing the research. In addition, the FDIC Research Bank should be consulted before any legal research is performed and it should be noted on the invoice that you have done so.

Please note: Prior approval by the Oversight Attorney is required for electronic research.

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

Note: State and local taxes on FDIC allowable expenses will be reimbursed.

6.4 Non-Billable Fees and Expenses

The FDIC must not be billed, and will not pay, for the following fees and expenses:

Fees

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

Expenses

- Ordinary postage;
- Expenses charged based on oral contracts with subcontractors, contractors, or other vendors;
- Charges related to word processing;
- In-house photocopying charges at more than \$.20 per copy;
- Clerical time for photocopying, sending facsimiles, filing etc.;
- Charges for expense items when a seller’s discount was applied and the discounted percentage or amount was not paid by buyer or buyer subsequently recovered discount from seller;
- Excessive/unnecessary overnight mail charges;
- Meals, except as provided for under the travel regulations;
- Daily commuting expenses;
- Sales tax (except for lodging) or surcharges imposed by utilities or phone services;
- Tax on services;
- Local travel expenses unrelated to approved travel;
- Any costs relating to filing fees in United States District Courts or Courts of Appeal which the FDIC is not required to pay (pursuant to [12 U.S.C. 1819\(b\)\(4\)](#));
- A service that is customarily included in the normal overhead or administrative expense of running a firm/business (e.g., rent, electricity, all telephone charges within the United States except for multi-party conference call charges, HVAC, storage, bill preparation); or
- Routine budget preparation.

6.5 Over Budget Invoices

If the full payment of the Invoice Package exceeds the total of the approved budget, notice will be sent by the FDIC. The Invoice Package cannot be paid until an amended budget is submitted and approved (refer to [Chapter 4](#)).

Note: *The Invoice Package will be returned with a notice that an approved amended budget is required before the Invoice Package can be properly resubmitted for payment.*

6.6 Expert's and LSS Provider's Invoice Format

Invoice format requirements are discussed below.

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

Fees:

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/11/2018	JFB	Prepare for and provide testimony at trial.	\$120.00	5 hrs	\$600.00

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

Service By	Title	Hours	Hourly Rate	Total
John Brown		10	\$150.00	\$1,500.00
Jane Green		20	\$110.00	\$2,200.00
Brian White		9.5	\$45.00	\$427.50

Block Billing of Services

Time billed for each activity 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, as in the following example:

Date of Service	Name/Initials of Individual	Service/Activity Description	Approved Hourly Rate	Time Charged	Amount (Rate x Time)
8/18/2018	RJG	Telephone conference with J. Brown regarding filing brief (.2 hrs); Review jury list (.1 hrs.); Telephone conference with J. Brown regarding jury list (.2 hrs).	\$120.00	.5 hrs	\$60.00

Description of Fees

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

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

Time Increments

Billing in increments of less than 0.1 billing hour (6 minutes) is unacceptable.

Expenses

Use the following format for expenses:

- Copy charges (unit cost multiplied by unit amount).
- Overnight delivery (date and amount, name to whom delivery was sent).
- Electronic research (subject, date, and amount, name of person performing research).
- Extraordinary postage (i.e., bulk or certified mail) (date and amount).

Claims for travel-related expenses must be made using the Travel Voucher (refer to Section 6.7) and should be in accordance with the FDIC's General Travel Regulations.

Example of Itemized Expenses

Expense		Amount
Photocopy	(46@ .20 pp)	\$9.20
Overnight Delivery	02/19/2018	15.00
Extraordinary Postage - Certified	02/19/2018	\$10.
J. Smith -- Expert Witness	02/19/2018 - 02/25/2018	\$10,500.00
Acme Reporting		\$425.00
Panic Copying		\$230.00
Travel for J. Cox Washington, DC to Boston, MA	02/5 - 06/05 Settlement Conference	\$780.00

6.7 Travel Reimbursement Guidelines

The following guidelines are provided to assist in compliance with requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement regulations.

Eligibility for Reimbursement

To be entitled for travel reimbursement, the expert or LSS provider must be on a temporary assignment that is at least 50 miles in distance from either the expert's or LSS provider's office or residence. If a temporary assignment

concludes during the workday and is located within 100 miles of the office or residence, it is expected that the expert or LSS provider return to the residence, rather than remain at the temporary location overnight.

Travel Authorization

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

Air travel

Air travel should be in coach class only, unless the expert or LSS provider bears 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 a change is required, a reasonable exchange fee may be claimed. Special approval is required for international air travel.

Rental Cars

Generally, 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. Original receipts must support claims for rental car gasoline. The FDIC will not reimburse for Personal Accident Insurance (PAI) or Personal Effects Coverage (PEC). The cost of Collision Damage Waiver (CDW) coverage is allowed if the expert or LSS provider does not have insurance coverage for collision damage.

Lodging

The expert or LSS provider should make use of government rates whenever possible. Any hotel expenses considered excessive or unreasonable will not be reimbursed.

Subsistence

On overnight travel status you may only be reimbursed on a per diem basis. The current FDIC prorated per diem rates allowable are listed below. The current FDIC per diem rates allowable are listed in Section 16.0 of the [Contractor Travel Reimbursement Guidelines - Word](#). Specific per diem rates for different localities may be found on the [General Services Administration \(GSA\) web site](#). Where the information contained on the GSA web site and FDIC Guidelines differs, the GSA web site controls. When you are on per diem, incidental expenses such as laundry and cleaning are considered to be covered by the per diem.

Per Diem for Overnight Travel (SAMPLE)

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

Departing If you leave your office/residence between:	Prorated Per Diem Rates
6:00 PM to 11:59 PM	100%

If you depart from and/or 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. Traveler must provide start and return times with their supporting travel documentation to demonstrate the number of quarters of the per diem allowance they are entitled to receive.

Miscellaneous Meal Expense

If the expert or LSS provider is in non-overnight travel status and is away from his/her residence for at least 11 consecutive hours excluding mealtime, the expert or LSS provider may be reimbursed on an actual expense incurred basis with the meal costs limited to a \$10 charge (receipt required) or \$6.00 without a receipt.

Long Distance Personal Calls

While on an overnight travel assignment, there may be a claim for the actual amount incurred, not to exceed \$3 per day, for personal long distance calls. This is in addition to per diem, if applicable. Itemize the call(s) on the Travel Voucher.

Use of Privately-Owned Vehicle

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

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

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

Taxicabs

The use of taxicabs is permitted while on official travel for FDIC. Reimbursement for taxicab fares (plus the customary 15% tip) will be made only if an appropriate receipt is submitted.

Taxi hire is appropriate when:

- Public transportation, airport limousine service, and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances;
- Traveling between transportation terminals and a residence, hotel or office while on official travel status; or for
- Traveling from a residence to the office to depart on assignment requiring at least one night's lodging and from the expert or LSS provider's office to the expert or LSS provider's residence upon returning from the trip.

Taxi fares for trips used to obtain meals will not be reimbursed.

Non-Reimbursable Travel Expenses

Examples of expenses that will not be reimbursed include the following; unless specifically agreed upon in writing in the expert or LSS providers agreement with the FDIC:

- Alcoholic beverages, entertainment;
- Laundry, dry cleaning, and pressing (covered by per diem reimbursement);
- Travel insurance;
- Parking fines;
- Gratuities and tips paid to service staff inside the lodging facility (covered by per diem reimbursement); or
- Cost of travel for spouses, other family members, and friends is not allowable under any circumstances.

Travelers will not be reimbursed for excess costs caused by:

- An indirect route as a matter of personal preference;
- Premature departure for personal reasons from a temporary location; or
- Extending a stay for personal reasons.

Travel Voucher Completion

After completion of travel, a [travel voucher - Word](#) must be submitted with the Invoice Package for reimbursement. 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 travel voucher.

Except for per diem expenses, valid original receipts must be submitted with the 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 travel voucher will justify the expense.

Receipts submitted with the travel voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. If an electronic ticket is used, the boarding passes for each flight must be submitted with the Travel Voucher.

WARNING: *The penalty for submitting a Travel Voucher that knowingly falsifies any item in the claim can be three times the amount of the claim plus a civil money penalty of \$10,000 under the False Claims Act. 31 U.S.C. 3729. Also, false statements may be criminally prosecuted under 18 U.S.C. 1001. The penalty can be up to 5 years in jail. A corporation that violates 18 U.S.C. 1001 can be fined up to \$500,000. 18 U.S.C. 3571.*

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

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

- Each invoice must have an invoice number unique to the expert or LSS provider's firm/business that is submitting the invoice.

Note: *If the expert or LSS provider is submitting multiple Invoice Packages, ensure a separate EIF&E Form or the IF&E Form for each Invoice Package is included.*

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

- The business and financial institution involved with the matter must be the same as identified in the retention letter or as identified in the written agreement with the FDIC.
- The billing period should be monthly. For example: FROM: 12/01/05 THROUGH: 12/30/05.
- The billing period should be quarterly when monthly fees and expenses are less than \$500. For example: FROM: 01/01/05 THROUGH: 03/31/05.
- If there are expenses incurred for anything other than the present billing period or the immediately preceding billing period, ensure that the expenses have not been previously reimbursed.
- **Sign at the bottom to certify that the EIF&E Form or the IF&E Form is true and correct. An original signature is required on the EIF&E Form and the IF&E Form.**

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

6.9 FDIC Invoice Package Review

The Invoice Package should be submitted in a timely manner and as directed in the retention letter or by the Oversight Attorney. Upon receipt, the FDIC Legal Information Technician reviews the package and does one of three things:

- a. Forwards it to the Oversight Attorney for review and/or approval;
- b. Rejects it. If the Invoice Package is rejected, the Oversight Attorney or the Legal Information Technician will notify the expert or LSS provider of the deficiencies to be corrected; or
- c. The Oversight Attorney performs a substantive review of the invoice. If any amounts are disallowed, the expert or LSS provider will be notified at the time of payment; such information appears on the check stub or EFT remittance form.

Note: *FDIC invoice processing time is a minimum of thirty (30) days after receipt of a correct or proper Invoice Package. Payment is generally not made in less than thirty (30) days.*

The FDIC is required by statute to make payments by [electronic funds transfer](#) (wire transfer) absent a waiver.

6.10 Reconsideration of Disallowances

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

Note: *(1) The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in civil or criminal sanctions. (2) Under no circumstances may the expert or LSS provider attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment for services rendered.*

6.11 Audit and Records Retention

Experts and LSS providers must permit the FDIC, the FDIC Office of Inspector General, the FDIC Legal Division's Internal Review Group and the Government Accountability Office, or their representatives, to conduct audits or reviews of the FDIC billings, including previously paid Invoice Packages.

For purposes of subsequent audits, experts and LSS providers must retain the following:

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

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

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

6.12 Frequently Asked Questions

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

When should an expert or LSS provider submit an Invoice Package?

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

Can clerical or secretarial overtime be billed?

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

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

No.

What common mistakes should be avoided when submitting an Invoice Package?

Experts or LSS providers should:

Make sure each invoice has a different invoice number for each Invoice Package submitted.

Ensure the totals on the Invoice Package equal the totals on the EIF&E Form or the IF&E Form.

Submit all necessary receipts.

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

Be sure to itemize experts and non-experts (including LSS providers) fees separately.

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

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

What information is required when fax and phone charges are being claimed?

The expert or LSS provider needs to include the date, phone number, and charge for each call. The bill from the carrier must be retained for three years after final payment for audit purposes.

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

An FDIC Legal Information Technician will notify the expert or LSS provider via telephone or fax. However, if certain fees and expenses are disallowed, the expert or LSS provider will be notified on the check stub or EFT remittance form.

Chapter 7 - Closeout

7.1 Final Invoice Package

At the conclusion of a legal service, the expert or LSS provider should submit a final Invoice Package within 90 days. It is important that the expert or LSS provider note on the invoice and the EIF&E form or the IF&E form that this is a final Invoice Package. Refer to Chapter 6 for procedures for submitting the Invoice Package.

7.2 Forwarding Documents to FDIC

Before forwarding any documents to the FDIC, consult with the Oversight Attorney. Upon completion of the delivery of services or termination, the expert or LSS provider must return any FDIC materials and forward all substantive work product not previously submitted, without regard to the format of those work products (whether on paper or electronic media). Failure to do so may delay or prevent payment of the final invoice and may cause the imposition of other sanctions to recover the FDIC materials, workpapers, or work product.

Note: *For purposes of subsequent audit, experts and LSS providers must retain certain documentation (refer to Chapters 6 and 8). Failure to maintain required documentation may cause the FDIC to disallow previously paid fees and expenses.*

Chapter 8 - Post-Employment Responsibilities

8.1 Post-Employment Responsibilities

As former experts or LSS providers for the FDIC, the expert or LSS provider has responsibilities that continue after work for the FDIC has been completed.

Former FDIC experts and LSS providers have a duty to protect confidential information and shall not use or allow the use of confidential information to further a private interest other than as contemplated by their FDIC agreement for services.

File Retention

Former experts and LSS providers have an obligation to preserve their files pertaining to the services they provided to the FDIC and those files concerning invoice support. The files may not be destroyed without the express permission of the FDIC.

Contacts with the Public and Media

All restrictions concerning public and media contacts applicable while providing services to the FDIC continue after services are concluded. These restrictions are discussed in Chapter 1.

Identifying FDIC as a Former Client

The expert or LSS provider may list FDIC as a former client in published materials provided the expert or LSS provider adheres with the guidance discussed in Chapter 1.

Compliance with Subpoenas and Other Court Orders

Experts or LSS providers that are served with a subpoena, court order, or other legal process documents relating to services provided to the FDIC, must immediately notify the FDIC's General Counsel, and may not disclose FDIC's records or provide testimony without authorization from the FDIC.

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

The expert or LSS provider agrees 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 experts or LSS providers in this matter or reimburse for any legal fees or other expenses that may incur in complying with this requirement. However, FDIC will consider requests for reimbursement on a case-by-case basis.

Appendices

Appendix A - Statutory Compliance

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

Acts of October 23, 1989 (Byrd Amendment) as amended

[31 U.S.C. § 1352](#) (cornell.edu)

Prohibits federal government contractors from using monies received from federal contracts, grants, loans or cooperative agreements to lobby Congress or the Executive Branch in order to influence the award, extension or modification of a contract, grant or financial transaction. *The Implementation Statement and certification and disclosure forms can be found in [Byrd Amendment](#).*

Age Discrimination in Employment Act

[29 U.S.C. §§ 621-634](#) (cornell.edu)

Prohibits employers from discriminating on the basis of age.

Americans with Disabilities Act

[42 U.S.C. §§ 12101-12117](#) (cornell.edu)

Prohibits discrimination in employment based on a physical or mental handicap.

Anti-Kickback Act of 1986

[41 U.S.C. §§ 51-58](#) (cornell.edu)

Prohibits the solicitation, payment and inclusion in contract price of kickbacks related to a federal contract.

Assignment of Claims Act of 1940

[41 U.S.C. § 15](#); [31 U.S.C. § 3727](#) (cornell.edu)

Controls the assignment of federal contract claims.

Civil Rights Act of 1964, as amended

[42 U.S.C. §§ 2000e et seq.](#) (cornell.edu)

Prohibits employers from discriminating in hiring, discharging, compensation, or terms, conditions, and privileges of employment based on race, color, religion, sex or national origin.

Conspiracy to Defraud the Government

[18 U.S.C. § 286](#) (cornell.edu)

Identifies penalties for conspiracy to defraud.

Minimum Standards of Integrity and Fitness for an FDIC Contractor (Contractor Conflicts of Interest)

[12 C.F.R. Part 366](#)

Implements the requirements of 12 U.S.C. §§ 1822(f)(3) and (4). Refer to [Conflicts of Interest](#).

Debt Collection Act

[31 U.S.C. § 3701 \(b\)\(1\)\(C\)](#) (cornell.edu)

Establishes the authority for the collection of monies owed the FDIC.

Debt Collection Improvement Act of 1996

[31 U.S.C. § 3332](#) (cornell.edu)

Requires all federal payments, including vendor payments and expense reimbursements, be made by [electronic funds transfer](#)(EFT).

Drug-Free Workplace Act of 1988

[41 U.S.C. §§ 701-707](#) (cornell.edu)

Requires drug-free workplace.

False Claims Act of 1863

[31 U.S.C. § 3729](#) (cornell.edu)

Identifies penalties for knowingly presenting false claims.

False, Fictitious or Fraudulent Claims

[18 U.S.C. § 287](#) (cornell.edu)

Identifies penalties for making or presenting false, fictitious or fraudulent claims.

False Statements or Entries

[18 U.S.C. § 1001](#) (cornell.edu)

Identifies penalties for making false statements or entries.

Federal Property and Administrative Services Act of 1949

[41 U.S.C. §§ 254\(a\)](#) and [254d](#) (cornell.edu)

Prohibits payment of contingent fees in federal contracts (§ 254(a)) and requires retention of contractor records and authorizes examination and audit of contractor records (§ 254d).

Financial Institutions Reform, Recovery, and Enforcement Act of 1989

[12 U.S.C. § 1833e\(c\)](#) (cornell.edu)

Requires establishment of Minority Outreach Program.

Forfeiture of Fraudulent Claims

[28 U.S.C. § 2514](#) (cornell.edu)

Identifies penalties for participation in fraudulent claims.

Inspector General Act of 1978 as amended

[5 U.S.C. app. §§ 1-12](#) (cornell.edu)

Establishes and identifies the authority of the office of inspector general.

Interests of Members of Congress

[41 U.S.C. § 22](#) (cornell.edu)

Prohibits participation by members of Congress in government contracts.

Internal Revenue Code

[26 U.S.C. §§ 6041, 6041A, 6050M](#) (cornell.edu)

Taxpayer Identification Number (TIN) and returns relating to persons receiving contracts from federal executive agencies.

International Air Transportation Competition Act of 1979

[49 U.S.C. § 40118](#) (cornell.edu)

Regulates use of federal funds for air transportation.

Obstruction of Federal Audit

[18 U.S.C. § 1516](#) (cornell.edu)

Identifies penalties for obstructing a federal audit.

Rehabilitation Act of 1973

[29 U.S.C. § 793](#) (cornell.edu)

Employment under federal contracts for disabled workers.

Service of Process

[12 C.F.R. §§ 309.7 \(b\) – \(c\)](#)

Identifies FDIC's notification and authorization requirements.

Vietnam Era Veterans' Readjustment Assistance Act of 1974

[38 U.S.C. § 4212](#) (cornell.edu)

Veterans' employment emphasis under federal contracts.

Appendix B - Contacts

FDIC Legal Division:

Attn: Legal Services Group
501 Fairfax Drive Room VS-E-6066
Arlington, VA 22226
(703) 562-2326
(703) 562-2499 (fax)

FDIC Legal Division

Legal Services Group (LSG)
1601 Bryan Street
Dallas, TX 75201
(972) 761-8429
(800) 568-9161
(972) 455-7094 (fax)

Equal Employment:

FDIC Office of Minority and Women Inclusion –
MWOLF Program

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

Ethics:

FDIC Legal Division
Attn: Ethics Section
550 17th Street, NW
Washington, D.C. 20429-9990
(877) 275-3342

Media Inquiries:

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

Payment Inquiries:

FDIC Legal Division
Legal Information Technology Unit (LITU)
3501 Fairfax Drive Room VS-E-6125d
Arlington, VA 22226
(703) 562-2357
(703) 562-2499 (fax)

Appendix C - Electronic Billing/Timekeeping

NOTE: These Guidelines were written for outside counsel but also apply to experts and LSS providers.

NOTE: You are required to retain copies of all invoice packages and original underlying support documentation, including time sheets and time and expense adjustment records, for three years after final payment under the legal referral. (Refer to [Chapter 1](#) and [Chapter 6](#).)

February 15, 1998

Electronic Billing Guidelines

The FDIC Legal Division is establishing electronic billing guidelines for FDIC outside counsel, consistent with the FDIC Office of Inspector General's audit requirements and the capabilities of commercially available time, billing and accounting software systems increasingly utilized by law firms. These guidelines are effective for legal fees incurred on or after February 15, 1998, and are incorporated in the FDIC *Outside Counsel Deskbook (Deskbook)*.

The guidelines were developed as a result of a joint project of the FDIC's Legal Division and Office of Inspector General (OIG) under the auspices of the FDIC's Audit Committee. As many of you are aware, the OIG conducts audits of fees billed by law firms retained by the FDIC. To facilitate such audit activities, the current Deskbook requires outside counsel to retain copies of all FDIC-related bills and original underlying support documentation, including time sheets and time and expense adjustment records, for at least three years after final payment. On occasion, law firms have maintained that their original time sheet data was available in an electronically archived format. In many instances, however, the OIG determined that the electronic systems in place did not contain adequate internal controls or audit trails to ensure the integrity of the data for audit purposes.

Guidelines

The Legal Division has concluded that time billing and accounting software available to the legal profession is able to provide basic internal control features that are consistent with generally accepted auditing standards. Controls deemed to be critical include the following:

- (1) unique identifiers (user identification) and/or passwords for each user of the system;
- (2) an access profile for controlling user access to each application;
- (3) identification of the individual who entered, changed or deleted data;
- (4) an audit trail that identifies dates of entry, change, or deletion;
- (5) information that shows the extent of the change or the reason for the deletion; and
- (6) provisions for a user identification code or other certification when the information entered is approved and forwarded for processing of the final fee bill.

These critical internal controls are present in varying degrees in available software packages and formats, but particular weaknesses may exist regarding items (3) and (4) above. To address these weaknesses and weaknesses created where otherwise adequate internal controls provided in the software are modified or not implemented, firms may need to consider appropriate upgrading, supplementation or modification of the software or maintenance of alternative manual documentation as backup, in order to minimize or avoid significant questioned fees and costs. The Legal Division reserves the right, should there be substantial questioned costs raised on audit based on deficiencies identified in a firm's electronic billing system, to impose additional documentation requirements to correct these deficiencies. These may include, without limitation, requirements to add specific internal controls through upgrades, supplemental programs, program modifications, or maintenance of alternative manual documentation as backup. Regardless of the software used, any OIG audit will include a separate evaluation of the firm's software and implementation of internal controls to assess the reliability of the electronic data recorded by the law firm.

Appendix D - Legal Services - Delegations of Authority

1. [Litigation & Resolutions Branch](#)
2. [Corporate Operations Branch](#)
3. [Supervision Branch](#)
4. [Consumer & Legislation Branch](#)