



# Outside Counsel Deskbook

(revised November 2025)

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# FDIC OUTSIDE COUNSEL DESKBOOK

## Foreword

The Legal Services Agreement (“LSA”) and this Outside Counsel Deskbook (“Deskbook”) form the mutually binding contractual relationship between the FDIC and Outside Counsel (sometimes referred to as “the firm”). Outside Counsel is obligated to comply with all requirements of the LSA and Deskbook, absent a written waiver of a requirement by the FDIC.

Waiver of a requirement of the LSA or Deskbook, including permitting any method or practice by Outside Counsel that is inconsistent with the Deskbook, is an “Exception.” The FDIC has the unilateral authority to grant Exceptions if doing so is in the FDIC’s interest, including when necessary to achieve the goals of a particular legal matter. Note that the granting of Exceptions is rare and should be sought only in circumstances not otherwise addressed in the LSA or Deskbook.

During the course of representation, with limited exceptions, the Oversight Attorney will be the primary contact for Outside Counsel.

## Chapter 1: Representing the FDIC

### 1.1 Scope of the Outside Counsel Deskbook

This Deskbook describes the policies and procedures that Outside Counsel must follow, beginning with the execution of an LSA (refer to Chapter 4), continuing through retention and concluding with post-representation responsibilities. “Inherited” counsel who do not execute an LSA with the FDIC are not subject to all the provisions of this Deskbook but are subject to Chapter 2 (Conflicts of Interest), Chapter 8 (Invoice Preparation & Submission), and the terms of the Legal Services Conflicts of Interest Procedures – Directive 2021-04-Legal (Classification 5250.2), as it may be amended. “Inherited” counsel may obtain a copy of the Directive by contacting the [Legal Services & Special Contracts Group](#).

### 1.2 Identifying the FDIC as a Client

A firm may list the FDIC as a client in published materials only if it adheres to the following restrictions:

- (a) A firm may not represent that it has been “approved” as Outside Counsel for the FDIC or any other language that implies endorsement of the firm’s work by the FDIC. A firm may only list the FDIC as a client if it has completed work for the FDIC.
- (b) Except as otherwise provided in clause (a) above, a firm may not use the FDIC’s name to promote its services or in a manner that states or implies the FDIC endorses, recommends, or prefers the firm’s services.
- (c) The firm must comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of “expert” status, expertise, or specialization.
- (d) The firm may not quote FDIC materials or staff comments as to performance evaluations. If a firm wishes for FDIC personnel to participate in surveys or interviews regarding its performance, the firm must first submit

the survey or interview questions to the FDIC Legal Services Contracts Group (“LSCG”) for review and approval.

An FDIC employee may provide a personal character reference for a private attorney based upon the FDIC employee’s knowledge of the private attorney’s ability or character gained by working with the attorney in the course of the employee’s FDIC employment. Such a character reference may be provided on FDIC letterhead using the employee’s official title. Disclosure of any non-public information or endorsement of the private attorney’s law firm is prohibited. The letter must also clarify that it is a personal letter limited to the FDIC employee’s experience with the subject attorney and is not a statement made on behalf of the FDIC. FDIC employees may not speak to the character or ability of the law firm as a whole. LSCG must review a proposed letter or Chambers survey (or equivalent) prior to submission. LSCG will consider the potential impact of the perception of the FDIC’s impartiality towards contractors when reviewing the request.

### 1.3 Statutory Compliance

All Outside Counsel must be familiar and comply with all applicable statutes and orders, as well as regulations, policies, procedures, and directives promulgated pursuant thereto. Refer to [Appendix A, Statutory Compliance](#) for a representative list of applicable federal laws and regulations. When setting up a Case Plan (Section 7.2), Outside Counsel should discuss any anticipated legal issues related to these rules with his or her Oversight Attorney.

### 1.4 (Reserved)

Reserved

### 1.5 Equal Employment Opportunity

The FDIC is strongly committed to equal opportunity under the law. See Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, [12 U.S.C. § 1833e](#); [12 C.F.R. Part 361](#); [FDIC Circular 2710.1](#), Equal Opportunity Policy. Moreover, the FDIC expects its contractors and subcontractors to take action to ensure that all individuals have equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a qualified covered veteran, as defined by [38 U.S.C. § 4212\(a\)\(3\)](#).

### 1.6 Ethical Requirements

Outside Counsel must maintain the highest ethical standards and comply with all applicable laws, rules, and regulations governing ethical conduct. When a firm or Outside Counsel has any ethical concerns, actual or perceived, it should contact its Oversight Attorney or LSSCG.

- (a) **Restrictions on Gifts to Government Employees:** With few exceptions, FDIC employees may not solicit or accept gifts from anyone who does or seeks to do business with the FDIC. To avoid any appearance problem, neither Outside Counsel nor any person associated with Outside Counsel’s firm may provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan, or other thing of monetary value to

any employee of the FDIC that is not in conformity with [5 C.F.R. Part 2635, Subpart B](#), Standards of Ethical Conduct for Employees of the Executive Branch. While a private firm 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.

- (b) **Restrictions on Hiring Former or Current FDIC Employees:** Determining how the standards of conduct, conflict of interest, and post-employment statutory restrictions and state bar requirements apply to FDIC employees can be complex, and current and former FDIC employees should consult with the FDIC Ethics Unit prior to engaging in communications that may run afoul of these prohibitions.
- (1) *Former FDIC Employees—Post Employment Restrictions:* Outside Counsel 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 the firm. 18 U.S.C. § 207(a)(1) bars all former FDIC employees from knowingly making, with the intent to influence, any communication to or appearance before a federal agency or any court on behalf of anyone other than the United States on a particular matter involving specific parties in which they participated personally and substantially while in government. Generally, however, former FDIC employees may work for the United States on matters that they worked on personally or which were under their supervision while at the FDIC, with special consideration and caution given to representing these matters before the FDIC or the Federal government. Prior to engaging in work on a legal referral, a former FDIC employee must obtain proper clearance from the Ethics & Alternative Dispute Resolution (ADR) Unit.
- If an FDIC employee was involved in negotiating a firm's current LSA on behalf of the FDIC, that individual upon joining the firm may not, during the duration of the LSA, renegotiate the rate schedule, request changes, or be involved in any matter pertaining to questions regarding the services provided by the firm under that LSA.
- (2) *Restrictions Applicable to Current FDIC Employees:* Please note that FDIC employees must follow federal ethical guidelines regarding post-FDIC employment. Note also that, under [18 U.S.C. § 208](#), FDIC employees who are negotiating with a firm or have an agreement with the firm for future employment cannot participate personally and substantially in matters in which the firm has any financial interest.

For more information regarding FDIC employee restrictions, contact the Ethics & ADR Unit, FDIC Legal Division, Washington, D.C. at [ethics@fdic.gov](mailto:ethics@fdic.gov).

## 1.7 File Retention

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

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

Upon completion or termination of the matter, Outside Counsel is responsible for the preservation of the files until the FDIC authorizes their destruction or the FDIC orders their transfer to the FDIC or another organization. Refer to Chapters 9 and 10.

**NOTE:** There are separate records retention requirements for underlying support documentation related to FDIC invoices. Refer to Section 1.8 below.

## 1.8 Audit Rights

- (a) When requested, Outside Counsel must permit the FDIC, the FDIC Office of Inspector General (“FDIC OIG”), and the Government Accountability Office (“GAO”), or their representatives, to conduct audits or reviews of his or her FDIC billings, including previously paid invoices. Audits or reviews may result in corrective actions or recommendations to be implemented by the firm. All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process. If an auditor identifies payments made to Outside Counsel that are not in compliance with the Deskbook that was in effect at the time of payment, Outside Counsel may be required to refund such fees or expenses previously paid by the FDIC.
- (b) For purposes of subsequent audits, Outside Counsel must retain invoice files, underlying supporting documentation for expenses, written justifications and approvals to utilize subcontractors, subcontractor invoices, and original or electronic time sheets and time and expense adjustment records for at least **five years** after final payment under the legal referral.
- (c) Outside Counsel must follow all recordkeeping requirements for electronic timekeeping systems in [Appendix C, Record Retention Guidelines for E-billing](#).
- (d) The FDIC reserves the right to obtain additional information upon review of any electronic invoice package submission or supporting documentation.

## 1.9 Fees and Expenses, Generally

The FDIC Legal Division will consider flat-rate, blended-rate, and other innovative rate proposals. All anticipated rates must be included in the firm’s LSA. Any costs not included in the firm’s LSA that are not pre-approved by the Oversight Attorney will be disallowed. Generally, rates are locked in for the duration of the LSA. Oversight Attorneys may negotiate lower rates with Outside Counsel than what is contained in the LSA.

- (a) Outside Counsel must include in its fees or hourly rates for legal services its costs of doing business, including all “overhead,” general and administrative costs, fringe benefits, and profit. Outside Counsel may not submit, and the FDIC will not pay, invoices for such costs of doing business.
- (b) Outside Counsel may not invoice the FDIC for “markups” above any costs actually incurred by the firm for any supplies or services obtained by the firm for the FDIC—any discounts the firm receives must be passed on to the FDIC.



- (c) The FDIC will pay only reasonable costs for services rendered or supplies provided during representation. Reasonableness is within the sole discretion of the FDIC. The invoice process is discussed in Chapter 8.
- (d) The FDIC will not pay for any administrative or overhead costs or expenses. This includes, but is not limited to, computer software or other information technology that is used generally by the firm or to support multiple clients. If Outside Counsel requires specific software or other IT resources for a specific matter, contact the Oversight Attorney. Absent FDIC pre-approval, such expenses will not be reimbursed.

See Chapter 8 for more details about allowable fees and expenses.

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

### 1.10 Malpractice Insurance

- (a) Outside Counsel is required to maintain adequate malpractice insurance in all matters when representing the FDIC.
- (b) Outside Counsel must advise the FDIC Legal Division of the identity of its malpractice insurance carrier, the extent and duration of coverage, and limitations on coverage that may affect the FDIC. It must furnish a copy of its malpractice insurance policy upon request by the FDIC Legal Division or the FDIC OIG.

### 1.11 Contacts with the Media and the Public

Outside Counsel should not make statements to the media or issue press releases regarding the services provided to the FDIC.

- (a) Under no circumstances may Outside Counsel comment to the media on the specifics of a case, such as potential appeals or settlements, or on more general matters involving the FDIC's policies and procedures or decision-making processes.
- (b) Outside Counsel must promptly refer all media inquiries concerning FDIC matters to the assigned Oversight Attorney for referral to the Office of Communications.
- (c) **Speaking Engagements:** If Outside Counsel addresses the public at seminars or other functions on topics pertaining to the FDIC or laws and regulations affecting the FDIC, he or she must disclose to the audience that he or she is making the presentation on his or her own behalf and not on behalf of the FDIC. Outside Counsel may not disclose any confidential FDIC information in any such speaking engagement.

When providing written materials to seminars or other functions on topics pertaining to the FDIC or laws and regulations affecting the FDIC, Outside Counsel must submit a copy of such materials to both the Oversight Attorney and the LSCG for review and approval **in advance** of the speaking engagement.

## 1.12 Roles of Outside Counsel and the FDIC Oversight Attorney

Oversight Attorneys in the FDIC Legal Division are responsible for managing all legal assignments and litigation, including matters referred to Outside Counsel. Outside Counsel must work closely with the Oversight Attorney on all strategic and major tactical decisions associated with a matter. No substantive work should be undertaken without the authorization of the Oversight Attorney. Absent express Oversight Attorney approval, Outside Counsel only has the authority to incur fees and expenses in accordance with the agreed upon legal referral and budget. At the onset of a case, Outside Counsel should discuss expectations with the Oversight Attorney, including which types of decisions must be discussed with the Oversight Attorney in advance.

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

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

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

- Define the goals and objectives to be achieved.
- Outline Outside Counsel's role and expected duties.
- Discuss the scope of the required case plan and budget designed to achieve the FDIC's goals and objectives in a cost-effective manner. Refer to Chapter 7.

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

During the course of representation, the Oversight Attorney will:

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

### **Contact with other FDIC Personnel**

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

*Therefore, Outside Counsel is expected to direct all communications directly to the Oversight Attorney, except in the following circumstances:*<sup>1</sup>

- When immediate action is required and neither the Oversight Attorney nor his/her supervisor can be reached;
- When communicating with the FDIC's OIG when required to by law or to report to the OIG an instance of actual or suspected fraud, waste, abuse, misconduct or mismanagement perpetrated in connection with the programs and operations of the FDIC;
- When responding to audit requests from the FDIC Legal Division's Risk Management and Records Group ("RMRG"), LSCG (such as when renewing the firm's LSA), or the Financial Specialist assigned to the matter (such as notification of a rejected invoice); or
- When the Oversight Attorney indicates otherwise.

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

The FDIC will not pay for charges related to contacts other than those authorized.

### 1.13 Contractor Employee Whistleblower Rights

All Outside Counsel and any subcontractor or employees working on that FDIC matter are entitled to the whistleblower rights and remedies established at [41 U.S.C. § 4712](#), and the following apply:

- (a) Outside Counsel must inform its employees, and any subcontractor must inform its employees, in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712.
- (b) Within 30 days of receipt of a legal referral letter or other award, the firm and its subcontractors, if applicable, must distribute the informational document entitled "[Whistleblower Information for Employees of FDIC Contractors, Subcontractors, or Personal Services Contractors](#)" to all employees performing work in support of the goods and services delivered under the legal referral.
- (c) By agreeing to the terms and conditions of the legal referral or other award, Outside Counsel acknowledges receipt of this requirement, in accordance with 41 U.S.C. § 4712, and commits to its distribution.
- (d) If the firm utilizes subcontractors for FDIC work, it must include substantially similar language to this subsection 1.13, Contractor Employee Whistleblower Rights, in any subcontract where the firm expects the subcontractor's portion of the budget for the legal referral to meet or exceed \$250,000 and must notify the subcontractor that the same rights apply to subcontractor employees for all FDIC work performed.

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<sup>1</sup> Generally, best practice is to CC the Oversight Attorney when communicating with other individuals besides the Oversight Attorney. However, Oversight Attorney permission is generally not required in these narrow instances.

- (e) The provisions in this Deskbook and the LSA are consistent with and do not supersede, conflict with, or otherwise alter the obligations, rights, or liabilities created by existing statutes or Executive Orders relating to (1) classified information, (2) communications to Congress, (3) the reporting to the OIG of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Deskbook and are controlling.

Questions related to complying with this Section may be directed to [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) or the FDIC [OIG](#).

#### 1.14 Cooperation with the FDIC Office of the Inspector General

The FDIC fully cooperates with the FDIC OIG by promptly reporting allegations of fraud, waste, abuse, or criminal violations related to FDIC programs or operations.

All Outside Counsel for all FDIC matters must comply with [FDIC Directive 12000.01](#), Cooperation with the Office of Inspector General.

For OIG matters unrelated to whistleblower reports of fraud, waste, or abuse, Outside Counsel should coordinate production of information or documents with the Oversight Attorney.

**NOTE:** The FDIC OIG can be reached via the OIG Hotline at (800) 964-3342 or through its [online hotline portal](#).

#### 1.15 Termination

The FDIC reserves the right to discontinue or limit its relationship with Outside Counsel for any or no stated reason. In such an event, the FDIC will notify the firm in writing of the termination of its LSA or removal of individual legal matters and will provide instructions concerning disposition of files and other FDIC property. Outside Counsel cooperation during transition is a contractual and ethical obligation and is necessary for an orderly transfer of legal matters. Outside Counsel must timely notify the FDIC of receipt of such notice.

**Upon demand, Outside Counsel must forward all files, documents, original (where practicable) underlying support documentation for expenses, subcontractor invoices, and electronic timesheets concerning the terminated legal matter(s) to the Oversight Attorney, including copies of all related work product. It is important that Outside Counsel promptly forward files as instructed. Failure to do so may delay or prevent payment of the firm's final invoice. Under no circumstances may Outside Counsel withhold files in the event of a dispute with the FDIC.**

#### 1.16 Written Notices

All notices to the FDIC that are required to be in writing may be forwarded electronically to the appropriate contact identified in [Appendix B](#) of this Deskbook. . If an FDIC contact is not specified by this Deskbook and incorporated materials, notice is to be directed to the LSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

## 1.17 Use of Artificial Intelligence

Artificial intelligence (“AI”) is a term used to describe computer technology with the ability to simulate human intelligence, to analyze data, to reach conclusions about data, to find patterns, and to predict future behavior. Generative AI (“GenAI”) is a subset of AI technology that can create content, including text, images, audio, video, and other outputs, when prompted by a user. GenAI outputs rely on the use of algorithms trained on information input by users. That information, both reliable and unreliable, may be sourced from a variety of places including from the internet.

The FDIC recognizes that attorneys and their staff are increasingly using AI tools, including GenAI, to promote efficiencies and reduce costs when performing a variety of legal tasks.

Courts, judges, and the rules of professional responsibility of various jurisdictions have evolving requirements about attorney use of AI and GenAI in the practice of law. These requirements have been established because the use of AI, and particularly GenAI, by attorneys and their staff raises novel issues and presents new risks that require awareness and attention prior to their use.

By their very nature, GenAI tools require the input of information to “learn” from the information and to generate outputs. The use of GenAI tools in representation of clients raises the risk that information relating to a client’s representation may be improperly disclosed if the use of GenAI is not within a “closed environment.”<sup>2</sup> Outside Counsel’s unauthorized use of the FDIC’s confidential or sensitive information or Outside Counsel’s reliance on GenAI outputs without appropriate review and verification violates Outside Counsel’s duties to the FDIC. Such conduct may also violate the duties of competent representation, candor, and other applicable rules of professional responsibility, which could potentially subject the FDIC or its Outside Counsel to sanctions.

Regarding AI usage for FDIC matters, Outside Counsel must:

- (1) Ensure compliance with the applicable jurisdiction’s bar and ethics rules as well as any applicable statute, regulation, court rules, standing order, or case law regarding the use of AI, including GenAI.
- (2) Provide the Oversight Attorney<sup>3</sup> written notice before using GenAI for an FDIC matter.
- (3) Never enter Sensitive Information or FDIC work product into a GenAI tool that operates in an “open environment.”<sup>4</sup>

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<sup>2</sup> A “closed environment” refers to a technology system in which AI algorithms and models operate within an organization’s internal infrastructure utilizing known, vetted, and confidential data sources, and which environment also ensures that data processing and inference remain within the organization’s control. A closed environment for the use of GenAI implies that the AI algorithm exclusively processes user-provided prompts and data within the organization’s internal systems, ensuring user data never leaves established security firewalls. Closed environment tools generally provide sufficient assurances that client information is protected from unauthorized disclosure to those outside the law firm and to those within the law firm not specifically authorized to see the client information. Outside Counsel is advised to consult with their technology vendors in advance of the use of any GenAI tools to ensure the vendor has provided satisfactory evidence that the use of its products and services will be within a “closed environment” as described in this Deskbook.

<sup>3</sup> If Outside Counsel is unsure of which Oversight Attorney to contact, please contact the LSCG at [lssc@fdic.gov](mailto:lssc@fdic.gov) to disclose this information.

<sup>4</sup> An “open environment” refers to a technology system where the AI algorithms and models, their training data, and underlying code are publicly available for anyone to use, modify, and distribute. A far from non-exhaustive list of examples of GenAI operating in an open environment include many programs freely accessible for public and commercial use such as ChatGPT, Gemini, Claude, LLaMA, Grok, and Stable Diffusion.

The FDIC reserves the right to limit Outside Counsel's use of GenAI on FDIC work.

## Chapter 2: Conflicts of Interest

### 2.1 FDIC Legal Division Conflicts Policies and Procedures

FDIC policies governing Outside Counsel conflicts of interest are found in the [2021 Statement of Policy Concerning Outside Counsel Conflicts of Interest](#) ("Statement of Policy"). Outside Counsel should refer to that statement for specific guidance regarding conflicts of interest and confidentiality issues. Be sure to refer to the hyperlinked online version, as that will be the most up-to-date version. If Outside Counsel has specific questions about how to submit a conflict waiver request to the FDIC Legal Division, he or she may send that inquiry as directed below in Section 2.9.

By signing an LSA with the FDIC, Outside Counsel confirms receipt of, acknowledgement of, and agreement to abide by the Statement of Policy.

### 2.2 FDIC Regulations and Policies

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

By signing FDIC Form 5200/01, Outside Counsel confirms receipt of, acknowledgement of, and agreement to abide by the provisions of Part 366 pertaining to minimum standards of fitness and integrity.

### 2.3 Rules of the Legal Profession

Outside Counsel must also observe applicable state bar rules of professional responsibility with respect to conflicts of interest and confidentiality for the relevant jurisdiction, as well as the American Bar Association [Model Rules of Professional Conduct](#) ("ABA Model Rules") to the extent that they do not conflict with the relevant jurisdiction's rules.

### 2.4 Required Disclosures

In general, Outside Counsel must disclose, in writing to the FDIC, information concerning actual or potential conflicts of interest and matters that may present the appearance of a conflict. See paragraph 2.6(a) below for the information conflict disclosures should contain. LSCG encourages Outside Counsel to err on the side of disclosing circumstances that may constitute an actual conflict, a potential conflict, or even the appearance of a conflict, but note that such disclosures often result in a finding of no conflict.

Disclosure should be made to the Oversight Attorney or to his or her supervisor in the office or section that oversees the matter giving rise to the conflict. If Outside Counsel is not actively representing the FDIC at the

time a possible conflict is discovered, he or she should send the written disclosure (and request for waiver, if applicable) to the LSCG at FDIC Headquarters using the address provided in Section 1.16 above.

Required disclosures include but are not limited to the following:

- Whether the firm currently represents any interest adverse to the FDIC, a [failed insured depository institution](#) (“IDI”), or the subsidiary of a failed IDI in any capacity.
- Whether the firm previously represented an open IDI that subsequently failed or previously represented any interest adverse to such an institution.
- Whether there exists an actual or potential conflict or the appearance of a conflict of interest between the firm and the:
  - Board of Governors of the Federal Reserve System;
  - Office of the Comptroller of the Currency;
  - National Credit Union Administration;
  - Consumer Financial Protection Bureau; or
  - U.S. Department of Justice (on matters involving failed IDIs or their directors, officers or related third parties).
- Whether the firm or any attorney of the firm currently has any outstanding debt, whether performing or in default, owed to any failed IDI.
- Whether any attorney of the firm currently serves or has recently served as an officer or director or is or was recently a substantial shareholder of any IDI.
- Whether any attorney of the firm has served or serves as a trustee in bankruptcy or as a receiver in any federal or state court or administrative proceeding.
- Whether the firm has represented or represents a debtor-in-possession, trustee in bankruptcy, or a receiver in a proceeding in which the FDIC in any capacity has an interest.
- Whether the firm represents a creditor in a bankruptcy, receivership, or other litigation proceeding where the FDIC in any capacity has asserted claims against the same debtor in the same or an unrelated proceeding.
- Whether the firm represents any insurance carrier or any stockholder or class of stockholders in an action against a director or officer of an IDI.
- Whether the firm represents any IDI in regulatory matters or assistance transactions.
- Whether the firm represents a prospective bidder for a troubled or failed institution or the assets of such an institution.
- Whether the firm represents any officer, director, debtor, creditor, or stockholder of any failed or assisted IDI in a matter relating to the FDIC in any capacity.
- Whether any attorney of the firm is closely related<sup>5</sup> to any person employed by the FDIC or is in litigation with the FDIC in any capacity.
- Whether any managing official or any attorney working on FDIC matters has outstanding debt owed to any failed IDI or a substantial ownership interest in such an institution.

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<sup>5</sup> This includes a spouse, dependent child, or member of the immediate household.

- Whether the firm or any attorney of the firm has been or is currently subject to any prior or pending claims or investigations by the FDIC in any capacity.
- Whether the firm or any current management official of the firm has been charged with the commission of a felony or is currently a party to an administrative or judicial proceeding in which fraudulent activity is alleged.

As noted above, the state's jurisdictional conflict rules are not the only conflict rules that apply to the firm's work for the FDIC. The [ABA Model Rules](#) (when not in conflict with the applicable state's rules) and [12 C.F.R. Part 366](#) also apply.

**Whether a conflict exists is in the sole discretion of the FDIC Legal Division**, and the firm may request that the FDIC waive any known or potential conflicts or appearances of conflict. When in doubt, Outside Counsel should err on the side of over-disclosing.

## 2.5 Duty to Disclose at LSA Application and Thereafter

- At the time of application for or renewal of a firm's LSA, the FDIC Legal Division requires that the firm disclose all actual or potential conflicts of interest and matters that may present the appearance of a conflict.
- Upon request, Outside Counsel must provide the FDIC with information about the firm's system for tracking conflicts and the firm's policies and procedures regarding the resolution of conflicts.
- After application or renewal of the firm's LSA, Outside Counsel must disclose in writing all actual or potential conflicts and matters that may present the appearance of a conflict to the FDIC **as soon as he or she learns of its existence**.
- In addition to the above-stated contractual reporting obligations, [12 C.F.R. § 366.14](#) requires Outside Counsel to disclose any actual or potential conflicts to the FDIC within 10 business days after becoming aware of such conflict.
- When in doubt about the existence of a conflict, Outside Counsel should disclose the matter and seek a waiver, as the FDIC has the sole discretion to determine whether a conflict exists. Even after a conflict has been reported or a waiver granted, the firm must notify the FDIC of any material change in facts.

## 2.6 Conflict Determination and Waiver

Should the FDIC determine that a conflict exists, Outside Counsel must request and be granted a conflict waiver prior to accepting a legal referral. Conflicts of interest may only be waived by the FDIC in writing. Requests for waivers of conflicts of interest are granted or denied on behalf of the FDIC by the FDIC Outside Counsel Conflicts Committee (or "Committee") at FDIC Headquarters. Requests for waivers are considered only on a case-by-case basis.



- (a) It is solely within the discretion of the FDIC to determine whether an actual or potential conflict exists. Even the appearance of a conflict may result in the denial of a waiver or imposition of other corrective actions. See Section 2.7.
- (b) With rare exceptions, the FDIC does not agree to advance waivers of undisclosed or unspecified future conflicts of interest. The Committee also does not have delegated authority to grant prospective or advance waivers of conflicts of interest. Any request for such a waiver must be presented to LSSCG, which will present it to the FDIC General Counsel for decision. When submitting advance conflict waiver requests, the firm should anticipate extended processing time and low probability of approval.
- (c) **Conflict of Interest Disclosure and Waiver Request Process:** Submit written conflict disclosures and associated request(s) for waiver to the appropriate Oversight Attorney or supervisor, forwarded (or initially directed, if the firm has no active FDIC matters) to the LSCG at FDIC Headquarters. Disclosures should generally include:
- (1) the nature of the conflict, including relevant facts and the parties/financial institutions involved;
  - (2) any conflict mitigation measures the firm has taken or proposes to take (for example, firewalls or other screening mechanisms);
  - (3) any applicable deadlines associated with resolution of the conflict;
  - (4) if the firm has already received any conflict waiver(s) related to the matter, and the terms and conditions of such prior waiver(s); and
  - (5) any other relevant considerations the firm desires the FDIC to consider.

After Outside Counsel submits a conflict disclosure and waiver request, LSCG will contact the relevant Oversight Attorney(s), who make(s) a recommendation regarding resolution of the conflict, as well as seek additional FDIC Legal Division comments, consideration, or recommendations. Then, LSCG will submit the request to the Outside Counsel Conflict Committee for a determination. LSCG will notify the firm and any interested FDIC offices or sections in writing of the Committee's decision.

## 2.7 Noncompliance

- (a) Failure to promptly disclose any actual or potential conflicts of interest or matters that may present the appearance of a conflict, as well as failure to comply with FDIC's conflicts of interest policies and procedures, may result in the following:
- Imposition of a bar to LSA application or renewal;
  - Termination of the firm's legal services;
  - Suspension of new referrals;
  - Disallowance in whole or in part of invoice(s) for services rendered;
  - Denial of a conflict waiver; or
  - Other corrective actions, including referral to the appropriate licensing authorities, or civil or criminal actions.
- (b) **The firm is not permitted to go forward with a representation adverse to the FDIC until the conflict has been waived or the situation otherwise resolved to the satisfaction of the FDIC Legal Division. In**

**the event that the Committee denies the firm’s waiver request, it may seek reconsideration of the decision. If the firm goes forward with such representation after receiving a denial of a waiver request, the FDIC may issue any of the above-listed sanctions against the firm.**

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

## 2.8 The FDIC as Former Client — Conflicts and Confidentiality

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

In the event the firm no longer represents the FDIC, the firm may not without a waiver represent another client against the FDIC in a matter substantially related to any matter in which the firm previously represented the FDIC.

The firm must continue to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation. Refer to Chapter 10 for additional information on post-representation responsibilities.

## 2.9 Questions Concerning Conflicts of Interest and Confidentiality Requirements

For information concerning any aspect of conflict disclosure or resolution, including the appearance of a conflict, contact LSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

## Chapter 3: Information Security & Confidentiality

**NOTE:** Due to the high importance of the security and confidentiality of FDIC information and records, Outside Counsel should pay close attention to the contents of this Chapter. Direct any questions regarding the firm’s responsibility for Information Security in FDIC Legal matters to the Oversight Attorney and the Legal Division Information Security Manager (“ISM”) at [LegalISM@fdic.gov](mailto:LegalISM@fdic.gov).

### 3.1 Maintaining Confidentiality

- (a) While representing the FDIC, Outside Counsel may have access to nonpublic, confidential information. The FDIC has defined a broad category of such information in any form, paper or electronic as “Sensitive Information” in [FDIC Directive 1360.09](#). Outside Counsel, including all employees or contractors, must

comply with Directive 1360.09. This includes an understanding of (1) all categories of Sensitive Information,<sup>6</sup> as defined in the Directive and set forth below; and (2) FDIC information security policies and procedures as set forth in the Directive.

- (b) Outside Counsel is responsible for the security and confidentiality of all Sensitive Information the firm may have access to. Outside Counsel must take appropriate measures to ensure that all personnel are trained and familiar with this responsibility. Protecting the security and integrity of Sensitive Information extends to all legal and non-legal personnel of the firm, and any experts or other subcontractors that the firm may hire in any FDIC legal matter. Due to the role and mission of the FDIC in the U.S. monetary and banking systems, Sensitive Information may include a broad spectrum of information and records from multiple sources. Outside Counsel's adherence to a strong and effective client confidentiality and information security policy is a critical part of FDIC representation.
- (c) Outside Counsel must supply the FDIC with the name and contact information of the firm's Chief Information Security Officer or equivalent as well as a backup contact, both of whom can be reached without delay if necessary.
- (d) The FDIC may contact the firm to assess the strength of the firm's cybersecurity measures, protections, policies, or procedures. This may include any combination of telephone contacts, email questionnaires, review and evaluation of the firm's Information Security directives, policies, and procedures, or on-site reviews by FDIC staff. Outside Counsel will cooperate with and timely respond to such FDIC requests.
- (e) In addition to jurisdictional client confidentiality rules, all Outside Counsel and their personnel must comply with the [American Bar Association \(ABA\) Model Rules of Professional Conduct, Rule 1.6](#) and [12 C.F.R. Part 366](#). This duty of client confidentiality includes maintaining the security and integrity of records in paper or electronic format.

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<sup>6</sup> **Sensitive Information is defined in Directive 1360.09 as:** Any information, where the loss, misuse, or unauthorized access to or modification of which could adversely impact the interests of the FDIC in carrying out its mission or the privacy to which individuals are entitled. It includes, but not exclusively, the following:

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;
2. Information under the control of the FDIC and contained in a Privacy Act system of record that is retrieved using an individual's name or by other criteria that identifies an individual;
3. Personally Identifiable Information ("PII") about individuals maintained by the 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., Social Security Number) 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., internal IP addresses, server names, firewall rules, encryption and authentication mechanisms, and network architecture pertaining to the FDIC).

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

- (f) All Outside Counsel must have in place a secure computer network. The network must have significant resistance to intrusions and sensitive detection capability to identify possible attacks by any method. The FDIC may contact the firm regarding the security of its computer network, as set forth above in subsection 3.1(d). Any deficiencies noted, as determined in the sole discretion of the FDIC, will need to be promptly corrected. See the Note above this subsection 3.1(f).
- (g) All outside Counsel must have internal policies and procedures on Information Security, data back-up, data breaches and the handling, use, and disposition of confidential client information (“Security Plan”). The Security Plan should, at a minimum, require the following:
  - 1) **Periodic Risk Assessments** — Outside Counsel should conduct and fully document periodic internal risk assessments to identify reasonably foreseeable threats to information security.
  - 2) **Appropriate Security Programs** — These should consist of reasonable physical, technical, and administrative security measures to manage and control identified risks.
  - 3) **Periodic and Recurring Training & Education** — Mandatory periodic employee training should be certified by the employee and documented by the firm. This training should enhance staff understanding of the roles and responsibilities regarding data, physical, and administrative security.
  - 4) **Testing/Monitoring** — Outside Counsel should periodically test the sufficiency of security measures. This includes testing or monitoring of systems, as well as records review of system activity, audit logs, access reports, and security incident tracking reports.
  - 5) **Review and Adjustment** — Outside Counsel must respond timely to any threats or risks that arise during these periodic internal reviews. This includes, when appropriate, FDIC notification, as further specified in this Deskbook.
  - 6) **Third Party Consultants** — To comply with the obligations imposed by law, FDIC policy, the ABA Model Rules and state professional rules of conduct, Outside Counsel should consider the engagement of technical consultants when necessary.

Outside Counsel must ensure their firm’s Security Plan is customized to meet business, legal, and client needs. Because each firm’s situation is unique, additional security measures not referenced in this subsection may be necessary in some instances. This subsection 3.1(g) is intended to aid Outside Counsel in considering their responsibilities for safeguarding FDIC Sensitive Information. This subsection does not create or expand on any formal FDIC Information Security policy, nor does it provide any safe harbor for Outside Counsel.

- (h) Since Outside Counsel is responsible for ensuring the security and integrity of FDIC records, especially Sensitive Information, a copy or detailed explanation of the firm’s Security Plan must be supplied to the

FDIC Legal Division or other FDIC component upon request. Any deficiencies noted, as determined in the sole discretion of the FDIC, must be promptly corrected. See the Note above subsection 3.1(f).

As stated above, **the firm is solely responsible for ensuring the security of FDIC records, especially Sensitive Information that may be supplied or made available to the firm, as well as those records handled by any consultants, experts, or other contractors that the firm may hire to perform work on behalf of the FDIC.** To better protect Outside Counsel, the firm must obtain the signature of all such third-party contractors on a Confidentiality Agreement in a form substantially identical to the one included in the LSA application. Such agreements should be retained in the firm's records.

- (i) 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 ESI must be hosted and produced utilizing an FDIC-approved vendor under the direction of and authorized by the FDIC Legal Division's e-Discovery Group ("eDG").** Further, all employees, consultants, experts, or other contractors who will have access to any ESI must be properly credentialed with the vendor hosting and producing said ESI. Outside Counsel should coordinate these discussions through the Oversight Attorney. If Outside Counsel has any questions concerning this subsection 3.1(i), please direct them to the Oversight Attorney and to [LegaleDG@fdic.gov](mailto:LegaleDG@fdic.gov), as further described below in section 3.2.

### 3.2 Requirement to Use FDIC's E-Discovery Group on Legal Matters

When feasible and relevant, Outside Counsel retained on an FDIC Legal matter should first consult with the Oversight Attorney to conduct an early case assessment to identify potential sources of responsive records, custodians, screening criteria, search parameters, review processes, and scope of production. The early case assessment will consider the resources to be applied in responding to requests for FDIC documents and testimony. The Oversight Attorney can place the attorney in contact with eDG. Outside Counsel may also reach the eDG at [LegaleDG@fdic.gov](mailto:LegaleDG@fdic.gov), but always copy the Oversight Attorney on any communications with eDG.

Prior to production or disclosure of any FDIC records or information, all Outside Counsel must consult with eDG, through the Oversight Attorney, and make diligent efforts to assure that Sensitive Information has been identified and reviewed, that appropriate protective measures have been taken, and that only records and information that are properly discoverable under [Fed. R. Civ. P. Rule 26](#) will be produced or disclosed.

eDG, in coordination with the Oversight Attorney, will also work with the firm and help to coordinate any data hosting issues or requirements that may arise as to ESI described above in subsection 3.1(i). If ESI issues are present, it is important to coordinate early in the progress of the legal matter.

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

Outside Counsel and their subcontractors, if applicable, must 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 the firm’s internal network, including to the FDIC Oversight Attorney, other sources inside of the FDIC or to the firm’s subcontractors;**
- (b) promptly notifying the Oversight Attorney, the Legal Division ISM ([LegalISM@fdic.gov](mailto:LegalISM@fdic.gov)), and the FDIC’s security response team ([srt@fdic.gov](mailto:srt@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, such as 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 the office; and
- (d) understanding that Outside Counsel is solely responsible for ensuring the security and integrity of FDIC information by any subcontractors the firm uses.

### 3.4 Using Encryption Technology to Transmit Confidential and Sensitive Information

Outside Counsel must use approved encryption technology to transmit nonpublic Sensitive Information or confidential information. The Oversight Attorney and eDG can provide information on the available tools and facilitate transfers of such information in a secure manner.

### 3.5 Secure Telecommunications and Video Surveillance or Equipment

Outside Counsel must comply with applicable portions of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. The requirements of this law concern the use of certain electronic communication devices, and the law contains certain prohibitions of which Outside Counsel must be aware. Section 889 is fully incorporated into the firm’s LSA. See [Appendix A](#) to this Deskbook for a link to Section 889.

## Chapter 4: Legal Services Agreement

### 4.1 Application for Legal Services Agreement

Outside Counsel who express interest in representing the FDIC must request an application package from LSSCG. The application package requires various disclosures and requests information including the firm’s areas of expertise, firm composition, and conflicts of interest. Many of these disclosures are statutorily mandated and are necessary to determine whether the firm is eligible to perform legal services for the FDIC. When evaluating a firm’s LSA application package, the FDIC Legal Division considers a firm’s rates, abilities, areas of expertise, and conflicts of interest, as well as the FDIC’s need for additional Outside Counsel in a particular geographic area, and other factors.

#### **Required Application Materials**

All interested firms must submit a DocuSign package. No paper or other electronic application methods will be accepted. All of the forms available on the [FDIC website](#) are for reference only.

The firm must propose a **single** [Rate Schedule](#), identifying every employee of the firm that may provide billable services. The firm must also provide a Substitute Form W-9 Request for Taxpayer Identification Number (“TIN”) and Certification for the primary office and a separate Payee Information for Automatic Deposit of Payment Form for each office from where an employee will be providing billable services. Included in the application package are the FDIC standard [LSA Forms](#), which will be sent to the firm’s designated point of contact via DocuSign.

More application procedures can be found on the FDIC’s website at [Information for Prospective Outside Counsel](#).

**NOTE:** All rates must be in U.S. dollars only and in whole dollar amounts (e.g. \$250.00 per hour), and a timekeeper ID must be provided for each billing professional. For foreign transactions, foreign currency must be converted to U.S. dollars on the invoice (and must be provided in whole dollar amounts). The firm must provide the currency conversion method utilized to calculate the conversion. See Chapter 11 for more details about foreign transactions.

#### **SAM.gov Registration Requirement**

The FDIC may only make awards or legal referrals to firms that are registered in the [System for Award Management](#) (“SAM”) database. The firm **must** register on the SAM website, which contains user guides and demonstration videos under the Help tab. If the firm has any questions regarding SAM or the registration process, please contact the SAM Assistance Center toll free at (866) 606-8220.

#### **4.2 LSA Overview**

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

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

#### **LSA Duration**

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

If at the end of the LSA term Outside Counsel is working on a legal referral and the firm chooses not to renew its LSA, the LSA may continue, in the sole discretion of the FDIC, for the sole purpose of completing existing work under the same terms and conditions. If the firm continues to represent the FDIC in any matter after the expiration of the LSA, that representation will continue until the earliest of the following occurs:

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

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

If the LSA is not renewed or continued, the firm must make provision for transfer of all outstanding legal matters as directed by the FDIC prior to the expiration of the LSA's term.

### **Freedom of Information Act**

LSAs and their accompanying rate sheets are records under the [Freedom of Information Act](#) ("FOIA"). While the firm may request confidential treatment for and detailed pricing information may be exempt from disclosure, the FDIC makes no guarantee that it will withhold any portion of the LSA, rate schedules, or other related information a firm submits as part of the FDIC's response to a valid FOIA request.

### **4.3 LSA Renewal and Amendment**

When an LSA is within ninety (**90**) **days** of expiration, the firm's relationship partner or billing contact must contact LSCG if the firm wishes to renew its LSA. LSA renewal is necessary to receive new referrals. The FDIC will review and contact the firm's representative regarding any renewal requests with rate increase markups for any billing professional. That process may result in a delayed decision on the firm's renewal. The FDIC does not guarantee that it will renew an LSA, even if the firm is working on one or more legal referrals at the time of its expiration. If a firm does not wish to renew its LSA, it must notify the LSCG of that fact, so that the FDIC may decide on the disposition of any outstanding legal matters and implement that decision before the firm's current LSA expires.

### **LSA Amendment**

An amendment to an LSA may be necessary when there has been a change in the information submitted in an LSA application package. Refer to the [LSA Forms](#). **It is the firm's responsibility to inform the FDIC of all new or changed information**. If the firm's LSA information is not current, the firm may not be able to perform legal services for the FDIC. This information includes, but is not limited to, structural changes to the firm or the addition or removal of billable individuals. In addition, payment of invoices may be delayed if any needed information is not up to date, including the firm's TIN. More information about submitting an LSA Amendment can be found below. If a firm is unsure whether it needs to amend its LSA, contact the LSSCG.

#### *Structural Changes*

A firm may need to amend its current LSA or execute a new LSA when a structural change occurs within the firm. Structural changes may impact the firm's relationship with the FDIC in areas such as conflicts of interest or malpractice insurance coverage. In addition, these changes may also impact the FDIC's invoice payment



process. Examples of law firm structural changes requiring either an LSA amendment or the execution of a new LSA, depending on the circumstances, include, without limitation:

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

After reviewing submitted information concerning any structural change, the FDIC will determine what action is appropriate and notify the firm.

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

#### *New Federal TIN*

A new federal TIN requires execution of a new LSA. Note that structural changes that result in a new TIN require a new LSA application. A new TIN also changes information used for payment of invoices by electronic funds transfer (“EFT”) and requires the execution of new EFT forms. See the [EFT requirements](#).

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

#### *Adding and Removing Billable Individuals*

The firm must inform LSCG and all current Oversight Attorneys the firm is working with in writing when adding or removing billable individuals to a rate schedule attached to the LSA. Complete the LSA Amendment form when any attorney, paraprofessional, or other billable individual is added or removed.

**NOTE:** When removing an attorney who is primarily responsible for any legal matter from the list of billable individuals, the firm should provide the following additional information to the Oversight Attorney(s):

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

## 4.4 Completion of LSA Amendment Form

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

- Make changes, as appropriate, to the law firm name, address, telephone number, facsimile (“fax”) number, e-mail address, and contact attorney.
- For each billable individual, listed alphabetically, type A to add or D to delete, and provide the following information:
  - Biller’s Full Name;
  - Biller’s Timekeeper ID;
  - State License, if applicable;
  - Position; and
  - Years in Practice (for attorneys only).
- Complete the remaining fields.
- Ensure the standard rate, percentage of FDIC discount, and proposed FDIC rate are in whole number/dollar amounts without decimal places.
- Sign and date the completed LSA Amendment form.

**NOTE:** Billing rates must be denominated in U.S. dollars only and in whole dollar amounts, e.g. \$350.00 per hour, not \$349.50.

- Email a PDF copy of the LSA Amendment form to all Oversight Attorneys.
- LSCG will notify the firm if its request to amend the LSA has been approved. The firm will receive an electronic copy of the fully executed LSA Amendment. If the firm’s request is not approved, LSCG will notify the firm in writing. Outside Counsel may not bill the FDIC for the services of any individuals who have not been included on the FDIC-approved rate schedule.
- After approval of any changes, the updated information will be entered into the electronic systems of the FDIC and its contractors. Once this approval is complete, only then may Outside Counsel submit invoices under the amendment.

## Chapter 5: Legal Referrals

### 5.1 Overview

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

The FDIC reserves the right to terminate a legal referral or legal matter for any or no stated reason. Refer to Chapter 1, Section 1.15. Outside Counsel may not subcontract any legal work referred to him/her without the prior written authorization of the Oversight Attorney.

## 5.2 Referral Letter

When Outside Counsel receives a legal referral, the Oversight Attorney will send a [referral letter](#), which identifies the specific services requested and the terms and conditions of the legal referral. The referral letter incorporates several documents by reference, including the firm's LSA, this Deskbook, and the case/matter budget(s) which must be submitted by the firm and approved by the FDIC. The incorporated documents, as well as the referral letter, may only be amended or modified in writing with proper approval.

**NOTE:** At the time a legal referral is made, Outside Counsel must confirm in writing to the Oversight Attorney that no material changes have occurred that affect the representations and conflicts certifications contained in its most recent LSA application package. Any significant changes may require an LSA amendment or conflict waiver prior to initiating work on a legal referral.

## 5.3 Byrd Amendment — Legal Referrals Over \$100,000

If the amount of the budget (initial or amended) for a legal referral exceeds \$100,000, the firm must comply with provisions of the Byrd Amendment, [31 U.S.C. § 1352](#). The Byrd Amendment requires any recipient of federal contracts valued at greater than \$100,000 (including all fees and expenses) to file certain certification and disclosure forms. The required certification is contained in each legal referral letter and is applicable when the budget for a legal matter exceeds \$100,000<sup>7</sup>. If the Byrd Amendment applies, the firm must also submit [Form SF-LLL, Disclosure of Lobbying Activities](#) to the Oversight Attorney if the firm participates in covered lobbying activities in connection with that legal referral. See the [Byrd Amendment](#) requirements and applicable forms.

## 5.4 FDIC Legal Division Participation

In connection with any legal referral, the FDIC Legal Division may participate in or assume complete responsibility for any matter referred to Outside Counsel. This may include providing Outside Counsel with filings and research previously prepared or staffing a matter jointly with Outside Counsel.

## 5.5 Selection of Outside Counsel

Outside Counsel is selected on a competitive basis whenever possible. When retaining Outside Counsel to perform legal services, the FDIC Legal Division considers several factors, including:

- The experience of Outside Counsel in the type of legal work required to be performed;
- The geographic location of Outside Counsel;
- The capacity of Outside Counsel to handle the anticipated volume of work;

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<sup>7</sup> When applicable, Outside Counsel must certify whether the firm has made any payment or has agreed to make any payment prohibited by the Byrd Amendment. Depending on the answers contained in the Certification, Outside Counsel may be required to complete and submit the Disclosure of Lobbying Activities ([Standard Form LLL](#)) ("Disclosure Form"). Generally, Outside Counsel need only submit a Disclosure Form if the firm has engaged in lobbying activities as defined in the Byrd Amendment.

- Whether the fees or rates proposed by Outside Counsel are competitive in comparison to other firms' rates;
- Whether the proposed rates reflect discounts;
- Whether, in the sole discretion of the FDIC Legal Division, current FDIC payments to the firm are already substantial or excessive;
- Whether provision of legal services by Outside Counsel would constitute or give rise to an actual or potential conflict of interest or the appearance of a conflict of interest. Refer to Chapter 2; or
- Whether the firm has a reputation for competence, integrity, cost effectiveness and cooperation.

## Chapter 6: Case Management

### 6.1 General Case Management

The FDIC seeks the best resolution of legal matters at the lowest reasonable cost. Consistent with that goal, the FDIC expects Outside Counsel to manage time carefully.

The FDIC will not pay for costs associated with:

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

Outside Counsel is required to discuss staffing with the Oversight Attorney and assign the appropriate number of attorneys and paraprofessionals that are necessary to adequately represent the FDIC. Outside Counsel must refrain from rotating assignments away from attorneys knowledgeable about FDIC matters or using FDIC projects for the sole purpose of training firm personnel.

Outside Counsel must immediately advise the Oversight Attorney of significant developments in the matter, including, but not limited to, if there is any indication that the authorized budget may be insufficient to complete work on the matter. Under no circumstances may Outside Counsel incur costs over its approved budget. Cost-effective representation on every matter requires that Outside Counsel work closely with the Oversight Attorney to:

- Achieve strategic, tactical, or cost-effective results, including pre-filing review of pleadings.
- Hire experts, e-discovery vendors, court reporters, and other professional service providers, including ensuring that those that have a current Legal Support Services Agreement (“LSSA”) with the FDIC follow Chapters 1 through 3 of the Legal Support Services Deskbook and do not charge the FDIC more than that provided in the professional service provider’s rate schedule. **Do not subcontract services without prior Oversight Attorney permission. The FDIC Legal Division reserves the right to hire experts directly in lieu of allowing Outside Counsel to subcontract, when appropriate.**
- Where appropriate, conduct an early case assessment (ECA) with the Oversight Attorney, together with the eDG, to identify sources of responsive information and likely custodians, scope costs, and create a discovery plan.

- Understand the roles and responsibilities of Outside Counsel and the Oversight Attorney in the matter.
- Understand the goals and objectives to be achieved.
- Establish expectations and processes to ensure prompt distribution of all correspondence, pleadings, and other filings.
- Make effective use of FDIC Legal Division resources, including its attorneys and the FDIC Legal Research Bank described in Section 6.4.
- Develop and obtain authorization for a case plan and budget that will achieve the FDIC’s goals and objectives.

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

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

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

## Reports

Outside Counsel must keep the Oversight Attorney fully informed regarding the status of each matter. Reporting requirements will vary by type and size of case and by firm. A status report must be submitted to the Oversight Attorney as often as directed.

Reports should:

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

## 6.2 Special Issues

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

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

### **Special Issues List**

Common FDIC Special Issues that arise include, without limitation, the following:

- Actions involving the FDIC and another state or federal financial institution regulator or federal agency
- Agency status of the FDIC in either its Corporate or Receivership capacity, or of any predecessor agency
- Comparative Fault/Contributory Negligence
- Conflicts between insolvent institutions, including but not limited to conservatorships, receiverships, and bridge banks
- Constitutional challenges to statutes and to actions taken by FDIC officials that affect the FDIC
- [Crime Control Act of 1990](#), Pub. L. No. 101-647, 104 Stat. 4789
- Department-of-Justice-initiated subpoenas (Grand Jury or Trial) and associated requests for information
- [Deposit Insurance Funds Act of 1996, part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996](#)
- [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 \(“Dodd- Frank”\)](#)
- Employee benefit and [ERISA](#) litigation; employee lawsuits involving any agency personnel, whether as named parties, deponents, or witnesses
- Environmental issues including, but not limited to: [CERCLA \(Superfund\)](#), [RCRA](#), Underground Storage Tanks, asbestos, lead-based paints, wetlands, endangered species, or the [National Environmental Policy Act](#)
- [Federal Deposit Insurance Corporation Improvement Act of 1991 \(FDICIA\)](#)
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), [Pub. L. No. 101-73](#), 103 Stat. 183 (1989) (codified at various sections of chapters 12 and 15 of the U.S. Code)
- [Freedom of Information Act \(FOIA\)](#)
- [Gramm-Leach-Bliley Act \(GLBA\)](#)
- Indemnification of employees, officers, or directors of failed insured depository institutions
- Interpretation of FDIC statutes, regulations, or policy statements
- National depositor preference
- Penalties against the receiver
- [Privacy Act of 1974](#) or the [Right to Financial Privacy Act](#)
- Pro-rata vs. pro-tanto settlement bar rule
- Prudential mootness

- Publicity: any case likely to generate publicity
- Punitive damages
- Qualified Financial Contracts, including derivatives, repurchase agreements, and swaps
- [Racketeer Influenced and Corrupt Organizations Act \(“RICO”\)](#)
- [Securities Act of 1933](#) and [Securities Exchange Act of 1934](#)
- Sovereign Immunity, including pre-judgment interest against Receiver
- Tax matters — state or Federal or related to Bank Holding Companies
- Third-party hosting costs, scanning, the use of analytics and managed review firms, and related discovery expenses
- Tort Claims ([Federal Tort Claims Act](#))
- Issues related to the [FDI Act](#), [12 U.S.C. § 1812 et seq.](#), including but limited to the following:
  - Involuntary Sale of FDIC Property, [12 U.S.C. § 1825\(b\)](#)
  - Judicial Restraints of Receivers’ Powers, [12 U.S.C. § 1821\(j\)](#)
  - Priority of payment for claims against the FDIC as Receiver, [12 U.S.C. § 1821\(d\)\(11\)](#) and [§ 1821\(d\)\(20\)](#).
  - Receiver’s succession to the rights of depositors and shareholders or [12 U.S.C. 1821\(d\)\(2\)\(A\)](#)
  - Repudiation of contracts, [12 U.S.C. § 1821\(e\)](#)
  - Standard of Liability of Directors and Officers, [12 U.S.C. § 1821\(k\)](#)
  - Unrecorded Agreements, *D’Oench, Duhme*, [12 U.S.C. § 1823\(e\)](#) or [§ 1821\(d\)\(9\)\(A\)](#)

Outside Counsel should maintain diligent communication with the Oversight Attorney to identify Special Issues that may not be listed above.

### 6.3 Electronic Discovery

Outside Counsel must be adept at evaluating e-discovery issues at the outset of a matter and able to develop a case-specific, cost-effective strategy to address those issues. In so doing, Outside Counsel should consult with the Oversight Attorney, who will engage the FDIC’s eDG, as necessary. The eDG will provide recommendations for the best use of internal eDiscovery and related solutions and explain any relevant eDiscovery-related policies, processes, or procedures.

### 6.4 FDIC Legal Research Bank

To avoid duplication of legal research and to capitalize on previous legal research, the FDIC Legal Division established a legal research bank for FDIC Outside Counsel (“OC research bank”), designed to centralize substantive briefs, unpublished opinions, and other legal research materials that may be utilized in FDIC matters. The OC research bank is intended to assist Outside Counsel in representing the FDIC by making legal research materials readily available, thereby reducing legal research costs. Law firms with current LSAs are eligible to open an account for online research in the OC research bank.

Outside Counsel is required to minimize legal research costs on FDIC matters. Thus, Outside Counsel must refer to the OC research bank at the beginning of every authorized legal research project, either by directly searching

through the database or by consulting with the assigned Oversight Attorney to get assistance in determining whether something has been researched already. Failure to consult the OC research bank may result in disallowance of associated charges for unnecessary legal research. See [Section 8.3 Billable Fees and Expenses](#).

In representing the FDIC, Outside Counsel authorizes the FDIC to include any final, substantive legal work product, such as briefs or legal research memoranda (and any other written materials prepared in the course of the firm's FDIC representation) in the OC research bank. Outside Counsel also consents to the reproduction, dissemination, distribution, or other use of such written materials (including the use of those materials in other documents prepared for the FDIC Legal Division) by any authorized user of the OC research bank.

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

## 6.5 Alternative Dispute Resolution (“ADR”)

The FDIC is committed to the use of alternative dispute resolution (“ADR”) in appropriate cases. The FDIC views such techniques as potentially less costly, less time-consuming, and more effective at facilitating negotiated settlements. Thus, except in instances of claims between two FDIC-controlled institutions, discussed below, Outside Counsel is encouraged to periodically review the matter to determine whether ADR or some other non-judicial dispute resolution approach is more appropriate than litigation.

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

When ADR is used, Outside Counsel is expected to comply with current FDIC [ADR policy](#). The Oversight Attorney can provide information on the use of binding arbitration and the selection and payment of third-party neutrals.

### **Claims between FDIC-controlled institutions**

Claims between FDIC-controlled institutions (including receiverships, conservatorships, acquired or assisted institutions, asset servicers, and bridge banks) must immediately be brought to the attention of the Oversight Attorney. These claims must be resolved through the use of the FDIC's internal ADR program unless otherwise directed by the Oversight Attorney. The FDIC may disallow costs or fees incurred in the litigation of such claims without prior Oversight Attorney approval.<sup>8</sup>

## 6.6 Special Litigation Concerns

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<sup>8</sup> See FDIC Directive 5000.03, Dispute Resolution Among Institutions Controlled by the FDIC, which can be provided by the Oversight Attorney.



The Oversight Attorney will provide direction and approval to Outside Counsel regarding litigation strategies. Questions concerning litigation strategies should be addressed to the Oversight Attorney.

### **Discovery Requests — FDIC or Other Federal or State Agencies**

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

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

Outside Counsel also must consult with the Oversight Attorney prior to contacting employees of the FDIC or other federal entities or obtaining documents generated by another federal entity.

### **Filing Fees**

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

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

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

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

If a professional service provider that is required to be retained is a law firm, that firm can either be a law firm with a pre-existing valid LSA in place or a non-LSA law firm. When considering law firms, if a firm with an LSA in place is equally suited for the engagement as a non-LSA law firm, **it is generally preferable to retain the services of the LSA law firm, when practicable**. When retaining an LSA law firm, Outside Counsel may not pay that law firm more than the FDIC's approved LSA rates. Where practicable, if Outside Counsel selects a subcontractor law firm that has an existing LSA, Outside Counsel should first discuss with the Oversight Attorney the feasibility of having that firm deal directly with the Oversight Attorney rather than as a subcontractor. If a non-LSA law firm is retained as a subcontractor for a matter, then the non-LSA firm's rates

must be agreed upon by the Oversight Attorney for that matter and the main LSA law firm requesting the subcontracting arrangement **in advance** of services.

Absent express FDIC permission, experts, e-Discovery vendors, court reporters, and other professional service providers hired as subcontractors may only be compensated for fees and expenses in accordance with the requirements of this Deskbook. Refer to Chapter 7 for administrative requirements. If Outside Counsel subcontracts with a vendor with an existing LSSA, Outside Counsel may not pay that vendor more than the FDIC's approved LSSA rates for substantially identical services. As with law firms, where practicable, if Outside Counsel selects a subcontractor that has an existing LSSA, Outside Counsel should first discuss with the Oversight Attorney the feasibility of having that vendor deal directly with the Oversight Attorney rather than as a subcontractor. The FDIC considers Outside Counsel's oversight of experts and other professional service providers an important duty under the terms of the legal referral.

### **Settlements**

The FDIC evaluates options for resolving disputes, including through settlement, at each stage of a matter. In all matters, the FDIC retains the sole authority to accept or reject settlement offers, and Outside Counsel is prohibited from agreeing to any settlement or settlement terms or preparing a detailed analysis of a settlement offer without prior authorization from the FDIC. The Oversight Attorney will provide Outside Counsel with direction regarding all proposed settlements.

Generally, Oversight Attorneys are involved in settlement discussions. If an Oversight Attorney is not directly involved in settlement discussions, Outside Counsel must communicate all settlement offers, including any deadlines imposed, to the Oversight Attorney as soon as practicable. Likewise, Outside Counsel must promptly notify the Oversight Attorney of any material changes that relate to the acceptance of a settlement offer (e.g., a change in the estimate of success or timing) that arise.

The time needed to obtain settlement authority, including authority to accept or reject a settlement offer, may vary. In the event of a court-ordered mediation, Outside Counsel must provide sufficient advance notice to the FDIC to enable the Oversight Attorney to secure settlement authority prior to the mediation, as needed.

### **Appeals**

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

## **6.7 Criminal Matters**

The FDIC has a responsibility to notify and, where appropriate, assist law enforcement officials, including the FDIC OIG, in investigating conduct that may constitute a violation of criminal statutes. Outside Counsel must immediately report any information that indicates possible criminal behavior to the Oversight Attorney, subject to Outside Counsel's whistleblower protections discussed above. The Oversight Attorney may either prepare a Suspicious Activity Report form with Outside Counsel's assistance or instruct Outside Counsel to do so under provided guidelines.

The FDIC does not have the authority to prosecute criminal matters. If suspected criminal activity is uncovered during the course of an investigation, Outside Counsel must promptly advise the Oversight Attorney. If Outside Counsel receives a request or subpoena in connection with a criminal matter to produce FDIC records, he or she must advise the Oversight Attorney, who can assist in obtaining appropriate authorizations to respond or produce the records.

## Chapter 7: Case Plan & Budget

### 7.1 Budget Package

Upon receiving a referral from the FDIC on a legal matter, Outside Counsel must prepare a plan (the “Case Plan”) to explain how Outside Counsel anticipates accomplishing the work, along with a case/matter budget (the “Budget”) showing the anticipated cost to the FDIC of such legal representation, including professional fees and all anticipated expenses.

The Case Plan and Budget constitute the “Budget Package” and must be submitted together. The Case Plan summarizes the strategy for achieving satisfactory resolution of a matter, while the information provided in the Budget controls costs and the payment of invoices.

Except in a case of extreme urgency, the FDIC must approve the Budget before Outside Counsel may begin working on the legal matter.

**NOTE:** The Budget must be approved by the FDIC before the firm can be paid for a legal matter. The FDIC uses, on an on-going basis, the cost estimates and other information provided in Outside Counsel’s Budget to assess cost-effectiveness and to measure progress. The FDIC Legal Division recognizes that estimates may be affected by changed circumstances; but, because the estimates are used in making business decisions, they must be as accurate as possible.

If Outside Counsel needs to later amend the approved Budget, he or she must submit an [Amended Budget Package](#) (See Section 7.8 below). The assigned Oversight Attorney can assist Outside Counsel with questions or clarification regarding the submission of a Budget Package.

### 7.2 Case Plan

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

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

### 7.3 Budget

The Budget translates the Case Plan into financial expectations. The Budget should conform to the Case Plan and estimate the total cost of fees and all anticipated expenses for the life of the matter. Outside Counsel may not bill in excess of the approved Budget. If Outside Counsel anticipates needing to exceed the approved Budget, Outside Counsel may submit an Amended Budget.

E-Billing firms must submit an electronic budget form as an Excel spreadsheet via the Collaboration Portal. Paper billing firms must submit a signed PDF copy of [the appropriate Budget form](#) to the Oversight Attorney as part of their Budget Package.

### 7.4 (Reserved)

Reserved

### 7.5 Completing the Budget Form (paper billing firms)

The following are the instructions for completing a Budget form:

- Select the [Budget form](#) appropriate for the legal matter (Litigation or Non-Litigation). Questions about which form to use should be directed to the Oversight Attorney.
- Fill out all requested information on the Budget form.
- Indicate in the appropriate box whether billing at the hourly rates specified in the firm's LSA [Rate Schedule](#), or if the FDIC has approved any type of Alternative Fee Arrangement, such as fixed fee, capped fee, or other payment arrangement.
- Refer to the following table to determine information required for the type of billing entered.

Rate	Information Required
Hourly	Complete the budget sections in which legal fees and expenses are expected.
Fixed Fee (very rare and only with FDIC authorization)	Record the fixed fee as a total without further itemization. Submit the estimated completion date and allowable related expenses.

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

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

## 7.6 Budget Package Submission

### E-Billing Firms

Upon receiving a legal referral, the Oversight Attorney will provide Outside Counsel with instructions for submitting the Budget and Case Plan, after which the following occurs:

- The Oversight Attorney reviews the Budget. If it is satisfactory, the Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
- Outside Counsel will be notified when the Budget is approved.
- If, in the FDIC's judgment, the submitted Budget appears excessive for the scope of the referral, the FDIC may request that Outside Counsel provide additional information to justify the requested Budget amount or that Outside Counsel make changes to and re-submit the Budget. In rare instances, the legal referral may be withdrawn or transferred if Outside Counsel is unable to submit an acceptable Budget.

### Paper Billing Firms

Paper billing firms must submit the Budget Package to the FDIC for approval prior to commencing any work on a legal referral. The following steps outline the submission and approval process:

- Submit the Budget Package (completed Case Plan and Budget Form) as instructed by the Oversight Attorney.
- The Oversight Attorney reviews the Budget. If it is satisfactory, the Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
- Outside Counsel will be notified when the Budget is approved.
- If, in the FDIC's judgment, the submitted Budget appears excessive for the scope of the referral, the FDIC may request that Outside Counsel provide additional information to justify the requested Budget amount or that Outside Counsel make changes to and re-submit the Budget. In rare instances, the legal referral may be withdrawn or transferred if Outside Counsel is unable to submit an acceptable Budget.

## 7.7 Amending a Budget Package

If Outside Counsel anticipates that the approved Budget amount is not sufficient to complete a case or matter, Outside Counsel must promptly submit an amended Budget Package. Outside Counsel may not exceed the approved Budget, and the amended Budget Package must be submitted and approved before additional costs are incurred.

**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. Outside Counsel must immediately report any anticipated Budget changes to the Oversight Attorney.

An Amended Budget Package contains:

- Amended Case Plan with an explanatory narrative; and
- For E-Billers, an amended Budget uploaded through the Collaboration Portal; or
- For paper billers, the appropriate [Amended Budget form](#) (Litigation or Non-Litigation). Questions about which form to use should be directed to the Oversight Attorney.

### Completing the Amended Budget Package

The following are the instructions for completing an Amended Budget Package:

- Prepare a narrative explaining the reasons for the amendment.
- If necessary, prepare an amended Case Plan that provides detail commensurate with the significance of the legal matter. For Litigation and Professional Liability matters, the amended Case Plan should summarize the revised strategy and circumstances giving rise to the amendment and project the schedule for preparing and trying the case under those circumstances, including all expected litigation events. Contact the Oversight Attorney if there is any doubt about whether an amended Case Plan is needed.
- **For e-Billing Firms:** If not already provided, request instructions for submitting the Amended Budget Package from the Oversight Attorney.
- **For Paper Billing Firms:**
  - Fill out all requested information on the Amended Budget form, in a manner similar to that used in completing the original Budget form.
  - Mark the appropriate box if Outside Counsel has submitted a previous amended Budget.
  - Use the most recent approved figures in the column for “Current Budget.”
  - Sign and date the Amended Budget.

### 7.8 Amended Budget Package Submission

Outside Counsel must submit the Amended Budget Package to the FDIC for approval.

- Submit the Amended Budget Package in the same manner as the original Budget Package, as instructed by the Oversight Attorney.
- Also note that if the amended Budget now exceeds \$100,000, (1) the [Byrd Amendment](#) (31 U.S.C. § 1352) applies to the referral, (2) the Byrd Amendment Certification contained in the firm’s referral letter

applies, and (3) the firm is required to submit a [Disclosure of Lobbying Activities form](#), if applicable. If the firm's initial referral letter did not contain a Byrd Amendment certification, Outside Counsel should contact the Oversight Attorney about the process for providing the certification.

- The Oversight Attorney reviews the Amended Budget Package. If it is satisfactory, the Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
- The FDIC will notify Outside Counsel when the Amended Budget Package has been approved.
- As with the original Budget Package, Outside Counsel may be asked for supplements or changes before the Amended Budget Package is approved. **Outside Counsel may not perform any work not authorized by the original Budget Package until the Amended Budget Package is approved.**

## 7.9 Alternative Fee Arrangements

The FDIC will consider employing Alternative Fee Arrangements for legal matters or groups of matters only when such arrangements are expected to provide significant cost savings that justify a departure from the rates negotiated in the LSA and it is not practical to amend the LSA [Rate Schedule](#). In appropriate cases, such arrangements may include fixed fees for a matter or class of matters (e.g., foreclosures), discounts to the LSA rate for a particular matter, capped total amounts, or "blended rates," where the firm and the FDIC agree that all attorneys assigned to the matter will bill at a single rate. Generally, the FDIC will not enter into contingency fee arrangements absent very rare circumstances.

Any Alternative Billing Arrangement is considered an Exception to the terms of the Deskbook and must follow the Exception process. Any Alternative Fee Arrangement must be documented in an agreement signed by the authorized representative of the law firm and pre-approved by the Oversight Attorney. The agreement should specify the service providers and billing rates included in the Alternative Fee Arrangement (for matters that will be billed at hourly rates) or the negotiated fee (for matters that will be billed at non-hourly rates, e.g., foreclosures, unlawful detainers, requests for legal opinion, etc.). The agreement memorializing the Alternative Fee Arrangement must be made a part of the referral letter for the assigned legal matter and saved in the Advanced Legal Information System ("ALIS").

No Alternative Fee Arrangement will be effective, and no invoices may be submitted under such an Arrangement until the referral letter with the attached Alternative Fee Arrangement signed by both parties is received and confirmed in writing by LITU at FDIC Headquarters or the equivalent group in a regional, field, or satellite office. LITU can be reached by contacting the Oversight Attorney.

## Chapter 8: Invoice Preparation & Submission

### 8.1 Overview for all Outside Counsel

The FDIC uses a third-party service provider to provide electronic billing ("e-billing") services. In order to access e-billing capabilities, including the electronic submission of case budgets and monthly invoices, Outside Counsel must sign up with the designated third-party vendor, as discussed below in Section 8.11.

Outside Counsel may also submit monthly PDF copies of paper invoices (“paper invoices”) if they choose not to use the electronic billing (“e-billing”) services, the cost of which is not a reimbursable expense. Paper invoices must be submitted according to the provisions of Section 8.12. Use of e-billing is preferred, when possible. Paper invoices may be used only to bill fees and expenses totaling \$100,000 or less during a two-year LSA period. **An Outside Counsel firm that uses paper billing must change over to e-billing once they have invoiced an aggregate of \$100,000 in fees and expenses during a two-year LSA period.**

**NOTE:** Outside Counsel **must bill on a monthly basis (e.g. May 1 through May 31)** and generally may not bill the FDIC more than once per matter per month. Outside Counsel also may not bill for overlapping service periods (e.g., May 1 through May 31 and then May 15 through June 15). All invoices must be submitted within a year of the date upon which the last services were provided.

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

As discussed in Chapter 7, Case Plan and Budget, Outside Counsel must have an approved Budget from the FDIC before performing services for the FDIC.

Outside Counsel should submit a final invoice for fees and expenses within ninety (90) days of the matter’s conclusion or termination. Absent extraordinary circumstances, the FDIC, in its sole discretion, may refuse to pay invoices submitted over **one year** from the date of invoiced services.

## 8.2 Fees

### **Block Billing and Vague Description of Services**

Block billing is a timekeeping method by which a lawyer or other billing professional aggregates time spent working on smaller tasks into a larger single “block,” rather than itemizing the time expended on the smaller specific tasks. **Block billing for FDIC work is strictly prohibited.** The use of block billing makes it impossible to accurately determine the number of hours spent on any single task, thus impairing the FDIC’s ability to review bills for reasonableness. To avoid block billing, Outside Counsel should not combine different types of activity into one single entry on an invoice, even if the same individual performed the activities. However, it is acceptable (and encouraged) to describe multiple tasks performed by the same individual within a single entry, itemizing the time spent on each task or category of tasks in parentheses.

In a similar vein, vagueness limits the FDIC’s ability to determine the nature of the work performed. Vagueness is the failure to use sufficient detail to adequately describe the work performed. An invoice entry’s description is vague when it does not identify the specific legal issue or purpose of a call, meeting, etc., provide adequate documentation, or provide an adequate metric for assessing the time spent (e.g., number of documents reviewed). An adequate description in a billing entry has enough detail for the Oversight Attorney to easily and readily identify the precise billed activity and to distinguish it from similar activities. As a guiding principle, if the Oversight Attorney would have to refer to the file or check notes to identify the billed activity, the entry is likely vague.



Additionally, Outside Counsel must staff tasks appropriately. Outside Counsel may not assign higher-level attorneys or staff to a matter or task that could or should have been accomplished by a lower-level attorney or staff, absent compelling circumstances. Overstaffing may also occur where more attorneys or staff are assigned to a matter than are necessary to complete the task.

The FDIC has the sole discretion to determine whether block billing or vagueness is present or if a task was overstaffed inappropriately. In such instance, the FDIC may reject the invoice, which may result in payment to Outside Counsel being delayed.

Below are examples to assist outside counsel with avoiding issues of block billing or vagueness.

Examples	
Example 1: Block Billing That Is Also Unacceptably Vague	
<b>Phone call with plaintiff's counsel; follow-up update email to Oversight Attorney; revise draft motion based on foregoing conversation.</b> (1.5 hours)	This entry is both unacceptable block billing and unacceptably vague. This example uses block billing because three different activities are combined into a single entry, the FDIC cannot evaluate the reasonableness of the time spent on each of those items. This example is unacceptably vague because it does not describe the purpose or necessity of the work nor the relevant legal issue or type of motion.
Corrected/Acceptable Entries from Example 1	
<b>10/10/2024 Phone call with plaintiff's counsel to satisfy court's meet-and-confer requirement prior to amendment of motion to dismiss (to add additional statute of limitations ground) (.5);</b> <b>10/10/2024 Prepare and send a follow-up email to FDIC Oversight Attorney confirming that plaintiff's counsel does not object to the amendment.</b> (0.2 hours)  <b>10/10/2024 Revise draft motion to dismiss based on communications with plaintiff's counsel and Oversight Attorney.</b> (0.8 hours)	This example demonstrates one way to revise the above invoice entry to eliminate the block-billing and vagueness issues.
Example 2: Block Billing That Is Also Unacceptably Vague	

<b>Examples</b>	
<b>Trial Preparation.</b> (7.5 h)	This example is unacceptably vague because it does not detail what specific tasks were accomplished. It is also likely block billing because “trial preparation” generally involves multiple tasks.
<b>Example 3: Properly Itemized Billing That Is Unacceptably Vague</b>	
<b>Letter to Court.</b> (0.5 h)	This example is properly itemized, i.e. not block billing. However, the example is vague because it does not identify the purpose of, or necessity for, the letter and provides no context as to its subject or the relevant legal issue.
<b>Corrected Entry from Example 3</b>	
<b>Prepare letter to court requesting unopposed continuance of order to show cause hearing, ordering plaintiff to show cause why it should not be sanctioned over boilerplate discovery responses.</b> (0.5 h)	<p>This is an acceptable corrected invoice entry for the letter prepared in the above Example. It is properly itemized and properly identifies the purpose and necessity of the letter and provides context regarding the relevant legal issue.</p> <p><i>Note:</i> This entry might still indicate overstaffing if it was billed at a partner rate for an unopposed continuance letter, which could be drafted by an associate. Overstaffing a task might involve assigning too many attorneys to a task or assigning a higher-level attorney work that is more appropriate for a lower-level attorney, paralegal, or support staff.</p>
<b>Example 4: Billing for Document Review That Is Unacceptably Vague</b>	
<b>Document Review.</b> (3 h)	This item is an unacceptably vague time entry. It does not adequately describe the items Outside Counsel reviewed nor the purpose of the review.
<b>Corrected Entry from Example 4</b>	
<b>Review and tagging/coding on 100 documents (Doc ID Numbers 1 to 100) to identify correspondence related to loan defaults in March 2023</b> (3 h)	This is an acceptable invoice entry. This corrected entry adequately identifies the items Outside Counsel reviewed and the purpose of the review.

## Rates

Outside Counsel and staff may not charge more than the agreed upon rate(s) listed in the LSA. Oversight Attorneys may negotiate lower rates on a case-by-case basis.

Rates must be billed in U.S. dollars and in whole-dollar amounts, e.g. \$400.

## Time Increments

Outside Counsel must bill in 0.1-hour (6-minute) increments, e.g. billing in increments of .15 or .25 hours is not acceptable. Experts or other subcontractors of the firm must also bill in .1-hour/6-minute increments, unless an Exception is pre-approved.

### 8.3 Billable Fees and Expenses and Subcontracting

Outside Counsel may bill the FDIC reasonable charges for fees and authorized expenses in U.S. dollars only and must follow the requirements, as explained below. The FDIC has the sole discretion to determine whether fees are reasonable. All LSAs have been deemed to charge reasonable rates as a prerequisite for approval. Any fees in excess of the agreed upon LSA rates will likely be disallowed, absent compelling circumstances. Any expenses billed to the FDIC may be disallowed if the FDIC determines them to be unreasonable.

The below requirements apply to all invoices submitted to the FDIC. However, they may be superseded by the terms of any alternative fee arrangements agreed upon in the referral letter.

#### **Fees**

Outside Counsel may bill the FDIC for reasonable fees at approved LSA rates or via other alternative fee arrangements approved by the Oversight Attorney in writing for:

- Legal work on matters as approved; and
- Travel time (when no substantive FDIC work is performed during travel) at 50 % of the approved LSA rate or the agreed upon hourly rates indicated in the referral letter, whichever is lower.

Alternative billing arrangements must be specifically pre-approved in writing and, absent compelling circumstances, must be included in the referral letter. Refer to Section 7.9, Alternative Fee Arrangements.

All other items, including subcontractors' fees, will be billed as an expense on the invoice, subject to the limitations described in the following subsection.

**NOTE:** The FDIC requires law firms to reduce the hourly rate charged by 50 % while traveling for FDIC work unless legal work is being performed for the FDIC during travel.

#### **Expenses**

Outside Counsel may only bill the FDIC reasonable charges for the below expenses, with minimum required documentation indicated in parentheses. These requirements do not relieve Outside Counsel of the duty to maintain receipts and other supporting documentation of all expenses for audit purposes or if otherwise requested at any time by the FDIC.

- Itemized in-house paper copy or outside photocopying charges, with Oversight Attorney pre-approval, up to \$0.20 per page (date, cost per page, number of pages, purpose/necessity of paper copy, and total amount).<sup>9</sup>

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<sup>9</sup> The FDIC expects Outside Counsel to provide information electronically at no cost to the FDIC. Paper copy charges will only be allowed where it is not possible or practicable to provide electronic copies.

- Itemized international long-distance telephone charges or fax charges, with Oversight Attorney pre-authorization (date, addressee's name and telephone number, purpose/necessity of call/fax, reason call could not be completed using cheaper virtual means, cost per page/minute, and total amount).
- Itemized domestic or international long distance conference call charges (date, length of call, names of participants, purpose/necessity of call, reason call could not be completed using cheaper virtual means, amount billed to the firm by conference provider, and receipt).
- Itemized overnight delivery (date, recipient's name, type of delivery service used, reason delivery could not be completed using U.S. mail or other cheaper means, and total amount).
- Itemized "actual-time" charges for electronic research charges billed by provider, such as LexisNexis or Westlaw (excluding monthly or annual subscription fees), with pre-authorization (date, number of pages billed for—if applicable, name of the service provider, name of person performing research, brief description of the research, and total amount billed).
- Out-of-pocket expenses relating to providing training to FDIC personnel, unless payment is provided for by other means, such as the State-of-the-Art Continuing Legal Education (CLE) program (date, description of item, purpose, and amount).
- Itemized extraordinary postage (e.g., bulk or certified mail) (date, name of vendor, type of postage, name of recipient, purpose of mailing, and amount).
- Expenses related to expert witnesses or other professional service providers, such as investigators or court reporters (with Oversight Attorney pre-approval)—see below for more details.
- Some sales taxes on items that Outside Counsel pays, such as on lodging or utilities.
- Filing Fees for state court matters. Please note that Outside Counsel may not bill for and should not pay for federal district or appellate court fees when filing on behalf of the FDIC (date, court name, case number, itemized list of fees, description of case/motion being filed).
- Other case-specific (non-overhead) expenses (date, case name/number, itemized list and description of expenses, justification if not obvious from description). Approval of these expenses must be documented in the case file for audit purposes.
- Allowable travel expenses. Claims for travel-related expenses must be made using the FDIC's [Law Firm Travel Voucher](#) and must follow the travel-related requirements and restrictions found in [Section 8.7](#).

**NOTE:**

Domestic state and local taxes on FDIC allowable expenses may be reimbursable. Consult the Oversight Attorney in advance about reimbursement for domestic and foreign taxes.

Domestic long-distance telephone or fax charges are considered overhead by the FDIC and are NOT allowable expenses.

**Non-Billable Fees and Expenses**

Outside Counsel may not bill the FDIC for the following fees or expenses:

*Non-Billable Fees*

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

#### *Non-Billable Expenses*

- Ordinary postage.
- Excessive/unnecessary overnight mail charges.
- Charges related to word processing.
- Charges other than “actual time” charges for electronic research.
- In-house paper photocopying charges at no more than \$0.20 per page.
- Clerical time for photocopying, sending faxes, scanning, filing, etc.
- **Meals, unless Outside Counsel is on approved travel.** Further information about meal expenses when travelling for the FDIC is set forth below in Sections 8.7 (Travel Reimbursement—Subsistence) and 8.14 (Frequently Asked Questions).
- Daily commuting expenses.
- Some sales tax.
- Most surcharges imposed by utilities or phone services.
- Tax on services or costs relating to filing fees in U.S. District Courts or U.S. Courts of Appeal, for which the FDIC is not required to pay pursuant to [12 U.S.C. § 1819\(b\)\(4\)](#).
- Domestic, long-distance telephone or fax charges or cell phone roaming charges.
- A service that is customarily included in the normal overhead or administrative expense of running a law firm (e.g., rent, electricity, HVAC, or electronic billing registration or membership fees).

- Travel agent fees.
- Unnecessary Pro Hac Vice and Good Standing with the Court (within Oversight Attorney's discretion).

**NOTE:** The FDIC does not pay for First or Business Class airfares or luxury hotel accommodation. The FDIC will pay only for air travel coach/economy rates and accommodation 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 requirements set forth in Section 8.7 of the Deskbook. To receive payment, Outside Counsel must keep on file all original or copies of receipts and other supporting documentation for all expenses billed to the FDIC.

### **Use of Experts, Professionals, and Legal Support Services Providers**

Outside Counsel may occasionally need to engage the services of other professionals, such as experts, local counsel, consultants, etc. The Legal Division's preference is to directly retain other outside legal support services providers, when practicable. Absent express written authorization from the Oversight Attorney, experts or other legal support services providers that are not in a contractual relationship with the FDIC may only be compensated for fees and expenses in accordance with the requirements of Sections 8.2 and 8.3 of this Deskbook. This includes the prohibition on block billing and vague billing, as well as the enumerated billable and non-billable fees and expenses. When directly engaging subcontractors that hold a valid LSA or LSSA with the FDIC, Outside Counsel will be reimbursed for the work of those subcontractors at the same or lower rates than those featured under the subcontractor's respective LSA/LSSA with the FDIC. The FDIC may reject any invoices submitted for subcontractor work that does not conform with these requirements. All subcontractor invoices and underlying supporting documentation must be maintained in the firm's files for five years for audit purposes or if otherwise requested by the FDIC.

#### *Initial Justification for Experts and Other Professionals*

Prior to engaging the services of experts or other professionals such as local counsel or consultants (not court reporters, process servers, or other providers of routine support services) in connection with an FDIC legal matter, Outside Counsel must first provide the Oversight Attorney a written justification for the proposed expenditure. The justification must include a brief explanation of the service to be rendered, the rationale for engaging the service, the estimated hourly rate of the expert or other professional, the estimated number of hours, and an estimated total price. The writing requirement may be satisfied by e-mail.

The justification serves to provide notice to the FDIC of potential expenses associated with experts and other professionals and aids in controlling costs. Upon review of the written justification, the FDIC Oversight Attorney will communicate whether Outside Counsel may proceed with the proposed engagement/expenditure.

**Any Exceptions or questions about invoicing, fees, and expense requirements for subcontracted professionals must be resolved and documented in writing between Outside Counsel and the Oversight Attorney before the firm incurs those expenses. Failure to do so may result in disallowance of fees and expenses.**

### *Expenses for Experts and Other Professionals Subcontracted by Outside Counsel*

Prior to commencing work, Outside Counsel should document in writing that subcontracting professionals performing work for the FDIC agree to comply with the block billing and vague entry and expense requirements in this Deskbook. Absent express pre-authorization in writing by FDIC delegated authority, experts or other professionals may only be compensated for fees and expenses in accordance with the requirements of this Deskbook. Outside Counsel is responsible for overseeing any subcontractors associated with a legal referral and for ensuring that their rates are reasonable. Outside Counsel must maintain all subcontractor invoices and original or copies of receipts for expenses submitted by subcontractors for review in the event the FDIC performs an audit of the matter, or if otherwise requested at any time by the FDIC Legal Division.

Any questions about invoicing, fees, and expense requirements for subcontracted professionals must be documented and resolved between Outside Counsel and the FDIC before incurring any expenses. Failure to do so may result in nonpayment.

## 8.4 Over-Budget Invoices

As discussed in Section 7.3, Outside Counsel may not incur fees and expenses that would cause it to exceed the approved Budget for a matter. No invoices in excess of the approved Budget can be paid until an Amended Budget is submitted and approved. If The Oversight Attorney approves of an increase, the Oversight Attorney will work with Outside Counsel to submit an Amended Budget. Refer to Chapter 7 for further information.

## 8.5 Correcting Invoices

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

## 8.6 Amending Invoices

**After both** submission **and** payment of an invoice, omissions to an invoice for fees and expenses incurred during a specific billing period may only be submitted by submitting an amended invoice. The amended invoice file must be received by the FDIC Legal Division within 90 days from the date of the invoice. Any late submission must have an approved Exception. The originally submitted invoice will remain valid and unchanged. A separate amended invoice will serve only to add any omitted fees and expenses. Outside Counsel will submit a separate amended invoice as needed.

The invoice will contain the original invoice number for the same billing period followed by the letter “A” to indicate that it is an amended invoice. Subsequent amendments to invoices must include a sequential number after the “A.” For example, an amendment to invoice number 12345 would be numbered 12345A; a second

amendment to the same invoice would be numbered 12345A2; a third amendment to the same invoice would be numbered 12345A3; etc.

**NOTE:** Amended invoices are not expected to be used as a standard billing practice but are merely a courtesy for inadvertent omission. Every effort is expected to be made to bill all fees and expenses on the original invoice. Any submitted amended invoices will be approved or rejected at the discretion of the approving attorney. Absent extraordinary circumstances, Outside Counsel may only submit one amendment per matter per monthly billing period.

## 8.7 Travel Reimbursement

### Eligibility for Reimbursement

To be entitled to travel reimbursement, Outside Counsel must be on a temporary assignment that is at least 50 miles from both his or her office and residence. If a temporary assignment concludes during the workday and is located within 50 miles of either his or her office or residence, Outside Counsel is expected to return to his or her residence, rather than remain at the temporary location overnight. The cost of travel for spouses, other family members, and friends is not reimbursable under any circumstances.

### Travel Authorization

Outside Counsel must ensure that all travel on behalf of the FDIC is necessary, documented, and pre-approved by the Oversight Attorney. Such authorization may be obtained via email.

### Travel Voucher

Upon completion of FDIC-related travel:

1. Submit a separate travel voucher for each individual with supporting documentation.
  - a. E-Billers should upload a single PDF for each traveler (Firm Travel Voucher + supporting documentation) in the Collaboration Portal.
  - b. Paper billers should submit a separate submission for each traveler, which includes the Firm Travel Voucher and travel-related supporting documentation, alongside their remaining documentation in a consolidated PDF, which should include the invoice, Legal Invoice for Fees and Expenses Form, and non-travel-related supporting documentation.
2. On the appropriate invoice, the total travel expenditure for each individual should be included as a one line-item description.
  - a. The line-item description must include the word “Travel” at the beginning of the entry and should also include the name or Timekeeper ID of the traveler, dates of travel, origin airport, destination(s), and purpose of travel.

### *Retention period for receipts and other supporting documentation*

As above in Section 1.8, Audit Rights, the firm must retain Travel Voucher files and original (if applicable) supporting documentation for five years. If the firm receives a request for Travel Voucher files or supporting documentation in the course of an audit, Outside Counsel must timely deliver copies of the requested back-up



documentation to the requesting FDIC Legal Division employee. Outside Counsel's up-front compliance with FDIC travel expense requirements will help ensure more prompt remittances on submitted monthly invoices and reimbursement for approved travel expenses.

See FDIC's website for a [sample Travel Voucher](#) and [Blank Travel Voucher](#).

### **Air Travel**

**Air travel should be in coach/economy class only**, unless Outside Counsel bears the cost of the difference between coach/economy and business or first class. In the latter instance, Outside Counsel must provide documentation showing the cost difference between a coach/economy fare and the business or first-class fare at the time of booking—failure to do so could result in disallowance of the full amount. 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 Outside Counsel requires a change, a reasonable exchange fee may be claimed, with Oversight Attorney pre-approval. Special approval is required for international air travel.

Receipts must be maintained in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC. As described above, the invoice description must include the traveler's name or Timekeeper ID, class of travel, date of travel, origin airport, destination airport(s), and purpose of travel. Travel agent fees will not be reimbursed.

### **Lodging**

The firm is expected to have a policy that provides for reasonable but not extravagant lodging accommodations for Outside Counsel in travel status. Outside Counsel should make use of "government contractor" rates, corporate rates, or other discount rates for lodging whenever possible. Any hotel expenses considered excessive or unreasonable by the Oversight Attorney will not be reimbursed. If the nightly base rate of the hotel exceeds 125% of the [GSA rate](#), Oversight Attorney pre-approval (with justification) is required. Any hotel expenses considered excessive or unreasonable will not be reimbursed. Instead, in those cases, lodging reimbursement will be limited to 125% of the GSA lodging rate for the location in question. Direct any questions about booking "government contractor" rates or about determining the GSA rate to the Oversight Attorney.

Receipts must be maintained in the firm's files for audit purposes or if otherwise requested by the FDIC. The invoice description must include the date, hotel name, type of room, and rate charged, and should itemize any other hotel charges that are billed by the firm to the FDIC. Hotel Wi-Fi service costs require advance approval and must be listed on the Travel Voucher.

Unless an alternative is approved in advance in writing by the Oversight Attorney, overnight stays in the Washington, D.C. area for FDIC business must be at the L. William Seidman Center (Seidman Student Residence Center), provided that space is available and doing so would not be impractical. The assigned Oversight Attorney can make a reservation on Outside Counsel's behalf.

### **Subsistence/Per Diem**

#### *Overnight Travel*

Outside Counsel on overnight travel status may be reimbursed only on a *per diem* basis. The current FDIC prorated *per diem* rates are chargeable in quarter-day increments, as noted in the below chart. The current quarter-day incremental *per diem* rates are listed in Section 15.0 of the [Contractor Travel Reimbursement Guidelines](#). Specific *per diem* rates for different localities may be found on the General Services Administration’s (“GSA”) website, [Per Diem Look-up page](#). Where the information contained on the GSA web site and FDIC Guidelines differ, the GSA website controls.

The *per diem* reimbursement allowance includes meals and any incidental expenses, such as laundry and cleaning. Accordingly, no reimbursement of meals or other incidental expenses will be allowed for overnight travel, and receipts do not need to be submitted when receiving *per diem* reimbursement.

In the event that Outside Counsel requests reimbursement for group meals while on overnight travel status, each meal recipient must deduct the amount shown in the chart found in Section 16 of the [Contractor Travel Reimbursement Guidelines](#). Outside Counsel’s *per diem* allowance is the standard reimbursement for meals while on FDIC travel, and group meals are only for limited, appropriate occasions in the FDIC’s sole discretion. No group meal will be considered as an expense unless accompanied by the contemporaneous written approval of the Oversight Attorney and the itemized listing of each recipient. See also the FAQ on group meals in Section 8.14.

If meals are provided by another person or entity while Outside Counsel is on overnight travel status, each meal recipient must likewise deduct the amount shown in the chart found in Section 16 of the [Contractor Travel Reimbursement Guidelines](#).

#### *Per Diem for Travel Days*

Prorated *per diem* for days spent traveling to or from the travel destination is required. One-fourth of the *per diem* allowance is payable for each quarter-day:

<b>Departing:</b> <b>If you leave your residence or office between:</b>	<b>You receive X% of the <i>Per Diem</i> Rate</b>	<b>Returning:</b> <b>If you arrive at your residence or office between:</b>	<b>You receive X% of the <i>Per Diem</i> Rate</b>
12:00 AM and 5:59 AM	100%	12:00 AM and 5:59 AM	100%
6:00 AM and 11:59 AM	75%	6:00 AM and 11:59 AM	75%
12:00 PM and 5:59 PM	50%	12:00 PM and 5:59 PM	50%
6:00 PM and 11:59 PM	25%	6:00 PM and 11:59 PM	25%

If Outside Counsel departs from or return directly to his or her residence, *per diem* is allowed from the time of departure from the residence until the time of return to the residence. If Outside Counsel departs from or return to his or her office, *per diem* is allowed from the time of departure from the travel destination until the time of return to his or her office. Outside Counsel must provide start and return times with his or her supporting travel documentation to and from the time of departure from the travel destination until the time of return to his or her residence or office. Outside Counsel must provide start and return times on the invoice and retain all supporting travel documentation to support the claimed quarter days of *per diem* for all travelers.

#### *Miscellaneous Meal Expense*

If Outside Counsel is in non-overnight travel status and is away from his or her residence for at least 11 consecutive hours while conducting FDIC work, the Oversight Attorney may allow Outside Counsel to be reimbursed on an actual expense incurred basis with the meal cost limited to a \$30.00<sup>10</sup> charge (receipt required).

## **Rental Cars**

Rental cars should only be used if necessary and if cost-effective compared to other available means of transportation during the authorized travel. Outside Counsel must receive Oversight Attorney pre-authorization to rent a car. No car larger than a mid-size should be rented, unless there are three or more passengers, a larger vehicle is necessary to transport equipment, files, etc., or there is no price difference for the larger vehicle. Deviations from standard policy should be documented and maintained along with receipts in Outside Counsel's files.

The invoice description must include the traveler's name, name of the rental car company, the rental company's invoice number, the dates of rental, type of car, the number of passengers, miles driven, gas usage, and any other relevant information. Claims for rental car gasoline must be supported by receipts. The FDIC will not reimburse Outside Counsel for Personal Accident Insurance (PAI) or Personal Effects Coverage (PEC). The cost of Collision Damage Waiver ("CDW") coverage is allowed if Outside Counsel does not already have insurance coverage for collision damage. Note that most corporate charge cards and many credit cards automatically provide CDW coverage or other comparable insurance coverage for rental cars.

## **Use of Privately-Owned Vehicle, Taxicabs, or Rideshare**

### *Use of Privately-Owned Vehicle*

Outside Counsel may be reimbursed for use of a privately-owned vehicle ("POV") while on travel for FDIC-related business. The maximum reimbursement rate per mile will be the rate currently [stipulated by the IRS](#).

If Outside Counsel chooses to use his or her POV in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or combination of mileage reimbursement and the additional *per diem* allowance. Appropriate documentation should be maintained in Outside Counsel's files to show the actual cost of coach/economy air travel compared to mileage reimbursement.

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

### *Taxicabs or Rideshare*

The use of taxicabs or rideshare services (e.g., Uber or Lyft) may be permitted while on official travel for the FDIC. Reimbursement for such fares (plus a 15 % tip) is allowed. The invoice description must include the

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<sup>10</sup> This amount is accurate as of October 10, 2025, and is limited by the maximum allowable amount under the FDIC Travel Regulations in effect on the date of travel. Outside Counsel may address any questions to the Oversight Attorney.

traveler's name, the name of the taxi service, the originating location and destination, the date, and the charge. If it is not possible to obtain a receipt from a taxicab, Outside Counsel must explain that to the Oversight Attorney and obtain his or her approval for the expense in writing. Receipts must be maintained in the firm's files for five years for audit purposes or if otherwise requested by the FDIC.

Taxi or rideshare hire is appropriate when:

- Public transportation 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 Outside Counsel's residence, hotel, or office while on official travel status; or
- Traveling from Outside Counsel's residence to his or her office to depart for travel requiring at least one night's lodging, and from his or her office to his or her residence on the day he or she returns from that trip.

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

### **Non-Reimbursable Travel Expenses**

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

- Alcoholic beverages;
- Entertainment;
- Laundry, dry cleaning, or pressing (covered by *per diem* reimbursement);
- Travel insurance;
- Meals, which are covered by *per diem* reimbursement, with a limited exception for group meals purchased by the firm on appropriate occasions. **Any group meal the firm intends to submit to the FDIC as an expense must be approved by the Oversight Attorney at or before the time of purchase and the approval must be documented in writing.** Additionally, in order to comply with FDIC Travel Regulations, the firm must deduct all approved meal expenses from the *per diem* claim of each meal recipient. See Sections 8.7 (Subsistence) and 8.14 (FAQ). See also Section 16.0 of the [Contractor Travel Reimbursement Guidelines](#) for further information;
- Parking or traffic fines;
- Gratuities or tips paid to lodging facility service staff (covered by *per diem* reimbursement); or
- Cost of travel for spouses, other family members, or friends under any circumstances.

Travelers will not be reimbursed for excess costs caused by:

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

### **Firm Travel Voucher Completion**

A [Law Firm Travel Voucher](#) must be prepared after completion of travel and maintained along with receipts in Outside Counsel's files for audit purposes or otherwise upon request by the FDIC. Indicate the purpose of travel,

as well as dates and times of each departure from residence or office, arrival at the place of temporary assignment, and arrival at the office or residence on the [Law Firm Travel Voucher](#) (see also the [Sample Travel Voucher](#)). Note that the FDIC does not make partial Travel Voucher payments. No payment will be made until the Travel Voucher is properly submitted for all expenses related to a trip. Likewise, no subsequent payment will be made for additional travel-related expenses after the Travel Voucher has been received without an approved amendment (which requires resubmitting the entire Travel Voucher and all supporting documentation). Payment will not be allowed until after completion of travel.

## Receipts

Except for *per-diem* expenses, the firm must maintain receipts for all travelers along with the Law Firm Travel Voucher for all travel expenditures for which it is seeking payment. If a receipt is not normally provided for the expense (bus or subway token, etc.), the certification signed by the traveler on the Firm Travel Voucher will justify the expense.

Receipts must be attached to the Travel Voucher and should be copies of originals (when possible) that indicate the name of the payee, date paid, amount, and the service rendered. The firm must maintain all receipts for five years, as discussed above in Section 1.8.

## Penalties for non-compliance

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

## 8.8 FDIC Invoice Review

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

**NOTE:** The FDIC requires a minimum of 30 days after receipt of a valid invoice and required supporting documentation for processing. Payment is generally not made in less than 30 days.

The FDIC makes all payments by EFT in accordance with the [FDIC EFT Guidelines](#). Payment is made using the information the firm provides to the FDIC on the [Payee Information for Automatic Deposit of Payment Form](#) when submitting its [Legal Support Agreement Application or Renewal Package](#).

## 8.9 Reconsideration of Disallowances

Outside Counsel must submit all requests for reconsideration of disallowances by preparing a new invoice file for the amount to be reconsidered. The originally submitted and disallowed invoice file will remain valid and unchanged. The request for reconsideration must be received by the FDIC Legal Division within 90 days from the date the notice of disallowance was sent electronically. The request must include matter number, invoice number, the amount disputed, the original description or entry that was disallowed, and the reason given for the disallowance, along with justification for reconsideration (e.g., copies of missing documentation, narrative rationale, etc.). The total amount to be reconsidered for payment cannot exceed the total amount of the original disallowances.

The request for reconsideration will contain the original invoice number followed by the letter “R” to indicate that it is a request for reconsideration of disallowance. Subsequent requests for reconsiderations to disallowances must include a sequential number after the “R.” For example, a request for reconsideration of disallowance of invoice number 12345 would be numbered 1234R; a second request for reconsideration of the same original invoice would be numbered 12345R2; etc. However, a request for reconsideration of a denial of a request for reconsideration would include a second “R”: 12345RR; whereas a request for reconsideration of denial of the second request for reconsideration of the original (12345R2) would include an “R” before the “R2”: 12345R2R.

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

## 8.10 Audit and Records Retention

Upon request, Outside Counsel must permit the FDIC, the FDIC OIG, the FDIC Legal Division’s RMRG, or the GAO, or their representatives, to conduct audits or reviews of the firm’s FDIC-related billings, including previously paid invoices or receipts, and associated supporting documentation.

All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process. If an auditor identifies payments made to Outside Counsel that are not in compliance with this Deskbook, Outside Counsel may be required to refund such fees or expenses previously paid by the FDIC.

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

- Copies of all invoice file submissions;
- Receipts and underlying support documentation not submitted with the invoice file;
- Written justification of any subcontractor hired or retained by outside Counsel;
- Approval from Oversight Attorney of any subcontractor hired or retained by Outside Counsel;
- Subcontractor invoices;

- Original or electronic time sheets and time and expense adjustment records. Example of adjustment records includes documentation explaining differences between time sheet hours and invoices hours for billable individuals;
- If applicable, copies of signed Travel Vouchers and supporting documentation;
- For paper-billing firms, signed copies of all Budget forms, Amended Budget forms, and Legal Invoices for Fees and Expenses forms;
- Signed copies of the LSA, rate sheets, and any LSA Amendments; and
- Internal policies and procedures, including but not limited to policies and procedures that address conflicts of interest, information security, and timekeeping.

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

### 8.11 Procedures for Submitting Monthly Invoices Electronically

This option is available only to Outside Counsel subscribed with the FDIC's third-party electronic billing services provider. Outside Counsel interested in signing up for the third-party electronic billing may contact the LSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) to receive further instructions. This service requires an annual subscription, which the firm agrees to pay.

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

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

For Outside Counsel not subscribed to the third-party electronic billing services provider that will send in paper invoices (may not exceed \$100,000 within a two-year LSA period), the below requirements apply:

- The [Legal Invoice for Fees and Expenses \(LIF&E\) form](#) should be completed and signed and placed on top of the invoice;
- The invoice needs to be on the firm's letterhead, in proper format, and dated. Task-based billing is not acceptable;
- Fees must be in chronological order;
- Fees must have the name of the Timekeeper;
- Fees must have the Timekeeper ID;
- Include a Timekeeper Summary;
- Include Expenses (if any);
- Receipts for expenses should be attached; and

- The invoice and all supporting documentation (receipts) need to be submitted in pdf format and emailed to the Oversight Attorney's assigned Financial Specialist.

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

### 8.13 Law Firm Paper Invoice Format

Law firm invoice format requirements are discussed below. Timekeeper Name or Timekeeper Initials are required for all Fee line items, and the Timekeeper Name & Timekeeper IDs are required for the Timekeeper Summary.

#### Fees

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

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

#### Timekeeper Summary

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

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

#### Example of Itemized Expenses

Date	Expense	Amount
2/28/2020	Photocopy - 46 pages at \$.20 (submit on one line only)	\$9.20
2/2/2020	Conference call - 617-262-8119	\$28.80
2/5/2020	Extraordinary Postage - Certified	\$12.75
02/01/20 – 02/28/20	Jack DaMony - Expert Witness (include expert's itemization)	\$8,500.00
2/28/2020	Acme Reporting, deposition of J. Genius, FDIC bank examiner	\$925.00



Date	Expense	Amount
2/28/2020	Panic Copying, submission of Reply brief	\$120.00
02/05/20 – 02/06/20	Travel for JFB, 2/5 - 2/6, Washington DC to Settlement Conference in Boston, MA	\$1,280.50
2/28/2020	Photocopy - 46 pages at \$.20	\$9.20

## 8.14 Frequently Asked Questions

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

No, any expert or other entity hired or retained by your firm is your subcontractor and should address all payment-related questions to you. Their fees are included as expenses in your invoice to the FDIC. The FDIC will not pay them directly. Outside Counsel must maintain subcontractor invoices, receipts, and proof of payment in Outside Counsel's files for audit purposes or if otherwise requested by the FDIC. As detailed at Section 6.6 above, if you select a subcontractor which has an existing LSSA with the FDIC, you may consider having that vendor deal directly with the Oversight Attorney rather than retaining them as a subcontractor.

In no case should a vendor with a pre-existing LSSA charge rates that exceed the LSSA, absent written, pre-approval from the Oversight Attorney. Such invoices will be disallowed, and, in the case of allowance, are subject to reversal in case of audit.

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

On a monthly basis, if the total equals \$500 or more. If your total is less than \$500, submit your invoice quarterly, unless this causes undue hardship (January–March; April–June; July–September; October–December).

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

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

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

No.

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

Make sure you use a different invoice number for each invoice you submit unless instructed otherwise. Always be mindful that you must maintain all receipts and other supporting documentation in your FDIC files and that it must be made available to the FDIC upon request.

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

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

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

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

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

Due to widespread use of cell phones, inexpensive universal business calling plans, and the lower costs for domestic long-distance fax and phone charges, these charges are considered overhead and are not reimbursable by the FDIC. Necessary conference calling services and international long-distance phone and fax charges (line charges/actual costs only) are reimbursable as expenses on your monthly invoices if no other practical option is available (e.g., Zoom or Teams calls). You need to include the date, phone number and charge for each call in the invoice description. The bill from the carrier must be retained in your firm's files for five years after final payment.

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

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

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

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

**How can I learn the nature and justification for any adjustments made to my paid invoices?**

When an invoice is paid, the Outside Counsel firm receives an email with details of any adjustments made to the invoice including the adjusted amount and the external comments where the justification for the non-compliance adjustment is entered by the individual who made the adjustment. In addition, e-billing firms also have access to a report in the Collaboration Portal (the e-billing application that is used to submit and track invoice statuses) that provides the line-item invoice adjustments with the justification.

## Chapter 9: Legal Matter Closeout and Record Maintenance

### 9.1 Final Invoice Package

Outside Counsel must submit his or her final Invoice Package within 90 days of the conclusion or termination of each matter. Refer to Chapter 8, Invoice Preparation & Submission.

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

All information contained in FDIC legal matter files, whether supplied by the FDIC or third parties or created by Outside Counsel, including attorney work product, belongs to the FDIC (collectively, “FDIC Property”)<sup>11</sup>. Refer to Section 1.7, File Retention. Outside Counsel must obtain FDIC approval before destroying FDIC Property. At the conclusion of a legal matter, the Oversight Attorney will provide Outside Counsel with instructions regarding retaining, returning, deleting, or destroying FDIC Property, as applicable. Any instruction to destroy or delete FDIC Property is subject to confidentiality obligations and any applicable state, federal, or other records retention requirements. At the conclusion of the applicable retention period, the firm must contact RMRG at [RMRG@fdic.gov](mailto:RMRG@fdic.gov), with a copy to the Oversight Attorney, to confirm that it has permission to destroy or delete the FDIC Property.

Once the Oversight Attorney authorizes the return, destruction, or removal of FDIC Property, the firm must promptly remove it from its computer systems, servers, individual workstations, back-up media (if practicable), file drawers, and all other locations and complete and return the [Certification of Removal and Return or Destruction of FDIC Property](#) (“Certification”) to the Oversight Attorney, with a copy to RMRG. The Certification must be completed by the attorney who signed the firm’s LSA with the FDIC or by such individual’s successor or delegee, or the equity owner in the firm that is supervising the firm’s handling of the FDIC legal matter. If the firm was supplied with any access tokens, security keys, or passwords to view FDIC Property, those items must also be included in the Certification and be destroyed or returned. Upon receipt of these items, the Oversight Attorney will close out the case in ALIS.

Any such FDIC Property that was used to create work product by the firm in an FDIC legal matter becomes part of the case record for that matter and should be preserved in accordance with Section 9.3’s requirements rather than being destroyed.

## 9.3 Record Maintenance Procedures for Concluded or Terminated Matters

As noted above, at the conclusion of a legal matter, Outside Counsel must promptly contact RMRG at [RMRG@fdic.gov](mailto:RMRG@fdic.gov) to obtain authorization before destroying or deleting any case records of a FDIC legal matter to ensure compliance with the FDIC’s record retention requirements. **No case records may be destroyed without the written permission of RMRG.** The case record includes any FDIC Property that is extracted and used in a legal matter, the firm’s work product (including that which uses or references FDIC Property), and any documentation concerning the nature, handling, significant developments, or outcome of the matter.

Any documents located in the case record are subject to all client confidentiality rules, and the firm acknowledges that its obligations to the FDIC as a client or former client remain in place. These obligations

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<sup>11</sup> FDIC Property is not limited to Sensitive Information. It refers to any information made or received by the FDIC in connection with a legal matter, including but not limited to documents that refer to the Corporation’s functions, policies, decisions, procedures, operations, or other activities that otherwise contain FDIC Sensitive Information or confidential business information, whether supplied by the FDIC, its e-discovery vendors, or other third parties.

include all applicable ABA and state bar rules and requirements concerning the safeguarding of the firm's client files. The firm also acknowledges its ongoing, post-representational responsibilities to the FDIC as discussed in Sections 2.3 and 2.8.

After receiving Outside Counsel's request for authorization to destroy, delete, or remove FDIC case records, RMRG will request the firm send an inventory of records and provide retention schedule for each item. **The firm must contact RMRG upon the conclusion of the applicable retention period to request authorization to destroy or delete the case record**, as stated in Section 9.2 above. If the FDIC cannot authorize destruction of records in the firm's possession, the FDIC can take custody of them and maintain them for the retention period. In such instances, RMRG will provide the firm with instructions for the shipment of the records to a FDIC storage facility or to the FDIC directly.

The FDIC will not reimburse Outside Counsel for the expense incurred preserving or inventorying FDIC case records, including but not limited to storage costs, permanent withdrawal fees, or destruction charges. Outside Counsel may not commingle FDIC case records with non-related matters pertaining to other FDIC assignments or to other clients. Only those expenses that are documented and submitted on Outside Counsel's final Invoice Package as incurred to permanently withdraw records from a private records storage vendor are reimbursable by the FDIC.

#### 9.4 Reserved

[Reserved]

#### 9.5 Reserved

[Reserved]

**NOTE:** Nothing in this chapter relieves the firm of its requirements to maintain certain documentation under Sections 1.7 and 8.11 of this Deskbook nor of any applicable professional duties, litigation holds, or other jurisdiction-specific records retention periods. Failure to maintain the required documentation in accordance with those two sections may result in disallowance of certain previously paid fees and expenses.

## Chapter 10: Outside Counsel Post-Representation Responsibilities

### 10.1 Responsibilities as Former Outside Counsel

Some of the responsibilities described in this Deskbook continue after the firm's representation of the FDIC concludes. The FDIC recognizes that lawyers are also subject to requirements imposed by the jurisdiction in which he or she practices. The provisions of [12 C.F.R. Part 366](#) may also apply to former Outside Counsel of the FDIC.

## 10.2 Conflicts of Interest and Confidentiality

- (a) Former FDIC Outside Counsel may not, without a written waiver from the FDIC, represent another client against the FDIC in a matter substantially related to any matter in which he or she previously represented the FDIC. Outside Counsel is also expected to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation.
- (b) When either an actual conflict of interest or the appearance of a conflict of interest exists, Outside Counsel must disclose the matter to the FDIC and seek a waiver. Outside Counsel must decline or cease such representation absent approval of a waiver request or an affirmative statement from the FDIC indicating that no conflict exists. When in doubt, the firm should err on the side of over-disclosing, as the FDIC has the sole discretion to determine whether a conflict exists.

Contact LSCG for questions concerning conflicts at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

## 10.3 File Retention

If former FDIC Outside Counsel retains files related to FDIC legal matter(s) for his or her own purposes as described in Section 9.2, he or she must preserve those files until they are either returned to the FDIC or properly destroyed in accordance with FDIC records management policies and retention schedules. Those files may not be destroyed without the express permission of the FDIC as described in Section 9.2.

## 10.4 Contacts with the Public and Media

All restrictions concerning public and media contacts applicable while representing the FDIC continue after conclusion of the representation. These restrictions are discussed in Section 1.11 and prescribe the exclusive role of the FDIC OCOM in discussing FDIC matters with the media.

## 10.5 Identifying FDIC as a Former Client

Former Outside Counsel may list the FDIC as a former client in published materials provided Outside Counsel comply with the guidance discussed in Section 1.2.

## 10.6 Compliance with Subpoenas and Other Court Orders

If former Outside Counsel is served with a subpoena, court order, or other legal summons or request for information relating to representation of the FDIC, he or she must immediately notify both the FDIC's General Counsel and the Oversight Attorney. Former Outside Counsel may not disclose FDIC records or provide testimony without FDIC authorization.

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

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

## Chapter 11: Foreign Law Firms

### 11.1 Definition

The FDIC occasionally requires the retention of a law firm located and operating in a country other than the United States. For purposes of this Deskbook, a “foreign law firm” is any law firm retained by the FDIC that meets **both** of the following criteria:

- The law firm does not operate any office location within the United States; and
- The law firm has not been issued a Federal taxpayer identification number by the U.S. Internal Revenue Service and is not subject to that entity’s regulations.

### 11.2 Outside Counsel Deskbook Compliance

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

### 11.3 Application Requirements

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

- A firm brochure or a narrative statement about the firm, including information regarding the areas of law in which the firm practices and highlighting areas of expertise.
- A statement acknowledging the requirements of the FDIC’s policies and procedures governing Outside Counsel conflicts of interest; and
- Completion of the related [Representations and Certifications Form](#). The FDIC may modify or waive (via a Deskbook Exception) inapplicable representations and certifications in the Foreign Legal Services Agreement initiated with the foreign law firm.

### 11.4 Foreign Legal Services Agreement

A [Foreign Legal Services Agreement](#) (“F-LSA”) is an agreement between a foreign firm and the FDIC that contains terms and conditions applicable to legal referrals and is incorporated in all referral letters. The F-LSA

and any associated referral letter incorporate applicable parts of the Deskbook, as it may be amended from time to time.

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

A foreign law firm must complete the following information on the [Rate Schedule](#) form for each approved billable individual:

- Full name
- Timekeeper ID (if the foreign law firm is subscribed to electronic billing, these numbers will be supplied to the foreign law firm by the FDIC’s third-party billing service provider)
- Position or title within the firm
- Years in practice
- Standard hourly rate (only in U.S. Dollar currency, with conversion calculated in accordance with Chapter 8 of this Deskbook)
- Percent (%) discount from standard hourly rate
- Proposed FDIC hourly rate (only in U.S. Dollar currency, with conversion calculated in accordance with Chapter 8 of this Deskbook)

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

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

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

An F-LSA is effective once both the F-LSA and the [Hourly Rate Schedule](#) have been signed by the appropriate FDIC delegated authority. The F-LSA is effective on the date specified in the F-LSA, and the term is for two years from the effective date, unless the FDIC elects to terminate or extend it prior to its expiration. The FDIC reserves the right to terminate the F-LSA without cause or advance notice. Absent compelling reasons, no increase in hourly rates incorporated in the F-LSA will be permitted during its term. The FDIC has the sole discretion to determine whether compelling reasons exist.

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

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

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

## 11.5 Electronic Funds Transfer Payments

The FDIC, in compliance with U.S. regulations, makes payments to vendors, including any foreign law firm that has an account with a U.S. financial institution, by means of electronic funds transfer (“EFT”) under [FDIC EFT Guidelines](#). Payments via EFT allow faster access to funds and payment information but can only be used with a U.S. bank account. If a foreign law firm has an account with a U.S. financial institution, the FDIC requests completion and submission of the [Payee Information for Automatic Deposit of Payment](#) form. Otherwise, payments to a foreign law firm without a U.S. bank account will be made via wire transfer, or equivalent. Contact LSCG if alternatives are required.

## 11.6 F-LSA Amendment

A foreign law firm must submit an F-LSA amendment when there has been a change in the information originally submitted in the F-LSA application package. It is the responsibility of the foreign law firm to inform the FDIC of any new or changed information. If the F-LSA information is not current, a foreign law firm may not perform legal services for the FDIC. Additionally, payment of invoices may be delayed if account and payment information is not up-to-date. Examples requiring an amendment include structural changes of the firm or adding or removing billable individuals.

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

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

The completed LSA Amendment Form must include the effective date of the amendment and be signed by an authorized representative of the foreign law firm. The original LSA Amendment Form should be submitted to LSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov), as well as to the Oversight Attorney for any matters the foreign law firm is presently handling. Once a request to amend the F-LSA has been approved, a copy of the LSA Amendment Form, approved and signed by FDIC delegated authority, will be sent to the foreign law firm. A foreign law firm may not bill the FDIC for services of any individual unless and until the individual has been approved and included on the Hourly Rate Schedule Form or the LSA Amendment Form.

## 11.7 Legal Referral

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

When a legal referral is made, the FDIC Legal Division will send a referral letter to the foreign law firm. The referral letter will identify the specific services requested and the terms and scope of the legal referral. The referral letter incorporates several documents, including the F-LSA, applicable portions of the Deskbook, and the case plan and budget(s), which are required to be submitted by the foreign law firm and approved by the



FDIC prior to providing legal services on any referred matter. The referral letter and any incorporated documents may subsequently be amended or modified by the FDIC. The Oversight Attorney will notify LSCG of any referrals to foreign law firms via e-mail at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov) so that LSCG can ensure that any special requirements are met.

When an Oversight Attorney makes a legal referral to a foreign law firm, the firm must confirm that no material changes have occurred that affect the representations and conflicts certifications submitted in the F-LSA package.

### 11.8 Invoice Preparation and Submission

The FDIC Legal Division has specific policies and procedures relating to the submission, processing, and payment of invoices. A foreign law firm must adhere to the requirements for preparing and submitting invoices to the FDIC as set out in Chapter 8 of the Deskbook. In addition to the requirements identified in Chapter 8, **any invoices submitted by a foreign law firm must be in English and in U.S. dollars, calculated at the exchange rate published in the [Wall Street Journal](#) at market closing on the date(s) upon which the services were rendered.**

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

### 11.9 Other Applicable Outside Counsel Deskbook Chapters

In addition to the information specified in this chapter, the following Deskbook chapters also apply to a foreign law firm:

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

### 11.10 Value Added Tax (VAT)

For issues related to the Value Added Tax (VAT) please contact LSCG at [LSSCG@fdic.gov](mailto:LSSCG@fdic.gov).

[APPENDIX A: Statutory Compliance](#)

[APPENDIX B: Contacts](#)

[APPENDIX C: Records Retention Guidelines for E-billing](#)

[APPENDIX D: Legal Invoice Validation Criteria](#)