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*Farm Credit System Insurance Corporation*

**POLICY STATEMENT ON RECEIVERSHIP  
AND CONSERVATORSHIP COUNSEL**

*Applicability*

This policy statement applies when the Farm Credit System Insurance Corporation (Corporation or FCSIC) acts in its role as receiver of a System institution under section 4.12 or section 8.41 of the Farm Credit Act of 1971 as amended (Act). It also applies, to the extent relevant, when the Corporation acts as conservator under section 4.12 or section 8.41 of the Act, in which case the words “conservator” and “conservatorship” shall be read for the words “receiver” and “receivership.”

This policy statement applies when the Corporation hires outside counsel to provide professional legal services, or any form of technical support for conservatorship and receivership activities, but does not apply to services provided by outside counsel in other circumstances.<sup>1</sup> In addition, the Corporation, as receiver or conservator, may choose to continue to employ attorneys of the institution that has been placed in receivership or conservatorship on certain matters, including, without limitation, loan closings, loan restructuring and servicing, and loan collection, without following all procedures contained in this policy statement. After adoption of this policy statement, Corporation staff will seek to compile and maintain a list of counsel with receivership or conservatorship experience.<sup>2</sup>

*Decision to Retain*

When the Corporation is appointed as receiver of a System institution, or when its appointment is imminent, the Chief Operating Officer (COO) of the Corporation will determine whether it is advisable to retain outside counsel to assist in the conduct of the receivership. Outside counsel may be retained to provide various services for the receivership, including, without limitation, assuming responsibility for specific cases or matters or acting as co-counsel<sup>3</sup> with the

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<sup>1</sup> From time to time, the Corporation’s Chief Operating Officer, with the advice and concurrence of the General Counsel, may retain outside counsel for other matters unrelated to receivership or conservatorship and therefore outside the scope of this policy, including, without limitation, certain securities or tax matters.

<sup>2</sup> This list is solely for convenience of the Corporation; counsel not listed may be hired.

<sup>3</sup> The term "co-counsel" is a general term applied here to an outside attorney or law firm working together with a Corporation staff attorney on a matter. The relationship of the outside attorney or firm and the staff attorney could vary according to the needs of the situation. For example, a co-counsel could be a local attorney or firm working under the specific (day-to-day) direction or the general direction of the staff attorney; an attorney or firm with a special expertise that takes the lead on a case or matter, with the staff attorney also doing substantive work on the case; or an attorney or firm hired to provide support for staff attorneys.

Corporation's attorneys. Factors to be considered in determining whether to retain outside counsel include, without limitation, the expertise required, anticipated workload, ability to respond to deadlines in a timely fashion, effectiveness and efficiency.

### Selection

The Chief Operating Officer, with the advice and concurrence of the General Counsel, shall select and determine the terms of employment of outside counsel. The selection process will be governed by contracting procedures approved by the Chief Operating Officer from time to time. Factors considered in selecting outside counsel include, without limitation: the capacity of counsel to perform the services required; whether the firm being considered has a sufficient number of attorneys and support staff to devote to the work, relevant expertise and experience, location,<sup>4</sup> standard fee arrangement and willingness to provide a discount, potential conflicts of interest, and the firm's reputation for competence, integrity, cost effectiveness, and customer service. Flat rate and other innovative rate proposals may be considered. 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 shall not charge the Corporation "markups" above any costs actually incurred by outside counsel for any supplies or services obtained by it for the Corporation; any discounts outside counsel receives are to be passed on to the Corporation.

Prior to performing work for the Corporation and the receivership, outside counsel shall enter into a legal services agreement with the Corporation and shall also submit such information concerning fitness and integrity as the COO or General Counsel may request. Outside counsel shall take all measures necessary to ensure the absolute confidentiality of all information entrusted to it, and shall sign a confidentiality agreement acceptable to the COO and General Counsel. Outside counsel must provide proof of, and must maintain, adequate malpractice insurance.

### Reporting

The primary goal of outside counsel and others serving a receivership is to preserve the assets of the receivership. An important part of receivership case management is to apply cost/benefit analysis to services to be performed by outside counsel. Outside counsel will be expected to apply this cost/benefit analysis to legal matters where there is discretion, such as decisions whether to investigate, pursue, settle, or drop claims. With respect to actions the receiver is required to take, such as loan collection, outside counsel will strive to perform such actions through the most cost-effective means.

The General Counsel or his/her designee will, together with a liaison designated by the COO from the Corporation's receivership staff (Receivership Liaison), coordinate the activities of the outside counsel with other receivership activities. Significant activities to be coordinated

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<sup>4</sup> A firm located outside the territory of the receivership (or that is remote from the asset that is the subject of the litigation) may be retained, particularly when the firm has a special expertise in a complex matter, but the added travel and other expenses and greater difficulty in monitoring the conduct of legal matters should be taken into consideration in the selection.

include preparation of a draft litigation plan and budget, including whether to bring litigation likely to raise significant legal issues, involve significant expenditures of resources, or generate publicity. The type of coordination will be determined on a case-by-case basis.

Outside counsel will submit periodic reports requested by the General Counsel (or his/her designee) and the Receivership Liaison containing, at a minimum, a list of all significant activities that have been undertaken or are likely to be undertaken in the near future, and all significant costs recently incurred or likely to be incurred in the near future.

### Services

The legal services to be performed by outside counsel will generally include the review of all legal files of the institution at the beginning of a receivership, and preparation of a draft litigation plan and budget, including recommendations pertaining to the disposition of pending or potential suits. The Corporation's COO and General Counsel will be advised of any pending or potential suits that are significant in terms of amounts to be recovered, litigation costs, or issues involved; investigation of previous actions of the institution's directors, officers, and other related parties in order to determine whether to bring civil charges or recommend that criminal charges be brought; representation of the receiver in civil actions; rendering of legal advice to the receiver in general corporate matters; performance of legal services on a discrete project or matter; and other activities as needed.

Outside counsel shall maintain the highest ethical standards and comply with all applicable laws, rules and regulations governing ethical conduct. All outside counsel are to be generally familiar with and are to comply with all applicable Federal statutes, including the Act, and well as regulations, policies, procedures and directives promulgated pursuant thereto. Outside counsel may list the FCSIC as a client in published materials, but may not represent that it has been "approved" as outside counsel for the FCSIC. Outside counsel shall be required to comply with all applicable ethics rules regarding advertising, including restrictions pertaining to claims of "expert" status, expertise, or specialization.

### Evaluation

In order to assure effective management and retention of outside counsel, all outside counsel for Corporation receiverships will be evaluated from time to time to assess quality of work, cost consciousness, responsiveness, and effective case management. After considering input from the Receivership Liaison, the General Counsel (or his/her designee) will review the performance of outside counsel. The evaluations will be submitted to the Chief Operating Officer for approval. These evaluation procedures do not affect in any way the Corporation's process for terminating its use of an attorney, nor do they create any right for an attorney to be evaluated prior to a termination.

### Termination

The Corporation reserves the right to discontinue its relationship with outside counsel for any reason, at any time. If terminated, outside counsel will be provided instructions concerning disposition of receivership files and other Corporation property. Outside counsel's cooperation during transition is an ethical obligation and necessary for an orderly transfer of legal matters. Outside counsel must forward upon demand of the Corporation all files and documents concerning the receivership or the Corporation, including all work product. It is important that outside counsel promptly forward files as instructed. Failure to do so may delay or prevent payment of outside counsel's final invoice. Under no circumstances may outside counsel withhold files in the event of a dispute with the Corporation.

### Post-Representation Responsibilities

While the Corporation's relationship with outside counsel generally begins with execution of a legal services agreement, the relationship imposes responsibilities on outside counsel that continue after the termination of the representation. For example, all information maintained in legal matter files, whether supplied by the Corporation or third parties or created by outside counsel, including attorney work product, is the property of the Corporation. 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 Corporation authorizes their destruction or orders their transfer to the Corporation or another organization. Separate records retention requirements may apply to underlying support documentation related to outside counsel's Corporation invoices.

### Audits and Reviews

Outside counsel shall permit the Corporation or its representatives or designees, to conduct audits or reviews of its billings, including previously paid invoices. All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process. For purposes of subsequent audits, outside counsel shall retain copies of all invoice packages and original underlying support documentation, including time sheets and time and expense adjustment records, for at least three years after final payment under the legal referral. The Corporation will reserve the right to obtain additional information upon review of any itemized fee bill or support documentation.

For additional information please contact James M. Morris, General Counsel, at 703-883-4380.