Office of Inspector General

Executive Summary

The FDIC's Efforts to Ensure Professional Liability Claims Are Cost Effective

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Why We Did The Evaluation

After a rigorous review of the factual circumstances surrounding the failure of an insured depository institution, the FDIC may pursue professional liability claims (PLCs) against directors, officers, and other professionals whose wrongful conduct caused losses to those failed institutions. PLCs also include direct claims against insurance carriers and contract rights inherited from the institution under fidelity bonds that institutions purchase to cover losses resulting from dishonest or fraudulent acts by their employees. To collect on these claims, the FDIC often must sue the professionals for losses resulting from their breaches of duty to the failed institution. Professional liability lawsuits are only pursued if they are both meritorious and expected to be cost effective.

Our objective was to evaluate the FDIC's efforts to ensure that PLCs are cost effective. We focused our review on the design of the FDIC's policies, procedures, and other practices associated with managing costs of PLC cases. We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Background

The FDIC's professional liability program is intended to maximize recoveries to receiverships and hold those officials who caused losses accountable. The FDIC's Division of Resolutions and Receiverships (DRR) and Legal Division are jointly responsible for the program. DRR Investigations and the Legal Division's Professional Liability Unit (PLU) investigate 11 claim areas for each institution failure and pursue recovery of losses by filing PLCs. The FDIC Board delegated joint authority to the DRR Director and the FDIC's General Counsel to settle, dismiss, or otherwise dispose of non-asset-related suits or claims, which includes PLCs. As such, pursuing PLCs requires a coordinated effort between DRR and PLU.

Evaluation Results

DRR and the Legal Division have procedures and controls in place for ensuring that PLCs are cost effective including, among other things, considering costs to pursue the claim against potential recovery sources; developing a budget for outside counsel fees; capturing PLC-related costs; seeking FDIC Board authority to sue and, where appropriate, settle claims; and drafting reports and holding meetings to periodically monitor case status. Notwithstanding these efforts, we identified additional opportunities to ensure the cost effectiveness of PLCs by

- enhancing coordination between DRR and the Legal Division,
- clarifying how the FDIC determines and reassesses PLC cost effectiveness, and
- better documenting key decisions made throughout the PLC process.

Recommendations and Corporation Comments

We made six recommendations to strengthen program controls to help ensure that PLCs are cost effective. The FDIC has taken or proposed actions that are responsive to our recommendations.