2012 Chief FOIA Officer Report Federal Deposit Insurance Corporation March 2011 - March 2012

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Yes. The FDIC's FOIA/Privacy Act Group ("FOIA Group") hosted a FOIA seminar in November 2011 for staff involved in the processing of FOIA requests. Topics covered at the seminar included FOIA time limits and fees, requirements of the OPEN Government Act, and recent court decisions interpreting the FOIA. Several training sessions on the FDIC's FOIA processing software and procedures were also held throughout the year for FDIC FOIA personnel.

In addition, the FOIA Group conducted training on the FOIA at several in-house "core functions" seminars for attorneys and paralegals during the reporting period.

The FOIA Group also provided training to the staff of the Corporation's Office of the Ombudsman on FOIA law and procedures. The Ombudsman serves as FOIA Public Liaison for the FDIC.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

FOIA Group personnel attended both the two-day *The Freedom of Information Act* for Attorneys and Access Professionals program and the 2011 Annual FOIA Report and 2012 Chief FOIA Officer Report Refresher Training course in October 2011.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. The Office of Information Policy (OIP) encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. Did your agency make any discretionary releases of otherwise exempt information?

The FDIC makes discretionary disclosures of exempt records pursuant to regulation 12 C.F.R. §309.6 ("Part 309"), which provides that under appropriate circumstances, discretionary disclosures may be authorized by the Director of the FDIC division having primary authority over the exempt records or by the General Counsel, or their designees. The Chairman of the FDIC may also authorize such disclosure. In accordance with Part 309, both FDIC headquarters and Regional Offices continuously make discretionary disclosures on a case-by-case basis in response to numerous written requests received for exempt information. There is no formal report which tracks the number of discretionary requests received and granted.

4. What exemptions would have covered the information that was released as a matter of discretion?

Several exemptions may cover materials subject to discretionary disclosures. Given the FDIC's responsibilities as a bank supervisory, Exemption 8 (information contained in or related to financial institution examination, operating, or condition reports) technically may apply to substantial proportions of the discretionary disclosures. However, in the interest of openness, the FDIC has provided discretionary disclosures of information that would not impair appropriate protections for non-public, confidential information involving open banks that are supervised or regulated by the FDIC.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

Requests for exempt records are reviewed, and determinations to release are made, on a case-by-case basis in accordance with the requirements specified in Part 309.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

We routinely monitor and analyze the nature of requests in order to spot trends; we then proactively post data and information to address any such request trends. In addition, we continuously update the data and information that is already posted on the FDIC's public website. The attached Appendix A shows the types of items currently posted on the FDIC's public website and provides a sense of the volume of information that is available.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's

2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

No

8. Did your agency have an increase in the number of responses where records were released in part?

No.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. Do FOIA professionals within your agency have sufficient IT support?

Yes.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

The FDIC's General Counsel serves as Chief FOIA Officer for the Corporation. The Chief FOIA Officer has taken an active role in monitoring the productivity and timeliness of the FOIA Group in handling FOIA requests.

3. Do your FOIA professionals work with your agency's Open Government Team?

Yes.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

The FDIC reviews the workload, backlog, and response time of the FOIA Group and divisional FOIA coordinators on an ongoing basis to assess whether adequate staffing is being devoted to FOIA administration. Since the end of Fiscal Year 2010, the number of personnel involved in the processing of FOIA requests has increased by 42% while the backlog of requests has decreased by 98%. Between the end of Fiscal Year 2010 and the end of Fiscal Year 2011, average response times were reduced for simple, complex and expedited requests by 72%, 49%, and 54%, respectively. Thus, it would appear that, given our improvements in overall processing times, our present staffing is adequate.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The FDIC held several training sessions during the year to familiarize the FOIA Group and divisional FOIA Coordinators with the operation of the commercial software used by the Corporation to process and track FOIA requests.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Has your agency added new material to your website since last year?

Yes. Information added to the FDIC's website is highlighted in the "What's New" section of the home page.

2. Provide examples of the records, datasets, videos, etc, that have been posted this past year.

Material posted on the FDIC's website in the past year includes: updated versions of two of the FDIC's most popular deposit insurance brochures, *Your Insured Deposits* and *Deposit Insurance Summary*; the Special Foreclosure Edition of

Supervisory Insights, a publication that discusses emerging issues faced by bank supervisors, as well as the Summer 2011 and Winter 2011 editions of the publication; memoranda and other documents presented to the FDIC's Board of Directors at board meetings held throughout the year; Your Guide to Preventing and Managing Overdraft Fees, a new FDIC brochure advising how to avoid and get help with overdraft fees; the Chief Financial Officer's (CFO) Report to the Board for the first three quarters of 2011 highlighting the Corporation's financial activities and results; the 1st, 2nd and 3rd Quarter 2011 editions of the *Quarterly* Banking Profile, a publication that provides report card on the status and performance of the banking industry; and The Orderly Liquidation of Lehman Brothers Holdings under the Dodd-Frank Act, a report on what the resolution of Lehman Brothers Holdings Inc. might have looked like had the orderly liquidation authority of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act been in effect in advance of Lehman's failure. A list of the types of material currently posted on the FDIC's public website is attached to this Report as Appendix A.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

We continuously assess the nature of the FOIA requests received in order to identify the types of information that are currently in demand and that could be posted on our website to most effectively serve the public interest, and we regularly confer with management concerning the appropriateness of such posting.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

We assess whether information posted can be made more useful to the public as needed. For example, in response to requests for information by the public concerning unclaimed deposits in failed banks, the FDIC created a searchable web page that allows searches by an individual's name.

5. Describe any other steps taken to increase proactive disclosures at your agency.

None are presently needed.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies

should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

All FOIA requests received by the FDIC are processed by the FOIA Group.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

Yes.

4. If not, is your agency taking steps to establish this capability?

N/A

Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

6. If so, describe the technological improvements being made.

The FDIC has established an Information Management and Compliance (IMAC) Program to ensure that policies, procedures, and technologies are implemented to organize, store, track, analyze, and retrieve all information (regardless of whether it is paper or electronically-stored) necessary to fulfill the FDIC's mission. The focus of the IMAC program team is centered on improving how FDIC personnel handle unstructured information such as email messages, Word documents, Excel spreadsheets, and PDF files. The FDIC is currently in the process of releasing

new software throughout the Corporation that will improve the ability to access and retrieve archived e-mails.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.

- 1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
 - a. Does your agency utilize a separate track for simple requests?

Yes.

- b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?
 - Yes. The average number of days to process simple requests was 11.42 days.
- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

N/A

2. Section VII.A Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section

VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

Yes. There was a dramatic decrease in the number of backlogged requests. At the close of Fiscal Year 2011, the FDIC had a backlog of 2 requests; at the close of Fiscal Year 2010, the backlog was 109 requests.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

N/A. The FDIC had no backlog of appeals at the close of either fiscal year.

c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

Yes.

d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

Yes. The one appeal pending at the end of Fiscal Year 2010 was closed in Fiscal Year 2011.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

N/A

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

N/A

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

N/A

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

N/A.

Administrative Appeal Backlog:

e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

N/A

f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

N/A

g. Was the lack of a reduction in the appeal backlog caused by in increase in the complexity of the appeals received?

N/A

h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

N/A

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes.

2. Has your agency increased its FOIA staffing?

The FOIA staff has not increased since the submission of the 2011 Chief FOIA Officer Report.

3. Has your agency made IT improvements to increase timeliness?

The FDIC implemented a public access portal to its FOIA processing software that allows the public to submit FOIA requests over the Internet. Requests are automatically delivered to the FOIA Group which reduces the overall amount of time spent on data entry.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

The utilization of IT to share documents may be considered in 2012 as significant IT upgrades occur throughout the FDIC, including to hardware and software for all users. Meanwhile, the FDIC continues to telephonically contact other agencies on consultations to improve overall efficiency in processing, as needed.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

- Did your agency invoke a statutory exclusion during Fiscal Year 2011?
 No.
- 2. If so, what is the total number of times exclusions were invoked? N/A.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

Each month, the FDIC tabulates the number of times ("hits") the different informational web pages in the FOIA Reading Room were accessed by the public. These data consistently show that such topics as the Chairman's schedule, congressional correspondence, and failed bank information (including bids) receive the most hits, numbering in the thousands each month. The popularity of

that information demonstrates that the proactive posting of such information has improved the FDIC's transparency and administrative efficiency.

2012 CHIEF FOIA OFFICER REPORT APPENDIX A

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