

# **FDIC Leasing Representations and Certifications**

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# FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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## **ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average one-hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Paperwork Reduction Act Clearance Officer, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## **PRIVACY ACT STATEMENT**

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C. §§ 1819, 1821, and Executive Order 9397. This information will be primarily used to review a potential lessor for fitness and integrity and the information provided may be disclosed to licensing authorities by the FDIC in making a determination of fitness and integrity.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude your property from being leased by the FDIC.

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## FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

### INSTRUCTIONS TO LESSORS

This FDIC Leasing Representations and Certifications form (the "Certifications") is comprised of two parts: Part I – Certifications Concerning the Premises, the Building and the Land, and Part II – Lessor Fitness and Integrity Certifications.

The FDIC requires that all Lessors insert the address of their property in the space provided below and complete both Parts of the Certifications and submit them as part of any Offer to enter into a Lease or a Lease Agreement. The Certifications shall be executed by an official authorized to bind the Lessor, and they shall be attached to and made a part of any Lease or Lease Amendment. For purposes of the Certifications, the FDIC is considered an agency of the United States with respect to its rights and remedies under Title 18 of the United States Code. **The Certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. §§ 1001, 1007, and 1014.**

Pursuant to paragraph IV.A. of the FDIC's Policy Statement on the Fitness and Integrity of Lessors of Real Property to the FDIC (the "Policy Statement"), dated February 6, 1996 (published in the Federal Registrar on February 13, 1996, and amended in the Federal Registrar on April 26, 1996), a copy of which is attached hereto as **Schedule A**, the FDIC will not consider Offers from Lessors, award Leases to Lessors, or enter into certain Lease Amendments with Lessors that either (a) fail to provide any of the information required by the Policy Statement, or (b) have Conflicts of Interest, unless such Conflicts of Interest are eliminated by the Lessor or waived by the FDIC.

All items within the Certifications must be completed. If the Lessor cannot certify "True" to an entire statement, or if a statement is partly "True" and partly "False" for the Lessor, the "False" box must be checked.

Whenever the "False" box is checked, the Lessor must attach a detailed, specific description of the particular defect, element of noncompliance, condition or situation, as applicable, that results in such response being "False" and, if applicable, such attachment should also include a full description of the Lessor's plans to remedy, correct, address or eliminate the particular matter.

If at any time prior to the award of the Lease or Lease Amendment, or during the term of the Lease, the Lessor learns that one or more of the representations or certifications made herein was erroneous when submitted or has become erroneous, the Lessor shall notify the FDIC in writing within five business days.

All capitalized terms not otherwise defined within the Certifications shall have the meaning set forth in the Policy Statement, which is attached as Schedule A, unless noted otherwise within the Certifications.

In connection with its Offer to lease certain space (the "Premises") to the FDIC, in the building (the "Building"), at the following address: \_\_\_\_\_, the undersigned Lessor, \_\_\_\_\_, certifies as follows:

# FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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## **PART I – CERTIFICATIONS CONCERNING THE PREMISES, THE BUILDING AND THE LAND**

**NOTE:** The foregoing Instructions describe what a Lessor must provide if a “False” box is checked regarding any of the following statements.

### **1. Compliance with Laws**

a. The Premises, the Building and the Land are in compliance with all existing health, safety, fire, zoning, building, and environmental laws, rules, regulations, codes and ordinances applicable to the Premises, the Building or the Land, respectively (excluding, for this Question #1(a), the Americans with Disabilities Act, 42 U.S.C. 12101 et. seq.).

True       False

b. The Building and the Land (excluding areas occupied by other tenants, but including, without limitation, common areas, existing bathroom facilities (in the Premises or in public areas), paths of travel to and from the Premises and ingress/egress Building access points (including, if applicable, any parking facility being provided by Lessor), elevators and drinking fountains) are in compliance with the Americans with Disabilities Act, 42 U.S.C. 12101 et. seq., and any similar state or local law, rule, regulation, code or ordinance applicable to the Building or the Land.

True       False

c. There is no “grandfather” provision relating to the Premises, the Building or the Land that results in the Premises, the Building or the Land, as applicable, being in compliance with the requirements described in Question #1(a) or Question #1(b) above such that, if that “grandfather” provision did not exist, the Premises, the Building or the Land otherwise would not be in compliance with any such requirement.

True       False

### **2. Asbestos-Containing Materials.**

a. The Premises and/or the Building have been assessed for the presence of Asbestos-Containing Materials (defined below).

True       False

If “True,” attach the most recent Asbestos-Containing Material assessment report for the Premises/Building.

b. The Premises and the Building do not contain any Asbestos-Containing Material.

True       False

The term “Asbestos-Containing Material” means any material with a concentration of one percent (1%) or greater by dry weight of asbestos.

### **3. Water Quality.**

a. The quality of the water at the Premises and/or the Building has been assessed.

True       False

If “True,” attach the most recent water quality assessment report for the Premises/Building.

b. The water at all drinking fountains, sinks or other sources of water at the Premises and the Building is potable and does not contain lead, copper or other contaminants in excess of maximum contaminant levels established by the United States Environmental Protection Agency and applicable state and municipal drinking water standards.

True       False

c. Lessor has not received any written complaints or otherwise become aware of any problems with respect to that water quality.

True       False

## FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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**4. Indoor Air Quality.**

- a. The quality of the indoor air at the Premises and/or the Building has been assessed.

True       False

If "True," attach the most recent indoor air quality assessment report for the Premises/Building.

- b. The indoor air quality at the Premises and the Building is safe and healthy.

True       False

- c. Lessor has not received any written complaints or otherwise become aware of any problems with respect to that indoor air quality.

True       False

**5. Hazardous Substances.**

- a. Lessor has not received, nor is Lessor aware of, any request for information, notice, order, civil or criminal action, demand, claim, citation, summons or similar communication from any person or entity with respect to any Hazardous Substance (defined below) associated with the Premises, the Building or the Land.

True       False

- b. To the best of Lessor's knowledge, information and belief, no Hazardous Substance is located on, under, or within the Land, the Building, or the Premises, the presence of which relates to or is the result of any spill, release, discharge, or disposal of a Hazardous Substance.

True       False

The term "Hazardous Substance" means any material, substance or waste (i) which is defined as a "hazardous waste" or hazardous substance" or "pollutant" or "contaminant" under any federal, state, county, municipal and local law, regulation, rule, code, ordinance and order under any environmental law; (ii) which is toxic, ignitable, reactive, corrosive, flammable, infectious, radioactive, or otherwise hazardous; (iii) which is regulated by any federal, state, county, municipal and local governmental entity or agency; or (iv) which contains or consists of gasoline, diesel fuel or other petroleum hydrocarbons, volatile organic compounds, polychlorinated biphenyls (PCBs), asbestos or asbestos-containing material, or urea formaldehyde foam.

- 6. Building Systems.** There are no material structural, plumbing, electrical, mechanical, or sewer system defects in the Building, and the Building, including the foregoing systems, has not been adversely affected by seismic activity.

True       False

# FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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## **PART II – LESSOR FITNESS AND INTEGRITY CERTIFICATIONS**

### **1. Conflicts of Interest**

**Important Note:** *The following pertain to this Conflict of Interest certification only.*

- *The word “Lessor” encompasses both Lessors and Lessor’s Affiliates, as defined in the Policy Statement, Schedule A.*
- **A check in any “False” box for 1.a. through e. below indicates that the Lessor has a Conflict of Interest, as defined at Section III.B.(1) through (5) of the Policy Statement.** *In accordance with Section V.A.(1)(b) of the Policy Statement, a Lessor with a Conflict of Interest shall, with its Offer, request that the Conflict of Interest be waived or propose how the Conflict of Interest will be eliminated.*
  - a. The Lessor is not adverse to the FDIC, RTC, Federal Savings and Loan Insurance Corporation, or their successors in a lawsuit.  
 True       False
  - b. The Lessor has not caused a Substantial Loss to Federal Deposit Insurance Funds within the ten year period preceding the date of this certification.  
 True       False
  - c. The Lessor has never been convicted of a Fraud Offense or of conspiring to commit a Fraud Offense, affecting any Insured Depository Institution.  
 True       False
  - d. The Lessor has not Defaulted on a Material Obligation within the last five years.  
 True       False
  - e. The Lessor has never been removed from, or prohibited from participating in the affairs of any Insured Depository Institution pursuant to any final enforcement action of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors.  
 True       False

### **2. Releases for Less than Full Amount Due**

The Lessor has never been released from any commitment to pay \$50,000 or more to an Insurer for which the Insurer received less than 100% (including interest, late charges, and other costs of collection) of the amount due.

True       False

### **3. Prohibited Communication with FDIC Employees**

Neither the Lessor, nor any employee of the Lessor, nor any entity which will be awarded a subcontract as a result of the award of the Lease or Lease Agreement, have at any time since the first public notification of the FDIC space requirement described in the FDIC’s Request for Proposal associated with the Certifications, or at any time after becoming aware of this pending Lease acquisition (if such awareness preceded public notification), (a) directly or indirectly offered any promise of future employment or business opportunities to, or engaged in any discussion of future employment or business opportunities with, any FDIC personnel responsible for this Lease acquisition; or (b) directly or indirectly solicited any information concerning the FDIC space requirement described in the Request for Proposal associated with the Certifications, other than information available to the general public.

True       False

# FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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## 4. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

- a. To the best of Lessor's knowledge, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (collectively, "covered Federal actions").

True       False

- b. To the best of Lessor's knowledge, no nonappropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the Request for Proposal associated with this certification.

True       False (If "False," Lessor must complete and submit with its offer, an OMB Standard Form LLL "Disclosure of Lobbying Activities" (available upon request).

**NOTE: The Lessor must include the language of 4.a. and b. of this Certification and Disclosure in all subcontract awards relating to the Offer or the Lease or the Building, at any tier, and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly. Submission of this Certification and Disclosure, and when required, a completed Standard Form LLL is a prerequisite for making or entering into this Lease imposed by 31 U.S.C. § 1352.**

## 5. Certificate of Independent Price Determination

- a. The prices in this Offer (or proposed for the Lease Amendment) have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any Lessor or competitor relating to (a) those prices, (b) the intention to submit an Offer, or (c) the methods or factors used to calculate the prices offered.

True       False

- b. The prices in this Offer have not been and will not be knowingly disclosed by the Lessor, directly or indirectly, to any other lessor or competitor before award of the Lease or Lease Amendment unless otherwise required by law.

True       False

- c. No attempt has been made or will be made by the Lessor to induce any other individual or Company to submit or not to submit an Offer for the purpose of restricting competition.

True       False

# FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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6. **Lessor Identification and Information**

a. List the name, address, and Federal Taxpayer Identification Number of (1) the Lessor and, (2) if different, the record owner of the Building:

NAME OF LESSOR <i>(Please print or type)</i>		TAXPAYER IDENTIFICATION NUMBER (TIN)
STREET ADDRESS		
CITY	STATE	ZIP CODE

NAME OF RECORD OWNER <i>(Please print or type)</i>		TAXPAYER IDENTIFICATION NUMBER (TIN)
STREET ADDRESS		
CITY	STATE	ZIP CODE

b. **Check one:** Lessor operates as  an individual,  a State or local agency, or  a Company.

c. Identify the following (If additional room is needed, please complete on 8-1/2 x 11-inch paper and attach it to the Certifications.)

1. If the Lessor is a Company provide:

(a) The state in which the Corporation or other organization is registered or organized:

\_\_\_\_\_

(b) The name, addresses, and Federal Taxpayer ID Numbers of all **general partners** and/or all **beneficial owners of a 25% or greater equity interest** in the Lessor. In addition, for those **general partners** and **beneficial owners** who are individuals, provide the Social Security Number, birth date, and Birthplace (City, State, Country):

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## FDIC LEASING REPRESENTATIONS AND CERTIFICATIONS

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2. The names, addresses, Federal Taxpayer ID Numbers, and state of incorporation or organization of any Companies of which the Lessor is either the **general partner** or a **beneficial owner** of a 25% or greater equity interest:

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3. If the Lessor is an individual, list the name, address, Social Security Number, birth date, and Birthplace (City, State, Country) of any Family Member:

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**By signature hereto, the undersigned certifies that he or she has full right, power and authority to execute these Certifications on behalf of the Lessor without the consent of any other entity or individual and makes these Certifications with the knowledge that the FDIC shall rely upon them. The undersigned also certifies that all of the foregoing representations and certifications are true, complete, and accurate, and that he or she is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements to an agency of the United States government. Further, the undersigned by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in making a determination of the lessor's fitness and integrity.**

NOTE: THE SIGNATURE OF AN AGENT IS NOT ACCEPTABLE

NAME <i>(Please print or type)</i>	
TITLE	
NAME OF LESSOR	TAXPAYER IDENTIFICATION NUMBER (TIN)
SIGNATURE	DATE

Attachment (1): Schedule A, Policy Statement

**POLICY STATEMENT ON THE FITNESS AND INTEGRITY OF LESSORS OF REAL PROPERTY TO THE FDIC**I. **Purpose.** To establish:

A. Minimum standards governing Conflicts of Interest and ethical responsibilities for Lessors who have entered into Leases with the FDIC, or who seek to lease real property to the FDIC; and

B. Official written guidance for FDIC personnel including, without limitation, personnel in the Division of Administration, the Division of Supervision, and the Office of the Executive Secretary, on the implementation of those minimum standards.

II. **Applicability.** This policy will apply to:

A. All Leases of 10, 000 square feet or more awarded as a result of Requests for Proposals issued after the date of this policy; and

B. All Lease Amendments entered into after the date of this policy to (1) existing leases of 10,000 square feet or more, or (2) existing Leases of less than 10,000 square feet where the total square footage of the Lease will be 10,000 square feet or more if the Lease Amendment is executed.

III. **Definitions.** As used in this policy statement:

A. **Company** means any corporation, firm, partnership, society, joint venture, business trust, association, or similar organization, or any other trust, or any other organization or institution.

B. **Conflict of Interest** means a situation in which:

(1) A Lessor or a Lessor's Affiliate is adverse to the FDIC, RTC, Federal Savings and Loan Insurance Corporation (FSLIC), or their successors in a lawsuit, for which no final adjudication or settlement has occurred; or

(2) A Lessor or a Lessor's Affiliate has caused a Substantial Loss to Federal Deposit Insurance Funds within the ten year period preceding the submission of its offer; or

(3) A Lessor or a Lessor's Affiliate has been convicted of a Fraud Offense or of conspiring to commit a Fraud Offense affecting any Insured Depository Institution; or

(4) A Lessor or a Lessor's Affiliate has Defaulted on a Material Obligation within the last five years; or

(5) A Lessor or a Lessor's Affiliate has been removed from, or prohibited from participating in the affairs of any Insured Depository Institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors; or

(6) A situation in which the FDIC determines, in its sole discretion, that the FDIC's award of a Lease to a Lessor could cause a reasonable person to question the integrity of the FDIC's operations. An example (without limitation) of a Conflict of Interest determined by the FDIC is a situation in which an individual who is not a Lessor's Affiliate, but has a direct or indirect equity interest in the Lessor, or directly or indirectly controls the Lessor, has been convicted of a Fraud Offense.

C. **Default on a Material Obligation** means a loan or advance from an Insured Depository Institution which has been delinquent for 90 or more days as to payment of principal or interest, or a combination thereof, with a remaining balance of principal, and accrued interest on the ninetieth day, or any time thereafter, in an amount in excess of \$1,000,000.

## POLICY STATEMENT ON THE FITNESS AND INTEGRITY OF LESSORS OF REAL PROPERTY TO THE FDIC

D. **Family Member** means the Lessor's spouse or dependent child.

E. **FDIC** means the Federal Deposit Insurance Corporation in its receivership and corporate capacities. It does not mean the FDIC in its conservatorship capacity or when it is operating a bridge bank.

F. **Fraud Offense** means any felony offense under the sections of title 18 U.S. Code as listed in Part IX, or similar offenses under state laws.

G. **Insured Depository Institution** means any bank or savings association the deposits of which are insured by the FDIC.

H. **Insurer** means the FDIC, RTC, FSLIC or their successors; or the Bank Insurance Fund, the Savings and Association Insurance Fund, the FSLIC Resolution Fund, or funds maintained by the RTC for the benefit of insured depositors.

I. **Lease** means a lease or sublease of real property for the use of the FDIC (including its contractors) as tenant, including but not limited to warehouse, office and retail space. As used herein, "Lease" does not include contracts for storage services.

J. **Lease Amendment** means any change to a Lease which extends the term of a Lease, increases the rentable square footage of the premises leased, or increases the rent paid under the Lease. As used herein, however, "Lease Amendment" does not refer to the exercise of a priced renewal option or an expansion option at a predetermined rental rate under any Lease entered into prior to the date of the policy.

K. **Lessor** means an individual or a Company which intends to or has submitted an Offer to lease or sublease real property to the FDIC, or which has entered into a Lease or a sublease with the FDIC.

L. **Lessor's Affiliate** means:

- (1) If the Lessor is a Company, (a) any general partner of the Lessor, or (b) any beneficial owner of a 25% or greater equity interest in the Lessor; or
- (2) Any Company of which the Lessor is (a) a general partner, or (b) in which the Lessor is the beneficial owner of a 25% or greater equity interest; or
- (3) If the Lessor is an individual, any Family Member of the Lessor.

A Lessor's Affiliate may be either an individual or a Company.

M. **Obligation** means a commitment to pay money to an Insurer, that is currently owing to, and held by, an Insurer, and which currently is not performing in accordance with the terms thereof (including any modifications thereto), including, without limitation, (1) any unsatisfied final judgment, and (2) any guarantee of any Obligation.

N. **Offer** means a proposal to enter into a Lease.

O. **RTC** means the Resolution Trust Corporation in any of its capacities.

P. **Substantial Loss to Federal Deposit Insurance Corporation Insurance Funds** means: An Obligation that is or has been delinquent for 90 or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal duty to pay an amount in excess of \$50,000. A Substantial Loss to Federal Deposit Insurance Funds does **NOT** include situations where the Obligation (1) has been fully resolved and the debtor has been released in full by the applicable Insurer, or (2) has been sold or transferred by the applicable Insurer and Insurer retains no interest therein.

## POLICY STATEMENT ON THE FITNESS AND INTEGRITY OF LESSORS OF REAL PROPERTY TO THE FDIC

### IV. Policy

A. **General.** The FDIC will not consider Offers from Lessors, award Leases to Lessors, or enter into Lease Amendments with Lessors that either (a) fail to provide any of the information required by this policy; or (b) have Conflicts of Interest, unless such Conflicts of Interest are eliminated by the Lessor or waived by the FDIC.

B. **Waivers.** Waivers of Conflicts of Interest will be granted only when, in light of all relevant circumstances, the Executive Secretary, or the designee of the Executive Secretary determines in his or her discretion that the interests of the FDIC in entering into a Lease or a Lease Amendment with the Lessor outweigh the concern that a reasonable person may question the integrity of the FDIC's operations.

### V. Procedures

#### A. **Conflicts of Interest**

##### (1) **Conflicts of Interest in existence prior to submission of an Offer:**

(a) A Lessor shall provide all information and certifications required in paragraph V.B. hereof at the time it makes an Offer to the FDIC.

(b) A Lessor that has a Conflict of Interest as defined at paragraph III.B.(1) through (5) of this policy statement shall, with its Offer, request that the Conflict of Interest be waived in accordance with paragraph IV.B., or propose how the Lessor will eliminate the Conflict of Interest.

(c) The Executive Secretary or designee, at his or her discretion, may waive the Conflict of Interest in accordance with paragraph IV.B., or may approve in writing a Lessor's proposal to eliminate the Conflict of Interest for purposes of the specific Lease.

##### (2) **Conflicts of Interest arising after submission of an Offer but prior to entering into a Lease:**

(a) If, after submitting its Offer, but prior to entering into a Lease, a Lessor discovers that it has a Conflict of Interest, it must notify the FDIC in writing within five business days of such discovery. The Lessor shall include with such notification a detailed description of the Conflict of Interest, and (i) a statement of how it intends to eliminate the Conflict of Interest; or (ii) a request for a waiver of the Conflict of Interest.

(b) The Executive Secretary or designee, at his or her discretion, may waive the Conflict of Interest in accordance with paragraph IV.B., or may approve in writing a Lessor's proposal to eliminate the Conflict of Interest for purposes of the specific Lease.

(3) **Conflicts of Interest that arise after entering into a Lease.** FDIC Lease agreements shall require that the Lessor notify the FDIC in writing within five business days after discovering a Conflict of Interest that arises after the Lessor and the FDIC have entered into a Lease. The Lessor shall include with such notification a detailed description of the Conflict of Interest, and either (i) a statement of how it intends to eliminate the Conflict of Interest; or (ii) a request for a waiver of the Conflict of Interest. After receipt of such notice from the Lessor, the FDIC shall take such action as it determines is in the FDIC's best interests, including:

(a) The FDIC shall notify the Lessor in writing of its findings as to whether a Conflict of Interest exists. If the FDIC finds that a Conflict of Interest exists, the FDIC shall also notify the Lessor in writing of the basis for such determination, and when applicable:

(i) whether a waiver will be granted, and if so, the terms and conditions of such waiver; or

(ii) a description of the corrective actions, if any, that the Lessor will take in order to eliminate the Conflict of Interest. Corrective actions must be completed by the Lessor not later than 30 days after notification is mailed by the FDIC unless the FDIC, in its sole discretion, determines that it is in the best interests of the FDIC to grant the Lessor an extension in which to complete such corrective action.

(b) Unless the FDIC waives the Conflict of Interest or the Lessor eliminates the Conflict of Interest, the FDIC shall not enter into any Lease Amendments with the Lessor.

## POLICY STATEMENT ON THE FITNESS AND INTEGRITY OF LESSORS OF REAL PROPERTY FOR THE FDIC

(4) **Conflicts of Interest discovered by the FDIC.** The FDIC will review all information provided by the Lessor with its Offer, as well as information from other sources that the FDIC determines is relevant. If the FDIC, in its sole discretion determines, based on such reviews, that a Conflict of Interest exists, an FDIC representative shall notify the Lessor of the basis for such determination.

- (a) If the FDIC discovers a Conflict of Interest after submission of an Offer, but prior to entering into a Lease:
- (i) The Lessor must respond to the FDIC in writing, within five business days of the FDIC's notification of its determination in one of the following ways.
- [1] stating how it intends to eliminate the Conflict of Interest; or
  - [2] requesting that the FDIC waive the Conflict of Interest; or
  - [3] if the FDIC's determination was based solely on information from a source other than the Lessor, and the Lessor can demonstrate that such information was incomplete or incorrect, the Lessor may provide additional or corrected facts and request that the FDIC consider such facts and reevaluate its determination that a Conflict of Interest exists. After reviewing the Lessor's additional or corrected information, the FDIC will notify the Lessor promptly whether it confirms its determination that a Conflict of Interest exists.
- (ii) If the Lessor does not respond in writing to the FDIC within five business days, the FDIC shall deem the Lessor's Offer to have been withdrawn.

(b) If the FDIC discovers a Conflict of Interest after entering into a Lease, the FDIC shall take such action as it determines is in the FDIC's best interest, including the actions described in V.A.(3)(a) and (b). As detailed at V.A.(4)(a)(i)[3], the Lessor can request that the FDIC reevaluate its determination if the FDIC's determination was based solely on information from a source other than the Lessor, and the Lessor can demonstrate that such information was incomplete or incorrect. After reviewing the Lessor's additional or corrected information, the FDIC will notify the Lessor promptly whether or not it will reverse its determination that a Conflict of Interest exists.

(5) **Reconsideration of decisions.** The Lessor may request that the chairman or designee(s) reconsider FDIC decisions regarding acceptance of a Lessor's proposal for the elimination of a Conflict of Interest, or the issuance of a requested waiver to a Conflict of Interest. Such requests must be in writing and contain the reasons for the request. The Chairman or designee(s) shall have the right to decline reconsideration.

### B. **Information required to be submitted:**

(1) **Initial Submission.** Every Lessor shall submit a completed "FDIC Leasing Representations and Certifications" form, including Part II, "Lessor Fitness and Integrity Certifications" and such other information as the FDIC may deem appropriate to permit it to make a determination with respect to Conflicts of Interest at the time the Lessor submits an Offer and prior to entering into any Lease Amendment. Among other items, the form shall require that the Lessor provide the following:

- (a) Certifications that no Conflict of Interest, as defined in paragraph III.B(1) through (5) exists, or;
- (b) In the event that one or more Conflicts of Interest exist, the following information:
- (i) When applicable, a description of any lawsuit in which the Lessor or any Lessor's Affiliate is adverse to the FDIC, RTC, FSLIC, or their successors and for which no final adjudication or settlement has occurred;
  - (ii) When applicable, a list and description of any instance during the five years preceding the submission of the Offer in which the Lessor or any Lessor's Affiliate has caused a Substantial Loss to Federal Deposit Insurance Funds;
  - (iii) When applicable, a list and description of any Fraud Offense of which the Lessor or any Lessor's Affiliate has been convicted;
  - (iv) When applicable, a list and description of any instance during the five years preceding the submission of the Offer in which the Lessor or any Lessor's Affiliate has Defaulted on a Material Obligation;

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(v) When applicable, a list and description of any instances in which the Lessor or any Lessor's Affiliate has been removed from or prohibited from participating in the affairs of any Insured Depository Institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors; and

(vi) The Lessor's request for waiver of such Conflicts of Interest or proposal for elimination of such Conflicts of Interest.

(c) A description of any commitment to pay \$50,000 or more to an Insurer that has been fully released by the Insurer, but for which the Insurer received less than 100% (including interest, late charges, and other costs of collection) of the amount due; and

(d) Any other information which the FDIC may deem appropriate.

(2) **Subsequent Submissions.** FDIC Lease agreements shall require that during the term of the Lease, the Lessor shall:

(a) Immediately notify the FDIC if any of the information submitted pursuant to this policy was incorrect at the time of submission or has subsequently become incorrect; and

b) At any time, submit such information as the FDIC requests in order to permit the FDIC to determine if a Conflict of Interest exists.

(3) **Failure to provide information.** Any Lessor who fails to provide any of the information required by this policy will neither be considered for, nor eligible for, the award of a Lease or a Lease Amendment.

(4) **Misstatement of Material Fact.** Any Lessor who misstates or fails to disclose to the FDIC a material fact or any Conflict of Interest, as defined in paragraph III.B.(1) through (5), whether prior to or during the term of the Lease, will not be considered eligible for the award of any Lease or Lease Amendment.

### VI. Lease agreement requirements.

A. **Retention of information.** FDIC Lease agreements shall specify that the Lessor shall retain the information upon which it relied in preparing its certification(s) during the term of the Lease and for a period of three years following the termination or expiration of the Lease or any extension thereof, and shall make such information available for review by the FDIC upon request.

B. **Response to requests for additional information.** FDIC Lease agreements shall specify that any Lessor who fails to respond to a request for information made by the FDIC pursuant to Section V.B.2.(b) of this policy, shall be in default under the Lease for which such information was requested.

C. **Additional Lease agreement provisions.** In addition to the provisions of this policy, the FDIC may include in its Lease agreements such provisions, conditions, and limitations as the FDIC deems necessary, including additional standards for Lessor fitness and integrity, and minimum standards of ethical responsibility for Lessors.

### VI. Lease agreement requirements.

D. **Retention of information.** FDIC Lease agreements shall specify that the Lessor shall retain the information upon which it relied in preparing its certification(s) during the term of the Lease and for a period of three years following the termination or expiration of the Lease or any extension thereof, and shall make such information available for review by the FDIC upon request.

E. **Response to requests for additional information.** FDIC Lease agreements shall specify that any Lessor who fails to respond to a request for information made by the FDIC pursuant to Section V.B.2.(b) of this policy, shall be in default under the Lease for which such information was requested.

F. **Additional Lease agreement provisions.** In addition to the provisions of this policy, the FDIC may include in its Lease agreements such provisions, conditions, and limitations as the FDIC deems necessary, including additional standards for Lessor fitness and integrity, and minimum standards of ethical responsibility for Lessors.

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VII. **Delayed compliance in emergencies.** In emergencies, when unforeseeable circumstances make it necessary to enter into a Lease immediately in order to protect FDIC personnel or property, the FDIC may delay compliance with this policy.

VIII. **Finality of determination.** Any determination made by the FDIC pursuant to this policy shall be in the FDIC's sole discretion and shall not be subject to further review, except as otherwise provided pursuant to a specific Lease agreement.

IX. **General.** Felony offenses as used in the standards set forth in this statement of policy mean the following statutes that establish standards to which a Lessor's conduct must conform and which shall not have been violated. The list is as follows:

- A. Bribery of Public Officials (18 U.S.C. 201).
- B. Offer of a loan or gratuity to bank examiners (18 U.S.C. 212).
- C. Continuing financial crimes enterprise (18 U.S.C. 225).
- D. Taking or using papers relating to claims (18 U.S.C. 285).
- E. Conspiracy to defraud the Government with respect to claims (18 U.S.C. 286).
- F. False, fictitious, or fraudulent claims (18 U.S.C. 287).
- G. Bonds and obligations or certain lending agencies (18 U.S.C. 493).
- H. Contractors' bonds, bids, and public records (18 U.S.C. 494).
- I. Contracts, deeds, and powers of attorney (18 U.S.C. 495).
- J. Chapter 31 Embezzlement and Theft (18 U.S.C. 642 through 668).
- K. Statements or entries generally (18 U.S.C. 1001).
- L. Possession of false papers to defraud the United States (18 U.S.C. 1002).
- M. Bank entries, reports, and transactions (18 U.S.C. 1005).
- N. Federal credit institution entries, reports and transactions (18 U.S.C. 1006).
- O. Federal Deposit Insurance Corporation transactions (18 U.S.C. 1007).
- P. Loans and credit applications generally (18 U.S.C. 1014).
- Q. Concealment of assets from a conservator, receiver, or liquidating agent of financial institution (18 U.S.C. 1032).
- R. Chapter 63 Mail Fraud (18 U.S.C. 1341 through 1344).
- S. Laundering of monetary instruments (18 U.S.C. 1956).

By order of the Board of Directors, dated at Washington, D.C., this 6<sup>th</sup> day of February 1996.

*[Source: 61 Fed. Reg. 5554, February 13, 1996, effective February 6, 1996; 61 Fed. Reg. 19939, April 26, 1996]*