



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document:	<b>Federal Deposit Insurance Corporation (FDIC) Office of the Inspector General (OIG) Audit Report No. 04-045, <u>Records Management and Storage</u>, 2004</b>
Requested date:	14-January-2009
Released date:	13-May-2009
Posted date:	26-October-2009
Source of document:	Federal Deposit Insurance Corporation FOIA/Privacy Act Group, Legal Division 550 17th Street, NW Washington, DC 20429-9990 Fax: (202) 736-0547

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



**Federal Deposit Insurance Corporation**

550 17th St. NW Washington DC, 20429

Legal Division

**MAY 13 2009**

FDIC Log Number 08-0864

This is in response to your electronic letter of January 14, 2009, which you requested, pursuant to the Freedom of Information Act, 5 U.S.C. §552, the following Office of Inspector General reports: 07-006, 06-025, 06-020, 06-006, 06-002, 05-034, 05-030, 05-023, 05-017, 05-011, 05-010, 05-006, 04-045, 04-031, 04-026, 04-012, 04-010, 04-006, 04-003, and 04-001.

Enclosed are the records that you requested. Certain deletions have been made to the enclosures pursuant to subsections (b)(2), (b)(4), (b)(5), and (b)(6) of the FOIA. Subsection (b)(2) permits the withholding of information that relates solely to the internal personnel rules and procedures of an agency. Subsection (b)(4) permits the withholding of commercial or financial information obtained from a person and considered privileged or confidential. Subsection (b)(5) permits the withholding of information contained in internal communications which relate to predecisional staff opinions, recommendations, and discussions of policy alternatives. Subsection (b)(6) permits the withholding of information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This letter constitutes formal notification that your request has been granted in part. You have the right to appeal this decision to the FDIC's General Counsel within 30 business days following receipt of this letter. Should you decide to appeal, please submit your appeal in writing to the General Counsel. Your appeal should be addressed to the FOIA/PA Group, Legal Division, FDIC, 550 17th Street, NW, Washington, D.C. 20429. Please refer to the FDIC log number and include any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Fredrick L. Fisch", written over a horizontal line.

Fredrick L. Fisch  
Supervisory Counsel

Enclosures



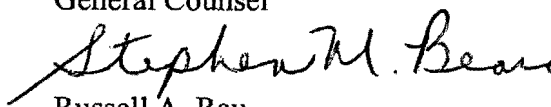
Federal Deposit Insurance Corporation

801 17th Street NW, Washington, DC 20434

Office of Audits  
Office of Inspector General

**DATE:** September 30, 2004

**MEMORANDUM TO:** William F. Kroener, III  
General Counsel

**FROM:**   
Russell A. Rau  
*for* Assistant Inspector General for Audits

**SUBJECT:** *Records Management and Storage*  
(Report No. 04-045)

The subject final report is provided for your information and use. Please refer to the Results of Audit section for the overall audit results. Our evaluation of your response is incorporated into the body of the report, and your response is included, in its entirety, as an appendix to the report. Your response adequately addressed recommendation 3. We consider the recommendation resolved, but it will remain undispositioned and open for reporting purposes until we have determined that agreed-to corrective actions have been completed and are effective. Appendix VII of the report summarizes the status of our report recommendations.

**This report addresses issues associated with sensitive contractor information. Accordingly, we request that you safeguard this report to the fullest extent possible. We do not intend to make this report available to the public.**

If you have any questions concerning the report, please contact me at (202) 416- 2543 or Stephen M. Beard, Deputy Assistant Inspector General for Audits, at (202) 416-4217.

Attachment

cc: Stephen M. Hanas, Legal  
James H. Angel, Jr., OERM  
Elroy Holden, OERM

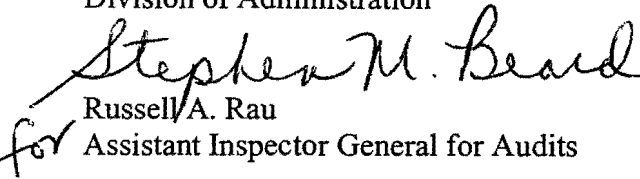


**Federal Deposit Insurance Corporation**  
801 17th Street NW, Washington, DC 20434

Office of Audits  
Office of Inspector General

**DATE:** September 30, 2004

**MEMORANDUM TO:** Arleas Upton Kea, Director  
Division of Administration

**FROM:**   
for Russell A. Rau  
Assistant Inspector General for Audits

**SUBJECT:** *Records Management and Storage*  
(Report No. 04-045)

The subject final report is provided for your use and comment. Please refer to the Results of Audit section for the overall audit results. Our evaluation of your response is incorporated into the body of the report, and your response is included, in its entirety, as an appendix to the report. Your response adequately addressed five of our nine recommendations to the Division of Administration (DOA). The five recommendations are considered resolved, but they will remain undispositioned and open for reporting purposes until we determine that the agreed-to corrective actions have been implemented and are effective. The other four recommendations remain unresolved. We reaffirm the four recommendations and request that DOA reconsider its responses to the recommendations and provide additional comments within 30 days. Appendix VII of the report summarizes the status of our report recommendations.

Additionally, DOA disagreed with all but \$602,438 of the Office of Inspector General's identified cost avoidances. We accept DOA's lower estimate of \$602,438 in savings for moving microforms to general storage space, and we will report a range of \$5,151,822 to \$5,573,881 for funds put to better use in our *Semiannual Report to the Congress*. With regard to the remaining estimated savings with which you do not concur, we will determine the actual funds put to better use, if any, through the corrective action closure process.

**This report addresses issues associated with sensitive contractor information. Accordingly, we request that you safeguard this report to the fullest extent possible. We do not intend to make this report available to the public.**

If you have any questions concerning the report, please contact me at (202) 416-2543 or Stephen M. Beard, Deputy Assistant Inspector General for Audits, at (202) 416-4217.

Attachment



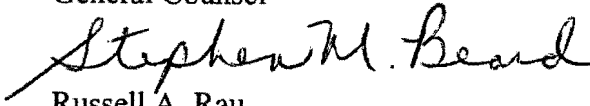
**Federal Deposit Insurance Corporation**

801 17th Street NW, Washington, DC 20434

Office of Audits  
Office of Inspector General

**DATE:** September 30, 2004

**MEMORANDUM TO:** William F. Kroener, III  
General Counsel

**FROM:**   
Russell A. Rau  
for Assistant Inspector General for Audits

**SUBJECT:** *Records Management and Storage*  
(Report No. 04-045)

The subject final report is provided for your information and use. Please refer to the Results of Audit section for the overall audit results. Our evaluation of your response is incorporated into the body of the report, and your response is included, in its entirety, as an appendix to the report. Your response adequately addressed recommendation 3. We consider the recommendation resolved, but it will remain undispositioned and open for reporting purposes until we have determined that agreed-to corrective actions have been completed and are effective. Appendix VII of the report summarizes the status of our report recommendations.

**This report addresses issues associated with sensitive contractor information. Accordingly, we request that you safeguard this report to the fullest extent possible. We do not intend to make this report available to the public.**

If you have any questions concerning the report, please contact me at (202) 416- 2543 or Stephen M. Beard, Deputy Assistant Inspector General for Audits, at (202) 416-4217.

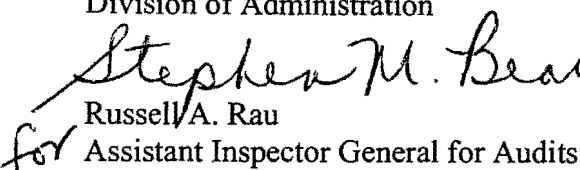
Attachment

cc: Stephen M. Hanas, Legal  
James H. Angel, Jr., OERM  
Elroy Holden, OERM



**DATE:** September 30, 2004

**MEMORANDUM TO:** Arleas Upton Kea, Director  
Division of Administration

**FROM:**   
for Russell A. Rau  
Assistant Inspector General for Audits

**SUBJECT:** *Records Management and Storage*  
(Report No. 04-045)

The subject final report is provided for your use and comment. Please refer to the Results of Audit section for the overall audit results. Our evaluation of your response is incorporated into the body of the report, and your response is included, in its entirety, as an appendix to the report. Your response adequately addressed five of our nine recommendations to the Division of Administration (DOA). The five recommendations are considered resolved, but they will remain undispositioned and open for reporting purposes until we determine that the agreed-to corrective actions have been implemented and are effective. The other four recommendations remain unresolved. We reaffirm the four recommendations and request that DOA reconsider its responses to the recommendations and provide additional comments within 30 days. Appendix VII of the report summarizes the status of our report recommendations.

Additionally, DOA disagreed with all but \$602,438 of the Office of Inspector General's identified cost avoidances. We accept DOA's lower estimate of \$602,438 in savings for moving microforms to general storage space, and we will report a range of \$5,151,822 to \$5,573,881 for funds put to better use in our *Semiannual Report to the Congress*. With regard to the remaining estimated savings with which you do not concur, we will determine the actual funds put to better use, if any, through the corrective action closure process.

**This report addresses issues associated with sensitive contractor information. Accordingly, we request that you safeguard this report to the fullest extent possible. We do not intend to make this report available to the public.**

If you have any questions concerning the report, please contact me at (202) 416-2543 or Stephen M. Beard, Deputy Assistant Inspector General for Audits, at (202) 416-4217.

Attachment



Federal Deposit Insurance Corporation  
801 17<sup>th</sup> Street NW, Washington, DC 20434

Office of Inspector General

DATE: October 6, 2004

MEMORANDUM TO: Board of Directors  
Audit Committee

FROM:   
Gaston L. Gianni, Jr.  
Inspector General

SUBJECT: *Records Management and Storage*  
(Report No. 04-045)

Attached for your information is a copy of an audit report that the Federal Deposit Insurance Corporation (FDIC) Office of Inspector General (OIG) recently issued. Also attached is a summary of the report.

The report presents the results of our audit work related to the FDIC's records management and storage, including contract oversight. The overall objective of this audit was to determine whether the contract for records storage is cost-effective and the FDIC's procedures are consistent with best practices at other federal agencies and in the private sector.

We concluded that the FDIC's contract with Iron Mountain Records Management, Inc. for records storage could be more cost-effective. We also made several recommendations relating to expediting the destruction of records not related to goodwill litigation and improving controls over contractor billings.

The General Counsel and Division of Administration (DOA) have planned corrective actions that are responsive to 6 of our 10 recommendations and are not responsive to the remaining 4 recommendations. We have asked DOA to reconsider its responses to the four unresolved recommendations and provide additional comments within 30 days. We will report a range of \$5.2 to \$5.6 million for funds put to better use in our *Semiannual Report to the Congress*. DOA disagreed with all but \$602,438 of the estimated cost avoidances. We will determine the actual funds put to better use, if any, through our corrective action closure process.

**This report addresses issues associated with sensitive contractor information. Accordingly, we request that you safeguard this report to the fullest extent possible. We do not intend to make this report available to the public.**

If you have any questions, please call me at (202) 416-2026 or Russell A. Rau, Assistant Inspector General for Audits, at (202) 416-2543.

Attachments

## **Records Management and Storage**

(Report No. 04-045, September 30, 2004)

### **Summary**

The Federal Deposit Insurance Corporation's (FDIC) Office of Inspector General (OIG) has performed an audit of the FDIC's records management and storage. The overall objective of this audit was to determine whether the contract for records storage is cost-effective and whether the FDIC's procedures are consistent with best practices at other federal agencies and in the private sector.

We concluded that the FDIC's contract with Iron Mountain Records Management, Inc. for records storage could be more cost-effective. The FDIC could avoid costs of \$5.6 to \$6 million by moving records from climate-controlled storage, renegotiating certain contract terms, and obtaining permission to destroy thrift (savings and loan associations and mutual savings banks) records not associated with the goodwill litigation.\* Additionally, the FDIC could improve oversight of the contractor by verifying the application of rounding factors used to determine billable container size and reconciling actual and recorded container displacement during quarterly physical inspections.

### **Recommendations**

We made several recommendations to the Director, Division of Administration (DOA), to make the FDIC's contract with Iron Mountain more cost-effective and to improve contract oversight. We also recommended that the General Counsel and DOA expedite efforts related to the destruction of records for thrifts not involved in the goodwill litigation.

### **Management Responses**

On September 21, 2004, the Director, DOA, provided a written response to nine recommendations addressed to the DOA. DOA's comments were responsive to five recommendations, and we consider those recommendations resolved, but they will remain undispositioned and open for reporting purposes until we determine that the agreed-to corrective actions have been implemented and are effective. The other four recommendations remain unresolved. The OIG reaffirms the five recommendations and has asked DOA to reconsider its responses to these recommendations and provide additional comments within 30 days. DOA disagreed with all but \$602,438 of the OIG's identified cost avoidances. We will determine the actual funds put to better use, if any, through our corrective action closure process.

---

\* In 1990, as a result of the passage of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), certain forms of intangible capital, such as supervisory goodwill, could no longer be considered as part of a thrift's capital. The goodwill litigation involves acquirers of thrift institutions who sued the federal government, alleging that they had purchased failed or failing thrifts prior to FIRREA based on a promise from the Federal Savings and Loan Insurance Corporation that acquirers could count goodwill toward their capital requirements. Plaintiffs alleged that FIRREA's changes resulted in a breach of contract, or a taking of their property without just compensation.



On September 17, 2004, the General Counsel provided a written response and agreed with the one recommendation addressed to the Legal Division and proposed responsive action. That recommendation is resolved but will remain undispositioned and open for reporting purposes until we determine that the agreed-to corrective action has been implemented and is effective.

We will report a range of \$5,151,822 to \$5,573,881 for funds put to better use in our *Semiannual Report to the Congress*. This range has been adjusted to reflect our acceptance of DOA's lower estimate of savings for moving microforms to general storage space.

**This report addresses issues associated with sensitive contractor information. Accordingly, we have not made, nor do we intend to make, public release of the specific contents of the report.**

# TABLE OF CONTENTS

<b>BACKGROUND .....</b>	<b>1</b>
Records Related to Supervisory Goodwill Litigation .....	3
<b>RESULTS OF AUDIT .....</b>	<b>4</b>
<b>FINDING A: CLIMATE-CONTROLLED STORAGE .....</b>	<b>6</b>
Contract Terms for Climate-Controlled Space .....	6
Alternative Storage Solution.....	6
Estimated Cost Savings.....	7
Policy Needed. ....	7
Recommendations.....	7
<b>CORPORATION COMMENTS AND OIG EVALUATION.....</b>	<b>7</b>
<b>FINDING B: MODIFICATION OF DOCUMENT PRESERVATION ORDERS .....</b>	<b>9</b>
FDIC Procedures for Disposing of Records .....	9
FDIC Efforts to Obtain Permission to Destroy Institution Records Not Related to Pending Goodwill Litigation .....	9
DOJ Requirements to Identify Financial Institutions Records for Destruction .....	10
Estimated Cost Savings.....	10
FDIC Counsel's Actions .....	10
Need to Expedite the Approval Process.....	11
Recommendations.....	11
<b>CORPORATION COMMENTS AND OIG EVALUATION.....</b>	<b>11</b>
<b>FINDING C: CONTRACT TERMS AND CONDITIONS .....</b>	<b>13</b>
Storage Fees .....	13
Best Practices at NARA.....	14
Estimated Cost Savings.....	15
Unit Definition for Billing Categories .....	15
Estimated Cost Savings.....	16
Disposal Rates.....	16
Estimated Cost Savings.....	17
Discussion With Management .....	18
Price Warranty Clause .....	19
Recommendations.....	20
<b>CORPORATION COMMENTS AND OIG EVALUATION.....</b>	<b>20</b>
Discussion Subsequent to Receipt of Comments .....	24

<b>FINDING D: VERIFICATION OF BILLABLE CONTAINER SIZE .....</b>	<b>25</b>
Oversight of Billings.....	25
Discussion With Management .....	26
Recommendations.....	27
 <b>CORPORATION COMMENTS AND OIG EVALUATION.....</b>	 <b>27</b>
<b>APPENDIX I: OBJECTIVE, SCOPE, AND METHODOLOGY .....</b>	<b>28</b>
<b>APPENDIX II: ESTIMATED SAVINGS IF RECORDS ARE MOVED FROM CLIMATE-CONTROLLED TO PAPER-STORAGE SPACE.....</b>	<b>32</b>
<b>APPENDIX III: ESTIMATED SAVINGS IN STORAGE COSTS.....</b>	<b>33</b>
<b>APPENDIX IV: ESCALATION RATES FOR SERVICES.....</b>	<b>35</b>
<b>APPENDIX V: OIG CALCULATION OF DISPOSAL RATES BASED ON A 4-PERCENT ESCALATION RATE.....</b>	<b>36</b>
<b>APPENDIX VI: CORPORATION COMMENTS.....</b>	<b>37</b>
Division of Administration .....	37
General Counsel.....	43
<b>APPENDIX V: MANAGEMENT RESPONSE TO RECOMMENDATIONS.....</b>	<b>48</b>
 <b>TABLES</b>	
Table 1: Results of Audit.....	5
Table 2: Variance Between Billable and Billed Cubic Feet of Storage .....	26





**Federal Deposit Insurance Corporation**

801 17th St. NW Washington DC. 20434


Office of Audits  
Office of Inspector General

**DATE:** September 30, 2004

**MEMORANDUM TO:** Arleas Upton Kea, Director  
Division of Administration

William F. Kroener III  
General Counsel

**FROM:**

  
for Russell A. Rau  
Assistant Inspector General for Audits

**SUBJECT:** *Records Management and Storage*  
(Report No. 04-045)

This report presents the results of the Federal Deposit Insurance Corporation (FDIC) Office of Inspector General's (OIG) audit of Records Management and Storage. The overall objective of this audit was to determine whether (1) the contract for records storage is cost-effective and (2) the FDIC's procedures are consistent with other best practices in the federal government and private industry. We limited our review of best practices to those related to records storage and disposal contracts. Details on our objective, scope, and methodology are presented in Appendix I.

## **BACKGROUND**

The Division of Administration's (DOA) Records Management Unit (RMU)<sup>1</sup> is responsible for the FDIC's records management program, which was established for the creation, maintenance, use, and disposition of all FDIC records (all types of media) in compliance with applicable laws and regulations. The FDIC maintains a significant amount of records both on-site in its offices and at off-site records centers. The records are either created by the FDIC in the course of doing business (FDIC-generated records) or acquired from failed depository institutions (institution records). Nearly all of the FDIC's inactive records are stored in commercial records centers throughout the United States. A small portion of the inactive records was transferred to federal records centers operated by the National Archives and Records Administration (NARA). These inactive records have been designated for permanent retention and future historical research.

---

<sup>1</sup> The RMU is part of the Corporate Support Section, Corporate Services Branch, DOA.

Historically, records management and storage for the FDIC and the former Resolution Trust Corporation (RTC)<sup>2</sup> have been performed by contractors. In 1992, the RTC conducted a competitive bid process resulting in a contract award to Iron Mountain Records Management, Inc. for the off-site records storage. In 1996, the FDIC conducted a competitive bid process for a second records management and storage services contract, which was awarded to Pierce Leahy Corporation. In February 2000, these two vendors merged as Iron Mountain Records Management, Inc. (Iron Mountain). On March 15, 2000, the DOA presented a proposal to the FDIC Board of Directors to negotiate with Iron Mountain for a single contract to replace the two existing agreements.

On July 19, 2000, the FDIC executed Contract Number 00-00389-C-DQ with Iron Mountain for records management and storage services for approximately 3.32 million cubic feet of records. The contract covered a base year ending July 18, 2001 with two 1-year options that extended the contract through July 18, 2003. After exercising both 1-year option periods, the FDIC issued Contract Modification 8, extending the contract for another 2-year period with an additional 1-year option period. The billing rates were also revised. If the option period is exercised, the contract will expire on July 31, 2006. As of January 2004, the FDIC has spent \$25.0 million on the current contract. At that time, Iron Mountain sites throughout the country stored about 3.0 million cubic feet of FDIC records, of which about 32,500 cubic feet of records were in climate-controlled space.

The FDIC also has two smaller contracts with Iron Mountain. One contract totaling \$499,000 is for data entry assistance, a records research system, and records packing for a specific inventory of records in Dallas, Texas. The other contract, totaling \$1.2 million, is for storing computer backup tapes for the FDIC's Division of Information Resources Management. We did not include these smaller contracts in our audit scope. They may be the subject of separate audits.

---

<sup>2</sup> The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) created the RTC to manage and resolve all thrifts previously insured by the Federal Savings and Loan Insurance Corporation for which a conservator or receiver was appointed during the period January 1, 1989 through August 8, 1992. The RTC Completion Act of 1993 terminated the RTC as of December 31, 1995. The RTC sold assets of failed thrifts and paid insured depositors. At the end of 1995, its duties were transferred to the FDIC.

## **Records Related to Supervisory Goodwill<sup>3</sup> Litigation**

As a result of FIRREA, the Office of Thrift Supervision (OTS)<sup>4</sup> in 1990 changed the regulations governing the capital requirements for thrift institutions<sup>5</sup> to make them conform to those for commercial banks. Consequently, certain forms of intangible capital, such as supervisory goodwill, could no longer be considered as part of a thrift's capital. Acquirers of thrift institutions sued the federal government, alleging that they had purchased failed or failing thrifts prior to the passage of FIRREA based on a promise from the Federal Savings and Loan Insurance Corporation (FSLIC) that acquirers could count such intangibles toward their capital requirements. Plaintiffs<sup>6</sup> alleged that FIRREA's changes resulted in a breach of contract or a taking of their property without just compensation.

Paralleling the goodwill cases were eight similar cases in which plaintiffs alleged that the federal government breached agreements regarding tax benefits associated with certain FSLIC-assisted acquisitions. The agreements allegedly contained the promise of tax deductions for losses incurred in the sale of certain thrift assets purchased by the plaintiffs from the FSLIC even though the FSLIC provided the plaintiffs with tax-exempt reimbursements. A provision in the Omnibus Budget Reconciliation Act of 1993<sup>7</sup> (referred to as the "Guarini legislation") eliminated the tax deductions for these losses.

The FDIC, as successor to the rights of failed institutions with potential goodwill claims against the United States, is either a co-plaintiff or plaintiff in more than 40 goodwill cases. The FDIC has assigned employees to represent the FDIC as plaintiff (FDIC-plaintiff). The FDIC, as successor to the FSLIC, is providing support to the Department of Justice (DOJ) in its defense of the United States (FDIC-defensive). The FDIC is keeping the two groups of FDIC employees separate in order to preserve confidentiality and avoid conflicts of interest.

Beginning in 1996, the United States Court of Federal Claims (Court) issued a series of orders or directives in certain goodwill-related cases that directed the FDIC and the OTS, among others, to preserve all thrift and thrift-related documents that may be relevant to the

---

<sup>3</sup> Under Generally Accepted Accounting Principles (GAAP), the "purchase method" of accounting is frequently used to account for acquisitions. The purchase method permits the acquiring entity to designate the excess of the purchase price over the fair value of all identifiable assets acquired as an intangible asset called "goodwill." Goodwill recognized under the purchase method as the result of a Federal Savings and Loan Insurance Corporation-assisted merger was generally referred to as "supervisory goodwill."

<sup>4</sup> OTS is the primary regulator of all federally chartered and many state-chartered thrift institutions, which include savings banks and savings and loan associations. OTS was established as a bureau of the U.S. Department of the Treasury on August 9, 1989 and is funded by assessments and fees levied on the institutions it regulates.

<sup>5</sup> Thrifts regulated by OTS include both savings and loan associations and mutual savings banks.

<sup>6</sup> A plaintiff is the person who initiates a lawsuit by filing a complaint.

<sup>7</sup> The Omnibus Budget Reconciliation Act of 1993 (Omnibus Act) amends the Federal Deposit Insurance Act to prescribe an order of priority for the distribution of amounts realized from the resolution of any insured depository institution in receivership. The Omnibus Act requires that any distribution in connection with certain claims be accompanied by a specified accounting report.

goodwill litigation. The document preservation orders<sup>8</sup> expressly ordered the FDIC, OTS, and others “to preserve all documents that may be relevant to this litigation.” These orders led to the FDIC suspending its regular document destruction program for all thrift records and all FSLIC, Federal Home Loan Bank Board,<sup>9</sup> RTC, or FDIC records pertaining to thrifts whether or not the records were relevant to goodwill litigation cases. That suspension remains in effect.

## RESULTS OF AUDIT

The FDIC’s contract with Iron Mountain for records storage could be more cost-effective. Specifically, the FDIC:

- Can save about \$1.0 million over the next 31 months by moving climate-controlled records to general storage (see Finding A: Climate-Controlled Storage).
- Can save about \$183,300 a month by expediting its actions to satisfy the DOJ’s requirements to obtain permission to destroy 1.3 million cubic feet of boxed records not related to goodwill litigation. We could not determine the total future cost avoidance because we could not reasonably estimate when the FDIC will be able to obtain permission to destroy the records (see Finding B: Modification of Document Preservation Orders).
- May be able to achieve savings related to contract terms and conditions, including: (1) \$1.2 to \$1.7 million by clarifying terms related to storage costs on records designated for destruction; (2) \$1.8 million by clarifying contract terms to apply the conversion formula used to calculate cubic feet billed for storage to other services, especially for boxes designated for disposal; and (3) \$1.5 million by renegotiating the disposal rate in the Iron Mountain contract (see Finding C: Contract Terms and Conditions).
- Could benefit by negotiating a price warranty clause into the contract as part of subsequent contract actions.

The FDIC could also improve internal controls related to billings to ensure that Iron Mountain has complied with contract clauses (see Finding D: Verification of Billable Container Size).

---

<sup>8</sup> The key order is a March 25, 1996 Protective Order for *Caroline Hunt Trust Estate v. United States*, Case No. 95-531. The broad document preservation language, quoted above, appears at paragraph 7 of that Order.

<sup>9</sup> The Federal Home Loan Bank Board (FHLBB) was once the federal entity that regulated and supervised the savings and loan industry, the Federal Home Loan Banks, the FSLIC, and the Federal Home Loan Mortgage Corporation. The FHLBB was abolished in August 1989 by FIRREA, and FHLBB functions transferred to other agencies, including the OTS, FDIC, and RTC.



Table 1 provides a summary of the funds the FDIC could put to better use identified in this report.

**Table 1: Results of Audit**

<b>Finding</b>	<b>Description</b>	<b>Future Cost Avoidance</b>
A	<b>Climate-Controlled Storage</b> – Move records now stored in climate-controlled storage to general storage.	\$1,016,767
B	<b>Modification of Document Preservation Orders</b> - Obtain permission to destroy thrift records not associated with goodwill litigation cases.	Could not be reasonably estimated
C	<b>Storage Fees</b> - Clarify contract terms related to continued storage of records identified for destruction.	\$1,229,611 to \$1,651,670
	<b>Unit Definition for Disposal</b> – Clarify contract terms defining box size.	\$1,810,333
	<b>Competitive Rates</b> – Renegotiate the disposal rate.	\$1,509,440
	<b>Price Warranty Clause</b> – Negotiate to include a price warranty clause when exercising contract renewal options or modifications.	Could not be reasonably estimated
D	<b>Verification of Billable Container Size</b> – Test the application of contract terms that apply rounding factors to boxes smaller or larger than one cubic foot.	Could not be reasonably estimated
<b>Total</b>		<b>\$5,566,151 to \$5,988,210</b>

In its response to our draft report, DOA stated that the Corporation will achieve savings of only \$602,438 based on Finding A and will not realize any of the savings projected for Finding C. We accept DOA's lower estimate of savings for Finding A, \$602,438, and we will report a range of \$5,151,822 to \$5,573,881 for funds put to better use in our *Semiannual Report to Congress*. With regard to the remaining projected savings with which DOA did not concur, we will determine the actual funds put to better use, if any, through our corrective action closure process.

## **FINDINGS AND RECOMMENDATIONS**

### **FINDING A: CLIMATE-CONTROLLED STORAGE**

The FDIC can avoid additional costs to store microforms<sup>10</sup> in climate-controlled storage by moving them to general storage facilities without climate controls. Because there was no FDIC policy on the use of climate-controlled storage, the FDIC stored some microforms in climate-controlled storage and some in general storage. The FDIC has subsequently learned that microforms can be stored safely in general storage space (without climate controls) for 10-12 years. Therefore, the FDIC can save \$1.0 million over the next 31 months if it moves the records currently in climate-controlled storage to general, or paper, storage areas (see Appendix II).

#### **Contract Terms for Climate-Controlled Space**

The FDIC has contracted with Iron Mountain to provide specialized climate-controlled environmental storage for microforms, reel film, microfiche cards, and magnetic media. The climate-controlled storage facilities are required to maintain a temperature and relative humidity range between 62 and 68 degrees and 35 to 45 percent, respectively. As of December 31, 2003, the FDIC was storing 32,514 cubic feet of media records in climate-controlled storage, at a monthly cost of \$1.22 per cubic foot. The paper storage rate was only \$0.141 per cubic foot, or \$1.079 less per cubic foot.

We found that NARA Record Center's<sup>11</sup> monthly rate of \$.45 per cubic foot for climate-controlled storage was \$.77 less than the \$1.22 per cubic foot charged by Iron Mountain. During the audit, we suggested to DOA's Assistant Director, Corporate Support Section (CSS) that the FDIC may be able to either move the climate-controlled records from Iron Mountain to NARA or negotiate with Iron Mountain to obtain a rate that is more comparable to the NARA rate.

#### **Alternative Storage Solution**

The Assistant Director, CSS, responded that fees would be involved in moving records from Iron Mountain to NARA, including a withdrawal fee of \$3.35 per cubic foot and transportation. He also stated that all of the film is quite old as the thrifts that created the film failed in 1994 and earlier. Absent the suspension on destroying the goodwill records, there was little reason to continue storage of these records in a temperature-and humidity-controlled environment. The Assistant Director stated that an alternative would be to move

---

<sup>10</sup> Microforms include items such as microfilm, microfiche, and similar items.

<sup>11</sup> The Record Center Program, as an essential component of NARA, is dedicated to providing records storage, access, and disposition services.

the 32,000 cubic feet of records from climate-controlled to general storage, dropping the storage rate from \$1.22 to \$0.141 per cubic foot per month.

Subsequently, the Assistant Director, CSS, confirmed that: (1) NARA does not store microfilm (previously referred to as microforms) created by federal agencies in temperature- and humidity-controlled space in its federal records centers unless the microfilm has permanent historical value; (2) NARA indicated that microfilm can be stored safely in general storage for 10-12 years; and (3) researchers have not complained about the quality of microfilm retrieved from the Dallas, Texas, Iron Mountain records center where the film is stored in general storage space.

**Estimated Cost Savings.** The Assistant Director, CSS, estimated that moving the records from climate-controlled to general storage would cost \$66,316. Accordingly, we estimated that the FDIC will save \$1,016,767 from August 1, 2004 -- when the move was estimated to take place at the time we were conducting field work, to December 31, 2006 -- when an estimated two-thirds of the records in climate-controlled storage will become eligible for destruction. The projected savings would result from the rate difference between climate-controlled and general storage rates. See Appendix II for the detailed calculation.

**Policy Needed.** The Assistant Director, CSS, agreed that there was no policy on the use of climate-controlled storage and a policy was needed. He further agreed to work with the FDIC's Division of Resolutions and Receiverships (DRR)<sup>12</sup> and Legal Division to establish a policy on the use of climate-controlled storage.

## **Recommendations**

We recommend that the Director, DOA:

- (1) Move the records currently stored in climate-controlled facilities to general storage facilities.
- (2) Coordinate with the Legal Division and the DRR to establish a policy for the future use of climate-controlled storage.

## **CORPORATION COMMENTS AND OIG EVALUATION**

Recommendation 1: DOA concurred with this recommendation. The Director, DOA, responded that the effort to move microforms from Iron Mountain vaults to general storage space in Iron Mountain records centers began in July 2004 and was completed by the end of August 2004. However, DOA does not agree with the OIG's projected cost savings of

---

<sup>12</sup> DRR is responsible for planning and efficiently handling the resolution of failing FDIC-insured depository institutions. When an FDIC-insured institution fails or is closed by a federal or state regulatory agency, the FDIC is appointed as receiver. Most of the FDIC's stored records are those retained by DRR for failed bank assets and operations.

\$1,019,767, stating that the amount is inflated and is not consistent with the analyses presented in other portions of the report that assumed the disposal of the thrift records will begin in January 2006. The Director suggested that the projected savings of \$1,019,767 should be reduced to \$602,438 to reflect that microforms would be destroyed in January 2006.

DOA's planned corrective action to address this recommendation was responsive. With respect to the projected cost savings, our calculation was based on information provided by the Assistant Director, CSS, during our field work, that two-thirds of the climate-controlled storage will be eligible for destruction by the end of 2006. Further, this projection is consistent with analyses in other portions of the report that assumed disposal of the thrift records will begin in January 2006. Other projections in this report address records in regular paper storage, not climate-controlled storage, and were also based on information provided by the Oversight Manager. Nevertheless, the potential monetary benefits are estimated based on receipt of permission to destroy goodwill-related records, the timing of which we cannot reasonably estimate. However, we are reducing the projected savings to \$602,438 to reflect management's projection that records destruction will start in January 2006 and will report that amount of funds put to better use for this finding in our *Semiannual Report to the Congress*. The actual monetary benefits will be determined through our corrective action closure process.

Recommendation 1 is resolved but will remain undispositioned and open until we have verified that corrective action has been taken and is effective.

Recommendation 2: DOA concurred with this recommendation. DOA agreed to prepare a draft policy, for review by DRR and the Legal Division, that will likely require storage of microforms in climate-controlled vaults for only a short time, possibly until a failed institution is terminated. DOA will establish the policy by December 31, 2004.

DOA's planned corrective action for this recommendation is responsive. The recommendation is resolved but will remain undispositioned and open until we have determined that agreed-to corrective action has been completed and is effective.

## **FINDING B: MODIFICATION OF DOCUMENT PRESERVATION ORDERS**

Document preservation orders imposed by the Court led the FDIC to store records related to all thrifts whether or not the institution was involved in the pending goodwill litigation. In February 2001, the FDIC requested the Court's permission to destroy thrift records not involving goodwill litigation. The Court has not yet ruled on this motion. The FDIC is currently working to satisfy conditions imposed by DOJ to resolve DOJ's opposition to a renewed motion to modify the existing document preservation orders. Modification of the document preservation orders would allow for the destruction of 1.3 million cubic feet of financial institutions' records that are not related to pending goodwill litigation. It is costing the FDIC \$183,300 to \$197,600 per month to store these records, pending a determination by the FDIC's divisions as to whether there is any other need to keep such records.

### **FDIC Procedures for Disposing of Records**

The FDIC established records disposal procedures in Circular 1210.4, *Records Disposition*, dated May 15, 2002. The FDIC's procedures require the RMU to obtain approval from the Division of Finance (DOF), DRR, and Legal Division for all proposed disposals of failed financial institution records. In accordance with Circular 1210.4, the approval process is to be completed within 60 calendar days after the records become eligible for destruction. As a result of the document preservation orders in place, the Legal Division needs to obtain a modification to the Court's existing document preservation order before approving the destruction of the thrift institution records not needed for the goodwill litigation. Without this approval, these records will continue to be held in storage.

### **FDIC Efforts to Obtain Permission to Destroy Institution Records Not Related to Pending Goodwill Litigation**

In April 2000, the FDIC requested that DOJ and the Plaintiff's Coordinating Committee (PCC)<sup>13</sup> consent to the destruction of all thrift institution records that do not involve pending or potential goodwill-related claims. A June 13, 2000 letter from the DOJ to an FDIC Associate General Counsel (FDIC-plaintiff) rejected the FDIC's general document destruction proposal but stated that if the FDIC would identify particular closed thrifts, the DOJ would reconsider the FDIC's request. Subsequently, the FDIC furnished DOJ a list of 69 individual thrifts that failed prior to January 1, 1989. These institutions could not have a goodwill claim based on the August 9, 1989 passage of FIRREA. Nevertheless, DOJ rejected the proposal to destroy any thrift documents held by the FDIC.

---

<sup>13</sup> PCC represented the interests of the private plaintiffs. In 1996, the judge for goodwill cases had the three parties (DOJ, FDIC, and private plaintiffs) designate a person or persons to serve as representatives of their group. For several years thereafter, the judge held status conferences with this group.

In February 2001, the FDIC-plaintiff filed a motion with the Court, requesting permission to destroy records related to the 69 failed thrifts. The Court has not yet ruled on the February 2001 motion.

### **DOJ Requirements to Identify Financial Institutions Records for Destruction**

On December 29, 2003, the FDIC's legal counsel (FDIC-defensive) informed the FDIC Senior Counsel (FDIC-neutral) that, in connection with any proposal to inform the Court that the FDIC was going to proceed with the destruction of records for institutions that have not been part of the goodwill or Guarini cases, DOJ requested that FDIC provide a:

- (1) list of the thrift institutions for which the FDIC wishes to destroy records and
- (2) letter from the PCC stating the plaintiffs' consent to the destruction and agreement not to raise the loss of any documents through such destruction in support of their claims or in response to government defenses.

### **Estimated Cost Savings**

It costs the FDIC from \$183,300 to \$197,600<sup>14</sup> each month to store about 1.3 million boxes<sup>15</sup> of records for the failed thrifts. We do not have sufficient information at this time to determine when the FDIC will be permitted to destroy these documents. Therefore, we cannot reasonably estimate the future cost savings related to this issue.

### **FDIC Counsel's Actions**

The Assistant General Counsel, Supervision and Legislation Section, (FDIC-plaintiff) stated that the FDIC is working on securing the two items requested by DOJ. On May 24, 2004, the Assistant Director, CSS, provided FDIC's legal counsel (FDIC-defensive) with a listing of the thrift institutions thought not to be involved in the goodwill litigation. On May 27, 2004, a representative from FDIC's legal counsel (FDIC-defensive) responded, identifying 34 institutions on the list as involved in the goodwill lawsuits. The list of uninvolved thrift institutions was finalized on June 8, 2004.

The Senior Counsel (FDIC-plaintiff) will contact the DOJ and PCC, requesting their consent to the destruction of the documents for all of the institutions on the June 8, 2004 list. After

---

<sup>14</sup> In accordance with the contract terms, the rates for storing the 1.3 million cubic feet of records varied from \$.141 per cubic foot per month (totaling \$183,300 per month) for the year ending July 2004; \$.146 per cubic foot per month (totaling \$189,800 per month) for the year ending July 2005; and \$.152 per cubic foot per month (totaling \$197,600 per month) for the year ending July 2006.

<sup>15</sup> In determining the monthly cost, we assumed that the 1.3 million boxes were standard cubic foot boxes billed at 1.0 cubic foot per box.

Counsel has received the consent from the DOJ and PCC, or if it becomes clear that the FDIC will be unable to obtain their consent, the FDIC Counsel will file a motion with the Court. The Assistant General Counsel did not estimate when the motion will be filed.

### **Need to Expedite the Approval Process**

Both the FDIC Legal Division and the DOA recognize the need to expedite efforts to obtain authority to destroy records from thrift institutions not involved in the goodwill litigation. With regard to preparing the disposal forms required in Circular 1210.4, the Assistant Director, CSS, stated that the forms to obtain approval for destruction of the records from thrift institutions not involved in goodwill litigation will be prepared when the Court grants relief from its document preservation order.

The Assistant Director, CSS also noted that the work is already in process to determine whether there is any other need to keep the records in question, such as other pending litigation. The FDIC Senior Counsel (FDIC-neutral) had been informed of the two DOJ conditions in December 2003, and as of June 30, 2004, the FDIC had incurred over \$1 million in storage costs. As stated earlier, the FDIC incurs about \$183,300 per month in storage costs for these records.

### **Recommendations**

We recommend that the General Counsel:

- (3) Expedite efforts to obtain relief from the document preservation orders of the U.S. Court of Federal Claims, and continue in the attempt to obtain the concurrence of DOJ and PCC in those efforts.

We recommend that the Director, DOA:

- (4) Expedite the process to obtain required approvals from the DOF, DRR, and Legal Division to destroy the financial institution records not related to the goodwill litigation.

### **CORPORATION COMMENTS AND OIG EVALUATION**

Recommendation 3: The General Counsel agreed with this recommendation. However, the General Counsel believes that the recommendation, as written in the draft of this report, reflected a misunderstanding regarding the roles of the FDIC, DOJ, and other parties in obtaining such relief. See Appendix VI for the General Counsel's detailed clarification of those roles. The General Counsel proposed the following revision to our recommendation that clarified those roles.

“Expedite efforts to obtain relief from the document preservation orders of the U.S. Court of Federal Claims, and continue in the attempt to obtain the concurrence of DOJ and PCC in those efforts.”

Consistent with this proposal, we revised our recommendation. The General Counsel stated that the FDIC strongly agrees that this matter should be expedited. On August 13, 2004, General Counsel sent DOJ and PCC a draft of the FDIC’s renewed motion for relief from the Court’s document preservation orders, including the FDIC’s formal request for the various litigation parties’ consent to the FDIC’s renewed motion for relief. (That cover letter is in Appendix VI of this report as an appendix to the General Counsel’s comments.) The General Counsel intends to file the motion shortly, with or without the concurrence of DOJ or the PCC.

The General Counsel’s comments were considered in preparing this report, and the planned corrective actions to address the revised recommendation are responsive. The focus of the finding was to expedite the destruction of records for thrifts that were not involved in the goodwill litigation. The proposed action by the General Counsel should achieve that focus. Further, we accept the General Counsel’s explanation of the roles of the FDIC, DOJ, and other parties involved in obtaining relief from the document preservation orders of the Court and have made appropriate changes to this report to reflect that explanation. The recommendation is resolved but will remain undispositioned and open until we have determined that agreed-to corrective actions have been completed and are effective.

Recommendation 4: DOA concurred with this recommendation. DOA stated that it began the pre-approval process on February 9, 2004 -- 2 weeks prior to the beginning of this audit.

DOA’s planned corrective action to address this recommendation is responsive. On the date DOA stated that it began the pre-approval process, DOA’s Assistant Director, CSS, issued an e-mail to certain contacts in the Legal Division and DRR, asking them to review a list of institutions not involved in the goodwill litigation to determine whether the FDIC required the records for any other purpose. However, the parties involved subsequently determined that the list was only a partial list of thrift institutions, which, absent the goodwill litigation, would have records eligible for destruction. A more complete list was finalized in June 2004 – 4 months later. The intent of our recommendation was to ensure that DOA expedites the process of obtaining approvals from DOF, DRR, and the Legal Division to destroy thrift records that are not needed. Although the pre-approval process began on February 9, 2004, DOA did not comment on the current status. The FDIC should complete its review of the need for the thrift records in an expeditious manner and not wait for the Court to grant permission to destroy the thrift records prior to completing the review. In order to resolve the recommendation, we request that DOA provide an estimated completion date for obtaining requested approvals.



## **FINDING C: CONTRACT TERMS AND CONDITIONS**

The FDIC may be paying too much for certain Iron Mountain services, and some contract terms are potentially unfair or unclear. Specifically, the Iron Mountain contract:

- May unfairly require that storage fees continue to accrue on records that Iron Mountain is unable to destroy after the FDIC has designated them for destruction.
- Lacks clarity concerning the applicability of the conversion formula<sup>16</sup> to boxes designated for disposal, accessioning,<sup>17</sup> retrieval, and permanent withdrawal.
- Contains disposal rates that were escalated since 1992 at a higher percentage than most other rates, resulting in a rate that may not be reasonable.
- Does not contain a price warranty clause that would require Iron Mountain to provide the most favorable customer pricing when the FDIC exercises renewal options or modifications.

If the FDIC is able to favorably renegotiate or modify its contract with Iron Mountain, it may be able to achieve estimated savings of more than \$4.5 million.

### **Storage Fees**

The FDIC may be required to pay storage fees for many months even though certain records have been designated for destruction. The OIG and DOA have different interpretations of certain provisions of Iron Mountain's contract pertaining to payment of storage fees when records are designated for destruction. If DOA's interpretation prevails, the FDIC may pay from \$1.2 million to \$1.7 million more for storage on existing records.

The following summarizes the evolution of the disposal clause in Iron Mountain's contract:

- In its technical proposal used to win the 1992 RTC competitive contract 700-92-0027, Iron Mountain stated, "All destruction and authorizations for reasonable volumes will be processed within 30 days. Large volumes requiring more processing time will not be charged for storage beyond 30 days."
- The FDIC's 1996 contract contained the same language because it was the same RTC contract with a new number.

---

<sup>16</sup> The formula considers a 1.2 cubic foot box as 1 cubic foot of storage space. See Finding D for a discussion on the verification of billable container size.

<sup>17</sup> The acts and procedures by which records are taken into the physical custody of a records center, archival agency, or other records repository.

- The FDIC contract currently in effect, 00-00389-C-DQ, Statement of Work, paragraph VIII, states:

Destruction of the records currently stored in the Contractor's Records Center shall occur within thirty (30) business days of receipt of notification to destroy 10,000 cubic feet or less of records. FDIC will not compensate Contractor for storage costs of records designated for destruction beyond this thirty (30) day period. Destruction requests for more than 10,000 cubic feet will be destroyed systematically at 10,000 per month until completed. Contractor will provide a report advising of progress. And a Certificate of Destruction for the containers destroyed. FDIC will not compensate Contractor for storage costs of records designated for destruction beyond their 30-day specified timeframe.

The Assistant Director, CSS, told us that although the FDIC originally anticipated that institution records would become eligible for disposal as individual cases were brought to a close, RMU realized that the goodwill freeze on records disposal would change the anticipated destruction schedule. RMU subsequently began planning for a large volume of thrift records that would become eligible for destruction when the goodwill freeze was lifted. Iron Mountain stated it would not have the capacity to destroy hundreds of thousands of cubic feet of records at a given location within 30 days. Accordingly, on August 1, 2003, the FDIC executed Modification 8 to contract 00-00389-C-DQ, which states, "The destruction cap for thrift records will be raised from 10,000 cubic feet per month to 10,000 cubic feet per month per location. The rate of 20,000 cubic feet per month will be in effect for the following locations: Dallas, Atlanta, Fullerton/Irvine [California], Kansas City, and Philadelphia."

The FDIC anticipates that 1.6 million cubic feet of records will be available for destruction beginning in January 2006. The Assistant Director, CSS, has estimated that storage costs will continue over a 21-month period. The Assistant Director, CSS, specifically recalled negotiating with Iron Mountain that the FDIC would pay storage fees on the records held until they are destroyed even though it would take 21 months to destroy them. He estimated that Modification 8's changes to the destruction amounts would reduce the FDIC's storage costs by \$1.9 million when it disposes of 1.6 million cubic feet of records over the next 3 years. Estimated savings were based on reducing the time for destroying the 1.6 million cubic feet of records from 42 months to 21 months as discussed further below.

OIG's interpretation of the contract is that the Iron Mountain contract requires discontinuing storage fees 30 days after records have been designated for destruction as the most reasonable interpretation of the contract. As discussed below, we estimated that the FDIC can avoid \$1.7 million in storage fees by following OIG's interpretation of the contract terms.

**Best Practices at NARA.** For comparison purposes, we contacted NARA to determine its procedures regarding the continuance of storage charges on records designated for disposal. NARA's policy is to destroy records within 90 calendar days of eligibility, as determined by the

applicable records disposition schedule and NARA's receipt of written concurrence from the customer agency, whichever comes later. If NARA is unable to accomplish the disposal of the customer records within the 90 calendar days, the customer shall not be responsible for the storage costs of these disposable records beyond the initial 90-day period. If the FDIC is unable to sustain the OIG interpretation of the contract, it could alternatively seek to negotiate based on NARA's practice of discontinuing storage fees within 90 days of destruction orders. The FDIC could save \$1.2 million in storage fees by renegotiating the contract to follow NARA's practice (see Appendix III).

**Estimated Cost Savings.** The Assistant Director, CSS, provided us with an estimate of the storage fees and disposal costs related to 1.6 million cubic feet of records subject to the goodwill freeze. Based on Modification 8, the FDIC anticipates that these records will be destroyed over a 21-month period, from January 2006 through September 2007. As shown in Appendix III, we recalculated the fees and costs to isolate the estimated storage costs, excluding disposal fees, and estimated storage fees totaling \$1,899,407 over the 21-month projected disposal period. We then calculated the storage fees that would be incurred if the fees ceased 30 days after the FDIC designated the records for destruction. The storage fees for 30 days would total \$247,737, a projected savings of \$1,651,670 in comparison to payment of storage fees until the 1.6 million cubic feet of records are destroyed. We made a similar calculation, assuming storage costs would cease 90 days after the FDIC designated records for destruction. Paying storage fees for 90 days rather than 21 months would yield a savings of \$1,229,611.

On June 10, 2004, we discussed the records storage fees with the Assistant Director, CSS. He stated that the Statement of Work did not have a per-month disposal ceiling until August 2000 when the 10,000-cubic-foot limit was adopted. In August 2003, the disposal limit was increased to 20,000 cubic feet at sites with the largest volume of records. Because the FDIC has openly discussed the disposal ceilings with Iron Mountain, he believed that the FDIC should proceed on the basis that the disposal ceilings are part of the contract. He agreed that the contract clause was not clearly drafted.

### **Unit Definition for Billing Categories**

The Iron Mountain contract provides a conversion formula that considers boxes displacing over 1.2 cubic feet of space as 1 cubic foot for storage purposes. However, the contract terms do not state that this formula is applicable for services such as disposal, accessioning, retrieval, and permanent withdrawal, which are also charged on a square-foot basis.

Section V, *Storage*, of the contract's Statement of Work states that the FDIC will compensate the contractor at the 1-cubic-foot fee for storage of any container displacing up to 1.2 cubic feet of space. Compensation for containers displacing more than 1.2 cubic feet of space shall be prorated by dividing the container's displacement by 1.2 and rounding to the nearest whole number. Fractions up to and including 0.5 shall be rounded down. Fractions above 0.5 shall be rounded up. The Statement of Work does not indicate that this formula applies to other services billed on the cubic-foot basis.

Because the contract is not specific regarding the use of the conversion formula, we were unable to determine whether the FDIC intended the formula to apply to storage only. Applicable costs for storage would substantially increase if they are recomputed based on the actual cubic-foot displacement of each box instead of the conversion formula. Specifically, based on current contract language, if the contract is not interpreted in favor of the FDIC when it disposes of 2.6 million cubic feet of standard cubic foot-boxes that are currently stored with a 1.2-cubic-foot displacement per box, the FDIC could pay \$1.8 million more than if costs are based on the standard cubic foot per box. Recently, the FDIC and Iron Mountain orally agreed that the conversion formula applies to all services that are billed on the cubic-foot basis.

**Estimated Cost Savings.** As of December 31, 2003, the FDIC had 2,586,192 boxes that displace 1.2 cubic feet each. Following the contract terms (Section V of the Statement of Work), storage of these boxes is to be billed at the rate of 1.0 cubic foot each. If Iron Mountain does not apply the conversion formula to storage for these boxes, upon disposal, the FDIC would pay for disposing of 3,103,430 cubic feet (2,586,192 x 1.2 cubic feet per box) of boxes rather than 2,586,192 cubic feet -- a difference of 517,238 cubic feet (3,103,430-2,586,192).

The FDIC has projected that records destruction will begin in January 2006. Using the \$3.50-per-cubic-foot disposal fee in effect at that time, the FDIC would pay \$1,810,333 (517,238 cubic feet x \$3.50 per cubic foot) more than if costs are calculated based on using 1.0 cubic foot per box.

## **Disposal Rates**

The disposal rate that the FDIC negotiated with Iron Mountain may not be fair and reasonable. The current Iron Mountain contract was awarded noncompetitively in 2000. The rates the FDIC negotiated on the contract are lower on an overall basis in comparison to rates in Iron Mountain's General Services Administration (GSA) Multiple Award Schedule (MAS)<sup>18</sup> contract. However, Iron Mountain's FDIC rate for disposals is substantially higher. In addition, Iron Mountain has escalated its disposal rate more than the rates for other services since the inception of the RTC contract in 1992. Specifically, for some billing periods, Iron Mountain escalated its disposal rate by 15 to 28 percent when the rates for most other services were escalated by only 4 percent. Consequently, the negotiated disposal rate may exceed a fair and reasonable rate. Details on Iron Mountain's escalation rates for various services in the contract are in Appendix IV.

The disposal rate is significant in light of the extraordinary amount of goodwill-related records that will be available for destruction in the near future. Accordingly, the FDIC should attempt to renegotiate a more reasonable rate before the FDIC receives permission to

---

<sup>18</sup> GSA awards MAS contracts to multiple contractors supplying comparable services and products at varying prices. Awards are made based on commercial product descriptions.

destroy records related to goodwill litigation. We estimated that the FDIC could save \$1.5 million by renegotiating a disposal rate of \$2.60 per cubic foot based on a 4-percent escalation since July 27, 1997, the first year of the 1996 contract. Details on the calculation of the rate based on a 4-percent escalation are in Appendix V. This would make Iron Mountain's rate comparable to ArchivesOne's GSA schedule disposal rate.

Effective July 2003, the *FDIC Acquisition Policy Manual* requires market research before exercising contract options to confirm that existing pricing represents current competitive pricing. The purpose of the market research is to determine whether the FDIC is receiving the most favored customer pricing<sup>19</sup> from the contractor and to validate that the option price is competitive. The *FDIC Acquisition Policy Manual* also requires market research on noncompetitive procurements.

The FDIC did not perform market research to test the reasonableness of Iron Mountain's prices before executing Modification 8 to the contract because the FDIC determined that permanent withdrawal fees would make it cost-prohibitive to transfer the records to another contractor. To assess whether Iron Mountain's disposal rate is fair and reasonable, we reviewed the percentages of escalation for the services most commonly used by the FDIC from 1992 through 2004. Because of the pending release for destruction of the records held for goodwill litigation, we focused our attention on disposal rates compared to the other service rates.

We also conducted our own market research to determine if the disposal rate we calculated using the 4-percent escalation rate was reasonable compared to the disposal rate charged by another GSA Multiple Award Schedule records contractor. We compared ArchivesOne's<sup>20</sup> rates with the FDIC's contract rates. For all services combined, Iron Mountain's rates were, in total, more competitive than ArchivesOne's rates primarily because Iron Mountain's rates were more competitive for paper storage. However, ArchivesOne had more competitive rates for most of the other services. For January 2006, the Iron Mountain contract specifies a rate of \$3.50 per cubic foot for disposal. In contrast, ArchivesOne's rate for disposal is a combination of two rates totaling \$2.50 (\$1.00 per cubic foot for disposal and \$1.50 per container for permanent withdrawal).

**Estimated Cost Savings.** The FDIC would pay \$5.9 million (1,677,156 boxes x 1.0 cubic foot per box x \$3.50 (the FDIC rate in effect as of January 2006)/cubic foot = \$5,870,046) to dispose of records. Based on our determination that \$2.60 per cubic feet is a reasonable rate based on 4-percent escalation from the period July 26, 1996 forward, the disposal of records would cost \$4.2 million (1,677,156 x \$2.60 (Appendix V) = \$4,360,606), a potential cost savings of \$1,509,440.

---

<sup>19</sup> Contracting officers determine prices fair and reasonable by comparing the price or discounts that a company offers the government, with the price or discounts that the company offers to its own commercial customers. In order to make this comparison, solicitations request offerors to disclose information about their commercial pricing policies and practices. This information is certified by the contractor and is subject to preaward and post award audit.

<sup>20</sup> ArchivesOne, discussed in more detail later in the report, also offers record management services.

**Discussion With Management.** The Assistant Director, CSS, stated that the disposal fee was based on competitive rates established in Contract Number 700-92-0027 for the period 1992 through 2000. He also stated that the average annual change in the disposal fee from 2001 to 2006 was 4.2 percent. The Assistant Director addressed the higher escalation percentages from 1997 through 2000 as competitive rates.

The Assistant Director, CSS, did not agree that the rate of increase during the initial contract period is relevant. He reviewed what disposal costs might have been in 2005 and 2006 had Iron Mountain applied the 4-percent escalation rate during the negotiations in 2003 prior to the second contract extension. Inflating the disposal fee by 4 percent (which is consistent with increases for other Iron Mountain costs) from 1993 to 2005 and 2006 results in a disposal rate of \$2.91 in 2005 and \$3.03 in 2006. The 2-year average rate is \$0.465 less than the rates in the contract extension and would have produced a cost avoidance of approximately \$780,000 when applied to the destruction of the thrift records.

Further, the Assistant Director, CSS, stated that in 2003, instead of arguing for reduced disposal fees based on inflation rates, RMU secured an additional disposal service at no charge to the FDIC. Iron Mountain agreed to shred FDIC records prior to the normal disposal procedure and not charge the usual \$2.00-per-cubic-foot fee. The Assistant Director, CSS, stated that the shredding process enhances the security of records disposal. Under Modification 8 to the contract, this additional service applies to all non-thrift records. The Assistant Director, CSS, added that the approach RMU adopted in 2003 produced an actual cost avoidance of approximately \$2,354,000.

In addition, the Chief, RMU, questioned our comparison of Iron Mountain's rates with those in the ArchivesOne GSA MAS contract. The Chief stated that primarily, ArchivesOne is a small regional operation unable to handle significant requirements such as those of the FDIC. Although ArchivesOne's disposal rate is considerably lower than Iron Mountain's rate, the ArchivesOne rate covers shredding only and not pulping,<sup>21</sup> which are both included in Iron Mountain's rate. The Chief noted that shredding and pulping is a financial industry standard.

We found that the FDIC's original contract with Iron Mountain, Section VIII B of the Statement of Work, stated "All records shall be destroyed by shredding, pulping, or macerating to ensure that all information contained in the records cannot be reconstructed." Iron Mountain, therefore, could have satisfied its disposal requirements by shredding only, the method used by ArchivesOne.

However, Modification 8 to the Iron Mountain contract changed the requirements for disposals by adding, "... 'Disposals' shall be modified to include strip shredding prior to hydropulping, for all records with the exception of institution records created by failed thrifts resolved by the Resolution Trust Corporation, at no additional charge to the FDIC."

---

<sup>21</sup> Hydropulping is the process that paper mills use to reclaim the fiber from scrap-recovered paper. Recovered paper, in baled form, is placed in a pulper to which water is added, and the paper is completely destroyed. A paper pulp is created, and through the papermaking process, the original wood fibers are reclaimed to make new paper products.

Although the Chief, RMU, stated that shredding and pulping was a financial industry standard, Modification 8 specifically excludes this shredding requirement for records created by failed thrifts. As discussed earlier, these records occupy about 1.6 million cubic feet or about half of the records the FDIC has in storage. Considering this exclusion, we question the need for pulping records that are shredded.

Additionally, although ArchivesOne is a regional contractor, it has locations in Connecticut, New York, and Washington, D.C. All are high-cost areas compared to Iron Mountain locations, which are in both high- and low-cost areas. Therefore, we used the ArchivesOne rates for our comparison.

We are not proposing that the FDIC move its records storage to ArchivesOne; however, the FDIC should use the GSA MAS to establish base line market rates. Although ArchivesOne does not have records centers in all of the locations where the FDIC currently has records stored, the FDIC may be able to use this information to negotiate more competitive rates with Iron Mountain.

### **Price Warranty Clause**

The price warranty clause in Iron Mountain's current contract does not apply to contract option periods or modifications. Absent contract provisions requiring Iron Mountain to provide a price warranty, or current cost and pricing data, before the FDIC exercises renewal options or modifications, there is no assurance that the FDIC will receive Iron Mountain's most-favored-customer pricing.

The FDIC is currently storing over 3 million cubic feet of records in Iron Mountain facilities. Due to this extraordinary volume of records, the FDIC should expect to receive Iron Mountain's most-favored-customer pricing. Accordingly, the FDIC should negotiate with Iron Mountain to provide a price warranty before the FDIC modifies the contract for any subsequent periods or exercises renewal options.

The base contract, executed on July 19, 2000, included a price warranty clause in paragraph 8.1. The clause required the contractor to warrant that, at the time of award, the prices and hourly rates charged do not exceed those currently charged by the contractor to any other customer, public or private, purchasing the same or similar goods or services in like or smaller quantities under similar conditions.

The price warranty clause applied only at the "time of award." A revised price warranty clause requiring Iron Mountain to prove a price warranty before any contract modification is executed and for each subsequent contract renewal period would permit the FDIC to review contracts Iron Mountain has with other customers and to determine whether Iron Mountain has complied with the price warranty clause and that the FDIC has received Iron Mountain's most-favored-customer pricing.

## **Recommendations**

We recommend that the Director, DOA, negotiate with Iron Mountain to modify the Iron Mountain contract to:

- (5) State that storage fees will cease 30 days after records have been designated for destruction.
- (6) Specify that the conversion formula in Section V of the Statement of Work applies to all services billed on a cubic-foot basis.
- (7) Obtain a more competitive disposal rate.
- (8) Require Iron Mountain to provide a price warranty such as that in Section 8.1 of the base contract before executing modifications for subsequent contract periods or exercising renewal options. The price warranty clause should permit the FDIC to review Iron Mountain contracts with other customers to determine if Iron Mountain has complied with the price warranty clause.

## **CORPORATION COMMENTS AND OIG EVALUATION**

Recommendation 5: DOA does not agree with this recommendation. DOA stated that the FDIC will not realize the projected cost savings the OIG projected because the OIG's interpretation of the contract language is incorrect. Additionally, DOA stated that during negotiations on this issue in 2000 and 2003, the vendor and the FDIC were clear on the intent of the language governing monthly disposal ceilings and that revisiting the issue at this point might expose the FDIC to allegations of negotiating in bad faith. The DOA will modify the contract language on this issue no later than December 31, 2004, to further clarify the intent of these discussions so that no one could misinterpret the effect of the monthly disposal ceilings of 10,000 to 20,000 cubic feet.

DOA further stated that OIG's best-practice comparison with the NARA is not valid. According to DOA, NARA has only recently begun emulating commercial vendors by charging back NARA's costs through service fees. In DOA's view, comparing NARA's practices to Iron Mountain's will be inappropriate until NARA acquires additional experience with the private sector business model.

DOA's comments are partially responsive. The contract language is clear regarding the rate of record disposal but is not clear regarding when storage charges cease after records have been designated for destruction. While it is important to modify the contract as agreed to by DOA, it must also ensure that the outcome is favorable and reasonable to the FDIC. Accordingly, we reaffirm our recommendation and the associated funds put to better use and request that DOA reconsider its response and provide us with additional comments addressing this recommendation.



Recommendation 6: DOA concurred with this recommendation. However, DOA management does not believe that the FDIC will realize the projected savings related to this recommendation. DOA's response stated that negotiations are not required because Iron Mountain has already agreed that the 20-percent discount outlined in Section V of the Statement of Work applies to all other services provided by the vendor. Further, DOA stated that its review of invoicing data from 2003 confirmed that the discount was extended to services other than storage. DOA concluded that modifying the contract would simply codify a pricing practice that has been in place since 2000. The modification will be completed no later than December 31, 2004.

DOA's planned corrective action to address this recommendation is responsive. Although DOA concurred with this recommendation, DOA stated that the Corporation will not realize any of the projected savings we estimated. In that regard, during our audit, we were unable to verify DOA's statement that modifying the contract will codify a pricing practice that has been in place since 2000. Instead, during our field work, the Assistant Director, CSS, provided us a document, which states:

We had a teleconference with Iron Mountain recently and in the course of the discussion were able to clarify a number of issues, some of which relate to questions you have raised during the audit. First, we are now finally clear on the effect of the rounding formula found in paragraph V (Storage) of the statement of work. This "rounding" applies to all services under the contract where the unit of measure for fees is the cubic foot - accessioning, storage, retrievals, deliveries, pickups, refills, permanent removals, and disposals. The broader application of the rounding increases the savings the Corporation realizes by using its contract with IM as opposed to the GSA schedule prices.

In addition, the OIG reviewed a sample of 2003 invoices, and we found that some of the charges that were billed on a cubic-foot basis did not have the rounding formula applied. Also, based on the supporting documentation provided with the invoices, we could not determine whether the rounding formula had been applied to some cost categories, such as disposals.

Until the results of DOA's discussion with Iron Mountain to clarify specific contract terms are incorporated in the contract, there is limited assurance that Iron Mountain will continue to honor its oral agreements. The recommendation is resolved but will remain undispositioned and open until we determine that agreed-to corrective action is complete and effective. We will determine the actual funds put to better use, if any, associated with the recommendation as part of the corrective action closure process.

Recommendation 7: DOA does not concur with this recommendation. DOA management stated that the FDIC will not realize the savings projected by the OIG. DOA stated that the overall effect of the numerous line item charges was very favorable, especially with regard to records storage costs, which represent 75 percent of the projected expenditures for 2005. Further, DOA stated that focusing on 1 of 46 line items unfairly distorts the overall value of

the pricing. In addition, DOA stated that opening negotiations with Iron Mountain to secure a lower disposal rate could cause the contractor to increase the cost of line items favorable to the FDIC.

DOA also disagreed that the disposal rate is substantially higher than the GSA schedule rate and stated that the reverse is actually the case. DOA said that the GSA rates should be adjusted to reflect the rounding formula in the FDIC contract, which would result in a higher disposal rate than the FDIC average contract rate.

DOA stated that the FDIC contract rate for disposal is competitive when factoring in a no-cost additional disposal service that calls for shredding records prior to shipping them to pulping plants. This service was negotiated in 2003. Also, this process applies to all non-thrift records (1.2 million cubic feet). The thrift records (1.6 million cubic feet) were excluded because they were the oldest portion of the records stored. DOA stated that the usual fee for shredding is \$2.00 per cubic foot and DOA calculated cost savings of \$2.4 million.

DOA provided a calculation based on the disposal rate of \$3.50 for the period August 1, 2005, through July 31, 2006. This calculation distributed the savings achieved by adding the \$2.00-per-cubic-foot shredding service at no charge over the entire 2.8 million cubic feet of records and resulted in an adjusted disposal rate of \$2.64. This adjusted rate is only \$0.04 more than the \$2.60 rate that would have resulted from a 4-percent rate of inflation. Therefore, DOA asserted that the cost avoidance projected in the audit report will not be realized.

DOA also noted that our report incorrectly stated that Modification 8 excludes the thrift records from the pulping process. DOA noted that the report should state that Modification 8 excludes the thrift records from the new requirement for strip shredding prior to hydropulping.

DOA's comments were not responsive to our recommendation. The eventual destruction of 1.6 million cubic feet of institution records that have been stored to support goodwill litigation, at the current disposal rate (a rate that is higher than rates in prior contracts with Iron Mountain), could overshadow the favorable pricing on paper storage rates. The disposal rate will continue to be significant in future periods as millions of cubic feet of records will become eligible for destruction. In our opinion, there is a close relationship between the monthly disposal ceiling and disposal rates, and both should be renegotiated at the same time to achieve equitable pricing arrangements.

DOA provided comments about our reference to Iron Mountain's GSA schedule rates. We did not base our projected savings on Iron Mountain's GSA schedule rate but on a 4-percent escalation of the \$1.75 disposal rate that had been established at the negotiation of the 1992 RTC contract. Therefore, any discussions of the GSA schedule rate have no impact on our calculations. Iron Mountain's GSA schedule rate was included in the report for informational purposes. However, we do not agree with DOA's comments about Iron Mountain's GSA schedule disposal rate. DOA stated that the rounding formula in Section V

of the Statement of Work applies to disposals; therefore, the rate should be increased by 20 percent to reflect the rounding formula. However, as discussed earlier regarding recommendation 6, the FDIC and Iron Mountain now have an oral agreement that the rounding formula applies to all cost categories billed on a cubic-foot basis. DOA is asserting that Iron Mountain was already doing this in practice. To date, however, the contract continues to apply the rounding formula only to storage, not to disposals. Furthermore, the FDIC has a significant number of boxes smaller than 1.0 cubic foot that would be rounded to 1.0 cubic foot. Therefore, the rounding, when implemented, will not always result in a cost reduction to the FDIC.

We also do not agree that the additional shredding service added to disposals in 2003 resulted in an adjusted disposal rate of \$2.64. Had this additional shredding service been considered necessary, it would have applied to all records, including 1.6 million cubic feet of thrift records (over half of the existing records) that have been specifically excluded.

Accordingly, we reaffirm our recommendation and the associated funds put to better use and request that DOA reconsider its response and provide us additional comments. Also, we have revised this final report to more accurately describe the provisions of Modification 8 based on DOA's response.

Recommendation 8: DOA does not concur with this recommendation. DOA stated that negotiating a price warranty clause is not an effective mechanism to guarantee that Iron Mountain prices are lower or equal to its most-favored-customer prices at this stage of the contract. DOA stated that this provision is best applied at the time of initial contract award. However, an Interim Acquisition Policy memorandum will be issued no later than October 31, 2004, revising the Price Warranty provision to ensure that the prices proposed to the FDIC by a contractor represents pricing that is equivalent to its most favored customers at the time of award.

DOA's comments are partially responsive. We do not agree that a price warranty clause is best applied only at the time of the initial contract award. DOA's proposed interim policy memorandum will apply the price warranty clause only at the date of initial contract award and not to subsequent contract modifications. This proposed policy does not adequately guarantee that the FDIC will continue to receive a contractor's most-favored-customer rates. In many instances, the FDIC initially awards competitive contracts, but subsequently, the contracts are extended noncompetitively, eliminating competitive incentives for the contractor to give the FDIC fair and reasonable prices. Such is the case, in our view, with the Iron Mountain contract, which was competitively awarded in 1992. Because of the potential cost associated with moving records to other facilities, the FDIC cannot practically compete this contract. Contract provisions requiring the use of a price warranty clause would help to ensure that the FDIC will continue to receive the contractor's most favored prices on subsequent contract actions, especially, noncompetitive contract extension or exercise of contract option periods.

Accordingly, we reaffirm the recommendation and request that the DOA reconsider its response and provide us additional comments.

## **Discussion Subsequent to Receipt of Comments**

After receipt of DOA's comments on our draft report, we discussed the renegotiation of Iron Mountain contract terms with the Associate Director, ASB. The Associate Director stated that the most appropriate time for the FDIC to consider renegotiating contract terms with Iron Mountain will be prior to exercising the renewal option in July 2005. We suggest that DOA consider responding to the unresolved recommendations by agreeing to address the storage fees, disposal rate, and price warranty as part of the July 2005 option renewal process.

## **FINDING D: VERIFICATION OF BILLABLE CONTAINER SIZE**

DOA has not provided adequate oversight of Iron Mountain's billing of storage fees for odd-sized boxes. DOA did not adequately verify the box sizes nor test Iron Mountain's application of contract terms that apply rounding factors to boxes smaller or larger than 1.0 cubic foot. Consequently, the FDIC cannot be fully certain that it is being billed appropriately.

### **Oversight of Billings**

Section V, *Storage*, of the Statement of Work contains a formula to convert actual cubic feet of each box to billable cubic feet. Boxes displacing up to 1.2 cubic feet are to be billed as 1.0 cubic foot. Boxes over 1.2 cubic feet are to be prorated by dividing a container's displacement by 1.2 and rounding up or down to the nearest whole number. Fractions up to and including 0.5 are rounded down. Fractions above 0.5 are rounded up.

According to the Assistant Director, CSS, RMU oversight managers visit a number of Iron Mountain records centers each year. During these visits, the oversight managers routinely sampled containers to verify Iron Mountain's compliance with contract terms. The oversight managers reviewed a judgment sample of boxes to verify proper sizing and did not report any discrepancies in their trip reports.

We reviewed the notes for the three Iron Mountain site reviews performed during 2003. The objectives of the site reviews were to determine compliance with the national records storage and services contract with Iron Mountain and to document relevant internal controls. Neither the reports nor the oversight manager's notes confirmed that the oversight managers had verified billable box sizes during site reviews. The reviews were performed at record centers in San Francisco, California; Dallas, Texas; and Hartford, Connecticut.

To independently test the application of the conversion formula in Section V of the contract Statement of Work, we reviewed an inventory of boxes in storage as of December 31, 2003 for Chicago, Houston, and Kansas City. Using these inventories, we determined the cubic feet that should have been billed for each of those sites by applying the conversion formula. We then compared the results to the number of cubic feet charged by Iron Mountain. Table 2 shows discrepancies at all three sites and for climate-controlled storage at numerous sites.

**Table 2: Variance Between Billable and Billed Cubic Feet of Storage**

<b>Iron Mountain Location</b>	<b>Billable Cubic Feet</b>	<b>Billed Cubic Feet</b>	<b>Amount of Cubic Feet Under- and Over-billed</b>
Chicago	142,393	144,002	1,609
Houston	106,126	104,983	-1,143
Kansas City	234,953	234,700	-253
Climate-controlled	33,352	32,456	-896
<b>Net Variance</b>			<b>-683</b>

Source: Databases obtained from Iron Mountain and OIG analysis of the databases.

At our request, Iron Mountain provided an inventory list of the boxes in storage, by size, as of December 2003. The list showed a total of 3,037,214 billable cubic feet based on applying the conversion formula. However, we determined that Iron Mountain billed the FDIC for 3,048,030 cubic feet of paper storage in December 2003, a discrepancy of 10,816 cubic feet. The Chief, RMU, explained that in 2001, the FDIC acquired a 10,000-cubic-foot “locked location” from Iron Mountain to house goodwill litigation records during the height of the goodwill litigation. These records were not included in the total inventory report, which would account for the discrepancy with the exception of the 683-cubic-foot variance noted above.

### **Discussion With Management**

The Assistant Director, CSS, agreed with the OIG regarding verification of box sizes and proposed adding a procedure to supplement the oversight performed at site inspections to test the accuracy of the box sizes without adding additional costs to the FDIC. The Assistant Director proposed validating the accuracy of the size recorded for storage billing purposes when containers are retrieved. The Assistant Director also initiated general testing procedures to determine whether Iron Mountain has properly applied the conversion formula to determine billable cubic feet.

The FDIC’s proposed testing of box sizes as they are retrieved for research will result in extensive testing. The FDIC retrieved about 17,000 containers in 2002. Testing at the time of retrieval will provide the FDIC the needed assurance that billings based on cubic-foot displacement are reliable. Further, the FDIC’s proposed actions to do testing commensurate with risk will help to ensure that Iron Mountain has properly applied the conversion formula to its billings.

## **Recommendations**

We recommend that the Director, DOA:

- (9) Validate the accuracy of the cubic-foot displacement recorded for each container for storage billing purposes as boxes are retrieved.
- (10) Coordinate and reconcile differences, on a quarterly basis, that are identified during the verification of cubic-foot displacement.

## **CORPORATION COMMENTS AND OIG EVALUATION**

Recommendation 9: DOA disagreed with the finding but concurred with the recommendation and plans to validate the accuracy of the cubic-foot displacement recorded for each container by:

- continuing to sample containers during each site visit,
- sampling containers retrieved for reference by staff in the Dallas Regional Office and headquarters to verify proper sizing, and
- reconciling the volume reflected on the year-end Iron Mountain invoices with the total captured in the Iron Mountain's database.

DOA stated that the procedures for sampling retrieved records have been implemented.

DOA's planned corrective action to address this recommendation is responsive. The proposed action should provide assurance regarding box sizes for billing purposes. Therefore, we consider recommendation 9 resolved, but it will remain undispositioned and open until we have determined that agreed-to corrective actions have been completed and are effective.

Recommendation 10: DOA concurs with recommendation 10 but stated that these activities would be done annually rather than quarterly as recommended by the OIG. The first annual reconciliation will be done by the end of December 2004.

We consider DOA's proposed action to be responsive and the recommendation resolved. It will remain undispositioned and open until we have determined that agreed-to corrective actions have been completed and are effective.

## OBJECTIVE, SCOPE, AND METHODOLOGY

### Objective

The overall objective of this audit was to determine whether the contract for records storage is cost-effective and the FDIC's procedures are consistent with best practices at other federal agencies and in the private sector. We performed the audit from March 8 through July 19, 2004 in accordance with generally accepted government auditing standards.

### Scope

The scope of our review included the implementation of the terms and conditions in the FDIC's contract with Iron Mountain for records management and storage for the period August 2000 through May 2004. As of January 2004, Iron Mountain billings totaled \$22.6 million for records management and storage.

The FDIC was unable to locate the Iron Mountain contract file, so we could not determine whether the requirements in the *FDIC Acquisition Policy Manual* were followed. However, we were able to deduce the requirements to be included in the contract by reviewing a request for expenditure authority<sup>22</sup> and other documentation. Therefore, we do not view this as a scope limitation.

### Methodology

To accomplish our audit objectives, we reviewed contract number 00-00389-C-DQ with Iron Mountain, including the contract's attachments and modifications.<sup>23</sup> We also performed a risk assessment of the records management program and the contract and related issues to determine the most significant risk areas. We discussed issues with the FDIC's personnel in Washington, D.C., and Dallas, Texas. We also met with and were provided statistical and background information from personnel employed by Iron Mountain. In addition, we reviewed the following:

- FDIC Circular 1210.4, *Records Disposition*
- FDIC Circular 1210.11, *Official Records and Personal Papers*

---

<sup>22</sup> The Assistant Director, CSS, indicated that although the Iron Mountain contract file could not be located, the 2003 request for expenditure authority explained DOA activities regarding market research and the determination of price reasonableness.

<sup>23</sup> Attachments to the contract include the: Statement of Work; Contractor's Proposal; FDIC General Provisions; Price Schedule (GSA MAS); Automated Deposit of Payment Form and Tax Identification Certification (Substitute Form W-9); and Iron Mountain/Pierce Leahy Legal Merger Document.



- FDIC Circular 1210.17, *Managing Records During Regional Office Consolidations*
- FDIC Circular 1210.18, *FDIC Records Management Program*
- FDIC OIG Audit Report Number 97-104, *Billing and Performance Audit of Iron Mountain Record Management Under Contract 700-92-0027*, dated October 2, 1997
- *FDIC Acquisition Policy Manual*
- *Memorandum of Understanding* between the FDIC and DOJ, dated October 2, 1998, regarding reimbursement to the DOJ for litigation support.

**Records Storage Costs.** With regard to climate-controlled storage, we determined the cubic feet of storage space, by year, for records stored since 1989 and the rate the FDIC has paid for this type of storage. We obtained rates charged by NARA and compared them to the rates charged by Iron Mountain. We also contacted NARA to determine whether NARA climate-controlled facilities were available. We discussed various cost-saving alternatives with the FDIC's Assistant Director, CSS, such as moving the climate-controlled records to NARA because its rates were more competitive or negotiating with Iron Mountain to pay rates equivalent to NARA's rates. We also discussed moving the records from climate-controlled to general storage to realize substantial savings. Also, we estimated the savings the FDIC could realize by moving the climate-controlled records to general storage, offsetting the savings in the first year by RMU-estimated costs for moving the records.

With regard to records held for goodwill litigation and document preservation orders, we obtained information from the FDIC counsel representing the DOJ and the FDIC as plaintiff. We obtained listings and estimates of the number of boxes and cubic feet related to institutions not involved in the pending goodwill litigation. We determined the monthly cost to continue to store the records and estimated the savings that could be realized by destroying the records by August 2004.

We obtained guidance from OIG's Legal Counsel to interpret contract clauses related to disposal of records. We also contacted NARA to determine its policy related to the continuance of storage fees on records designated for destruction. We estimated the savings the FDIC could realize if it modifies the contract terms so that storage fees cease 30 days after the FDIC designates records for destruction.

We reviewed the Iron Mountain contract's Statement of Work to determine if the conversion formula in Section V applied to other services billed by the cubic foot, such as disposals.

We computed the costs the FDIC will incur if it does not clarify the contract to apply the conversion formula when it disposes of its 2.6 million standard cubic-foot boxes.

We performed market research to evaluate the reasonableness of the rates on the Iron Mountain contract. We compared the FDIC contract rates with GSA MAS contract rates for Iron Mountain and with rates charged by ArchivesOne, which has a GSA MAS contract. We estimated the cost savings based on the FDIC renegotiating the disposal rates to be equivalent to ArchivesOne's disposal rates.

We reviewed the price warranty clause in the base contract to determine when the clause was applicable to modifications. We considered the significance of Iron Mountain's storage and whether the price warranty clause should be included in subsequent contract actions.

**Procedures Related to Records Storage.** We reviewed the storage procedures, policies, and rates of NARA and private sector companies. We compared the FDIC's practice of storing some microform records in climate-controlled storage to NARA's practice in order to determine if the costs the FDIC incurred for climate-controlled facilities were warranted. We also compared the FDIC's interpretation of its contract regarding discontinuance of storage fees on records designated for destruction to NARA's policy.

#### **Government Performance and Results Act<sup>24</sup>**

We reviewed the 2003 performance objectives and goals for DOA's Acquisition Services Branch. The performance objectives and goals did not specifically relate to our audit objective.

#### **Reliance on Computer-Processed Data**

We relied on computer-processed data obtained from Iron Mountain's Automated Records Management System (ARMS) document storage and recovery system to make our estimates of potential cost savings. We did not test the accuracy of the inventories other than to compare billings with inventory totals for several locations. We found minor discrepancies, but nothing that caused us to doubt the overall reliability of the ARMS system. The FDIC has proposed action to do substantial testing of the accuracy of box sizes recorded in ARMS, but these actions have not yet been implemented.

---

<sup>24</sup> The Government Performance and Results Act of 1993 (Pub. L. No. 103-62, codified at titles 5, 31, and 39, United States Code) requires agencies to develop strategic plans, align programs and activities with concrete missions and goals, and manage and measure results. An agency is to prepare annual performance plans that establish connections with strategic goals and day-to-day activities and report on the extent to which the agency is meeting its annual performance goals.

### **Management Controls**

We evaluated the effectiveness of the FDIC's oversight of Iron Mountain's compliance with the terms and conditions of the contract. We gained an understanding of internal controls in certain areas, including the policies and procedures related to contracting and disposal of records, and reviewed actions taken by management and the FDIC divisions to comply with requirements in the Iron Mountain contract and the policies and procedures.

### **Fraud and Illegal Acts**

We did not develop specific audit procedures to detect fraud and illegal acts because we did not consider fraud and illegal acts to be material to the audit objectives. However, throughout the audit, we were alert to the potential for fraud or illegal acts.

### **Compliance With Laws and Regulations**

We did not find any instances in which the FDIC was not in compliance with applicable laws and regulations as they related to our audit objectives.

### **Prior Audit Coverage**

On October 2, 1997, the OIG issued Audit Report No. 97-104, *Billing and Performance Audit of Iron Mountain Record Management Under Contract 700-92-0027*. We reported that except for unsupported and unallowable charges totaling \$53,613, Iron Mountain's billings were generally supported, allowable, and calculated in accordance with the terms of the contract.

Because of the relatively low-dollar amounts involved in the previous audit report, the current audit did not review corrective actions but concentrated on those areas we determined to be of high risk.

## ESTIMATED SAVINGS IF RECORDS ARE MOVED FROM CLIMATE-CONTROLLED TO PAPER-STORAGE SPACE

Period	Monthly Rate for Climate-Controlled Storage <sup>a</sup>	Monthly Rate for Paper Storage <sup>b</sup>	Monthly Rate Difference <sup>c</sup>	Cubic Feet of Records to be Moved to Paper Storage <sup>d</sup>	Monthly Savings <sup>e</sup>	Number of Months per Year <sup>f</sup>	Projected Savings per Year <sup>g</sup>	Costs Associated with Moving Records to Paper Storage <sup>h</sup>	Net Projected Savings <sup>i</sup>
8/1/04 to 7/31/05	\$1.270	\$0.146	\$1.124	32,482	\$36,510	12	\$438,120	\$66,316	\$371,804
8/1/05 to 7/31/06	1.320	0.152	1.168	32,482	37,939	12	455,268	-	455,268
8/1/06 to 12/31/06 <sup>j</sup>	1.320	0.152	1.168	32,482	37,939	5	189,695	-	189,695
<b>Total</b>							\$1,083,083	\$66,136	\$1,016,767 <sup>k</sup>

Source: OIG analysis of the cost savings that will be realized if the FDIC moves records currently stored in climate-controlled storage to paper storage.

<sup>a</sup>The monthly rate is the climate-controlled storage rate in effect on the current contract (Modification 8) for the periods noted through July 2006. For the period ending December 31, 2006, we assumed that the rate for the period ending July 2006 will remain in effect.

<sup>b</sup>The monthly rate is the paper storage rate in effect on the current contract (Modification 8) for the periods through July 2006. For the period ending December 31, 2006, we assumed that the rate for the period ending July 2006 will remain in effect.

<sup>c</sup>We calculated the monthly rate difference by subtracting the monthly paper storage rate from the climate-controlled rate for each period.

<sup>d</sup>The number of cubic feet of records to be moved from climate-controlled to paper storage was obtained from an Iron Mountain report dated March 1, 2004. The number of cubic feet was updated to 32,514 cubic feet (from 30,158 cubic feet) of records in climate-controlled storage as of December 31, 2003.

<sup>e</sup>The monthly savings was computed by multiplying the monthly rate difference by the cubic feet of records to be moved to paper storage.

<sup>f</sup>We used the number of months in each period to estimate annual savings.

<sup>g</sup>We projected annual savings by multiplying monthly savings by 12 months.

<sup>h</sup>The FDIC provided us with estimated costs associated with moving records stored in climate-controlled storage to paper storage.

<sup>i</sup>We calculated net projected savings by offsetting projected yearly savings by the costs associated with moving the records from climate-controlled to paper storage.

<sup>j</sup>We made the assumption that a new contract will be executed or that the existing contract with Iron Mountain will be extended after July 31, 2006 based on the significant costs the FDIC would incur (i.e., permanent withdrawal fees) if the records were transferred to another contractor.

<sup>k</sup>As discussed in the body of the report, based on management's response, we are reducing the projected savings to \$602,438.

# ESTIMATED SAVINGS IN STORAGE COSTS<sup>a</sup>

Iron Mountain Storage Region		Dallas	Fullerton/ Irvine	Philadelphia	Atlanta	Kansas	Houston	Denver	Hartford	Miami	New York	DC	Chicago	New Jersey	Boston/ Franklin	Phoenix	Total Costs
Jan-06	Volume <sup>b</sup>	417,682	374,352	218,138	212,675	150,843	80,479	76,809	42,875	21,663	15,666	8,830	5,638	2,726	1,344	130	
	Cost <sup>c</sup>	\$63,488	\$56,901	\$33,157	\$32,327	\$22,928	\$12,233	\$11,675	\$6,517	\$3,293	\$2,381	\$1,342	\$857	\$414	\$204	\$20	\$247,737
Feb-06	Volume <sup>b</sup>	397,682	354,352	198,138	192,675	130,843	70,479	66,809	32,875	11,663	5,666						
	Cost <sup>c</sup>	\$60,448	\$3,861	\$30,117	\$29,287	\$19,888	\$10,713	\$10,155	\$4,997	\$1,773	\$861						\$222,100
Mar-06	Volume <sup>b</sup>	377,682	334,352	178,138	172,675	110,843	60,479	56,809	22,875	1,663							
	Cost <sup>c</sup>	\$57,408	\$50,821	\$27,077	\$26,247	\$16,848	\$9,193	\$8,635	\$3,477	\$253							\$199,959
Apr-06	Volume <sup>b</sup>	357,682	314,352	158,138	152,675	90,843	50,479	46,809	12,875								
	Cost <sup>c</sup>	\$54,368	\$47,781	\$24,037	\$23,207	\$13,808	\$7,673	\$7,115	\$1,957								\$179,946
May-06	Volume <sup>b</sup>	337,682	294,352	138,138	132,675	70,843	40,479	36,809	2,875								
	Cost <sup>c</sup>	\$51,328	\$44,741	\$20,997	\$20,167	\$10,768	\$6,153	\$5,595	\$437								\$160,186
Jun-06	Volume <sup>b</sup>	317,682	274,352	118,138	112,675	50,843	30,479	26,809									
	Cost <sup>c</sup>	\$48,288	\$41,701	\$17,957	\$17,127	\$7,728	\$4,633	\$4,075									\$141,509
Jul-06	Volume <sup>b</sup>	297,682	254,352	98,138	92,675	30,843	20,479	16,809									
	Cost <sup>c</sup>	\$45,248	\$38,661	\$14,917	\$14,087	\$4,688	\$3,113	\$2,555									\$123,269
Aug-06	Volume <sup>b</sup>	277,682	234,352	78,138	72,675	10,843	10,479	6,809									
	Cost <sup>c</sup>	\$43,874	\$37,028	\$12,346	\$11,483	\$1,713	\$1,656	\$1,076									\$109,176
Sep-06	Volume <sup>b</sup>	257,682	214,352	58,138	52,675		479										
	Cost <sup>c</sup>	\$40,714	\$33,868	\$9,186	\$8,323		\$76										\$92,167
Oct-06	Volume <sup>b</sup>	237,682	194,352	38,138	32,675												
	Cost <sup>c</sup>	\$37,554	\$30,708	\$6,026	\$5,163												\$79,451
Nov-06	Volume <sup>b</sup>	217,682	174,352	18,138	12,675												
	Cost <sup>c</sup>	\$34,394	\$27,548	\$2,866	\$2,003												\$66,811
Dec-06	Volume <sup>b</sup>	197,682	154,352														
	Cost <sup>c</sup>	\$31,234	\$24,388														\$55,622
Jan-07	Volume <sup>b</sup>	177,682	134,352														
	Cost <sup>c</sup>	\$28,074	\$21,228														\$49,302
Feb-	Volume <sup>b</sup>	157,682	114,352														

Iron Mountain Storage Region		Dallas	Fullerton/Irvine	Philadelphia	Atlanta	Kansas	Houston	Denver	Hartford	Miami	New York	DC	Chicago	New Jersey	Boston/Franklin	Phoenix	Total Costs
07	Cost <sup>c</sup>	\$24,914	\$18,068														\$42,982
Mar-07	Volume <sup>b</sup>	137,682	94,352														
	Cost <sup>c</sup>	\$21,754	\$14,908														\$36,662
Apr-07	Volume <sup>b</sup>	117,682	74,352														
	Cost <sup>c</sup>	\$18,594	\$11,748														\$30,342
May-07	Volume <sup>b</sup>	97,682	54,352														
	Cost <sup>c</sup>	\$15,434	\$8,588														\$24,022
Jun-07	Volume <sup>b</sup>	77,682	34,352														
	Cost <sup>c</sup>	\$12,274	\$5,428														\$17,702
Jul-07	Volume <sup>b</sup>	57,682	14,352														
	Cost <sup>c</sup>	\$9,114	\$2,268														\$11,382
Aug-07	Volume <sup>b</sup>	37,682															
	Cost <sup>c</sup>	\$6,180															\$6,180
Sep-07	Volume <sup>b</sup>	17,682															
	Cost <sup>c</sup>	\$2,900															\$2,900
Total Costs for 21-Month Period		\$707,584	\$570,243	\$198,683	\$189,421	\$98,369	\$55,443	\$50,881	\$17,385	\$5,319	\$3,242	\$1,342	\$857	\$414	\$204	\$20	\$1,899,407
Total Storage Cost if Records Are Stored for 30 or 90 Days <sup>d</sup>																	247,737 to 669,796
Total Estimated Cost Avoidance <sup>e</sup>																	\$1,651,670 to \$1,229,611

Source: OIG revision of the FDIC's analysis of storage and disposal costs projected over a 21-month period based on records destruction caps of 10,000 to 20,000 cubic feet per month per Iron Mountain site.

<sup>a</sup> We estimated savings in storage based on the assumption that the records storage is discontinued in 30 to 90 days instead of 21 months (the time the FDIC established) as records are destroyed.

<sup>b</sup> The volume of records stored at each site was obtained from the FDIC's analysis of storage and disposal costs estimated over a 21-month period.

<sup>c</sup> We determined the cost by applying the paper storage rate in effect for each period to the volume remaining in storage for that month. The current Iron Mountain contract expires in July 2006. The FDIC estimated storage rates are based on an annual 4-percent increase. We determined the estimated cost by multiplying the volume at each site by the FDIC's estimated storage rate as follows: \$0.152 per cubic foot for August 2005 through July 2006; \$0.158 per cubic foot for August 2006 through July 2007; and \$0.164 per cubic foot for August 2007 through July 2008.

<sup>d</sup> Total costs for storing the records for January 2006 (30 days) through March 2006 (90 days) only.

<sup>e</sup> Projected cost avoidance calculation: the cost for 30 days is \$1,651,670 (\$1,899,407-247,737); the cost for 90 days is: \$1,229,611 (\$1,899,407-\$669,796).

## ESCALATION RATES FOR SERVICES

Contract Number	Effective Date	Services													
	Percent of Escalation Rate	Accessioning	Paper Storage	Climate-Controlled Storage	Retrievals	Refills	Warehouse Clerk	Data Entry	Management Services	Records Analyst	Data Conversion Spec	Site Prep Coordinator	Reboxing	Permanent Withdrawal	Disposals
Competitive Contract 700-92-0027	7/27/92 to 7/26/96	\$5.00	N/A	N/A	\$2.50	\$2.50	\$21.00	\$21.00	\$25.00	\$30.00	\$60.00	\$40.00	\$5.60	\$3.00	\$1.75
96-90018-C-XX	7/27/96 to 7/26/97	\$2.00	\$0.12	\$1.40	\$2.60	\$2.60	\$21.84	\$21.84	\$26.00	\$31.20	\$62.40	\$41.60	\$5.82	\$4.00	\$2.25
	Escalation Rate	-60.0%	N/A	N/A	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	3.9%	33.3%	28.6%
	7/27/97 to 7/26/98	\$1.25	\$0.12	\$1.46	\$2.70	\$2.70	\$22.71	\$22.71	\$27.04	\$32.45	\$64.90	\$43.26	\$6.06	\$4.25	\$2.75
	Escalation Rate	-37.5%	0.0%	4.3%	3.8%	3.8%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.1%	6.3%	22.2%
	7/27/98 to 7/26/99	\$1.30	\$0.12	\$1.52	\$2.81	\$2.81	\$23.62	\$23.62	\$28.12	\$33.75	\$67.50	\$44.99	\$6.30	\$4.50	\$3.25
	Escalation Rate	4.0%	0.0%	4.1%	4.1%	4.1%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	5.9%	18.2%
	7/27/99 to 7/26/00	\$1.35	\$0.14	\$1.58	\$2.92	\$2.92	\$24.57	\$24.57	\$29.25	\$35.10	\$70.20	\$46.79	\$6.55	\$4.75	\$3.75
	Escalation Rate	3.8%	16.7%	3.9%	3.9%	3.9%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	5.6%	15.4%
00-00389-C-DQ	8/1/00 to 7/18/01	\$0.60	\$0.131	\$1.08	\$2.57	\$2.57	\$22.71	\$22.71	\$27.04	\$33.75	\$64.90	\$46.79	\$4.28	\$4.23	\$3.00
	Escalation Rate	-55.6%	-6.4%	-31.6%	-12.0%	-12.0%	-7.6%	-7.6%	-7.6%	-3.8%	-7.5%	0.0%	-34.7%	-10.9%	-7.7%
	7/19/01 to 7/18/02	\$0.62	\$0.137	\$1.12	\$2.67	\$2.66	\$23.62	\$23.62	\$28.12	\$35.10	\$67.50	\$48.66	\$4.45	\$4.40	\$3.12
	Escalation Rate	3.3%	4.6%	3.7%	3.9%	3.5%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
	7/19/02 to 7/18/03	\$0.64	\$0.14	\$1.17	\$2.77	\$2.77	\$24.56	\$24.56	\$29.24	\$36.50	\$70.20	\$50.61	\$4.63	\$4.58	\$3.24
	Escalation Rate	3.2%	2.2%	4.5%	3.7%	4.1%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.1%	3.8%
00-00389-C-DQ Modification 8 Dated 8/01/03	8/1/03 to 7/31/04	\$0.67	\$0.141	\$1.22	\$2.88	\$2.88	\$25.54	\$25.42	\$30.40	\$37.96	\$73.00	\$52.63	\$4.68	\$4.76	\$3.24
	Escalation Rate	4.7%	0.7%	4.3%	4.0%	4.0%	4.0%	3.5%	4.0%	4.0%	4.0%	4.0%	1.1%	3.9%	0.0%
	8/1/04 to 7/31/05	\$0.70	\$0.146	\$1.27	\$2.99	\$2.99	\$26.56	\$26.43	\$31.62	\$39.47	\$75.95	\$54.73	\$4.88	\$4.95	\$3.37
	Escalation Rate	4.5%	3.5%	4.1%	3.8%	3.8%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.3%	4.0%	4.0%
	8/1/05 to 7/31/06	\$0.73	\$0.152	\$1.32	\$3.11	\$3.11	\$27.62	\$27.62	\$32.88	\$41.04	\$78.95	\$56.92	\$5.06	\$5.15	\$3.50
	Escalation Rate	4.3%	4.1%	3.9%	4.0%	4.0%	4.0%	4.5%	4.0%	4.0%	4.0%	4.0%	3.7%	4.0%	3.9%

**OIG CALCULATION OF DISPOSAL RATES BASED ON  
A 4-PERCENT ESCALATION RATE**

<b>Contract Period</b>	<b>Rate</b>
July 27, 1992 to July 26, 1996	\$1.75 <sup>a</sup>
July 27, 1996 to July 26, 1997	\$1.82
July 27, 1997 to July 26, 1998	\$1.89
July 27, 1998 to July 26, 1999	\$1.97
July 27, 1999 to July 26, 2000	\$2.05
August 1, 2000 <sup>c</sup> to July 18, 2001	\$2.13
July 19, 2001 to July 18, 2002	\$2.22
July 19, 2002 to July 18, 2003	\$2.31
August 1, 2003 to July 31, 2004	\$2.40
August 1, 2004 to July 31, 2005	\$2.50
August 1, 2005 to July 31, 2006	\$2.60

Source: Based on our analysis of the effects of 4-percent inflation applied to the disposal rate for the base year of contract 96-90018-C-XX.

<sup>a</sup> The \$1.75 disposal rate originated in competitive contract 700-92-0027, dated July 27, 1992. The rates from that contract were carried to the current contract 96-90018-C-XX for referential purposes only. We applied the 4-percent escalation for each period beginning July 27, 1997, based on the escalation rate the FDIC accepted since the beginning of the contract. The average inflation rate from 1996 through 2003 ranged from 1.55 to 3.38 percent. Therefore, we determined that 4 percent is adequate to cover inflation.

<sup>b</sup> Contract 00-00389-C-DQ was executed on July 19, 2000 with an effective date of August 1, 2000. The initial period of performance started on the effective date (August 1, 2000) and expired on July 18, 2001.



## CORPORATION COMMENTS

## Division of Administration

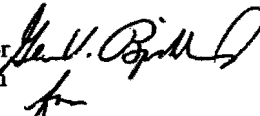


Federal Deposit Insurance Corporation  
550 17th Street NW, Washington, D.C. 20429-9990

Division of Administration

**DATE:** September 21, 2004

**MEMORANDUM TO:** Stephen M. Beard  
Deputy Assistant Inspector General for Audits

**FROM:** Arleas Upton Kea, Director   
Division of Administration

**SUBJECT:** Draft Report Entitled *Records Management and Storage*  
(Assignment Number 2004-024)

The Division of Administration (DOA) has completed its review of the subject Office of Inspector General (OIG) report. We appreciate the review performed by the OIG and that their review did not find any instances where FDIC was not in compliance with applicable laws and regulations. In its report, the OIG made ten recommendations for improvement; nine are addressed to the Division of Administration (DOA) and one is addressed to the General Counsel, Legal Division. The Legal Division will respond to its recommendation (recommendation 3) in a separate memorandum. We have evaluated the OIG's recommendations and have provided a detailed response to include the planned corrective actions and expected completion dates as appropriate.

## MANAGEMENT DECISION

## Finding A: Climate-Controlled Storage.

**Condition:** The FDIC can avoid additional costs to store microforms in climate-controlled storage.

**Recommendation 1:** We recommend that the Director, DOA, move records currently stored in climate-controlled facilities to general storage facilities.

**Management Response:** FDIC concurs in part with this recommendation.

The effort to move microforms from Iron Mountain vaults to general storage space in Iron Mountain records centers began in July and was completed by the end of August. However, the OIG's cost savings projection of \$1,019,767 is seriously inflated and not consistent with the analysis presented in other portions of the report. Cost savings estimates made under the headings *Unit Definition for Billing Categories* and *Disposal Rates*, are based on the assumption that disposal of the thrift records will begin in January 2006, assuming relief from the records disposal freeze is lifted. Cost savings resulting from the removal of microforms from Iron Mountain vaults assume that the microforms will be stored until the end of December 2006, or 11 months after the projected lifting of the Goodwill freeze and five months after the current contract with Iron Mountain expires. The projected savings of \$1,019,767 should be reduced by

\$417,329 to \$602,438. The reduction reflects the assumption that we would direct Iron Mountain to destroy the microforms in January 2006, thus voiding the savings projected by the OIG for the remaining 11 months in that year. Even with this reduction, the projected savings of \$602,438 may prove excessive because relief from the Goodwill freeze is now anticipated by the end of 2004 rather than January 2006.

**Recommendation 2:** We recommend that the Director, DOA, coordinate with the Legal Division and the DRR to establish a policy for the future use of climate-controlled storage.

**Management Response:** FDIC concurs with this recommendation. The Division of Administration will prepare a draft policy for review by DRR and the Legal Division. The draft policy will likely require storage of microforms in Iron Mountain vaults for a short period of time during which the records are required for liquidation purposes, possibly until the failed institution is terminated. After this period expires, the microforms will be moved to general Iron Mountain storage space. DOA will establish policy by December 31, 2004.

**Finding B: Modification of Document Preservation Orders.**

**Condition:** Document preservation orders imposed by DOJ led the FDIC to store records related to all thrifts, whether or not they are related to pending goodwill litigation.

**Recommendation 3:** We recommend that the General Counsel expedite efforts to prepare the two documents for DOJ related to the destruction of records for thrifts not involved in the goodwill litigation so that DOJ can file a new motion for the Court, requesting permission to destroy these records.

**Management Response:** See the Legal Divisions response under separate cover.

**Recommendation 4:** We recommend that the Director, DOA, expedite the process to obtain required approvals from DOF, DRR, and Legal Division to destroy the financial institution records not related to the goodwill litigation.

**Management Response:** FDIC concurs with this recommendation. The Division of Administration began the pre-approval process found in this recommendation on February 9, 2004, which is two weeks prior to the beginning of this audit. DOA will continue with its coordination effort while awaiting formal relief from the Goodwill records disposition freeze.

**Finding C: Contract Terms and Conditions**

**Condition:** The FDIC may be paying too much for certain Iron Mountain services and some contract terms are potentially unfair or unclear.

**Recommendation 5:** We recommend that the Director, DOA, negotiate with Iron Mountain to modify the Iron Mountain contract to state that storage fees will cease 30 days after records have been designated for destruction.

**Management Response:** FDIC does not concur with this recommendation. The Corporation will not realize any of the savings projected by this finding because the OIG interpretation of the contract language is not correct. During negotiations on this issue in 2000 and again in 2003, both the vendor and the Corporation were perfectly clear on the intent of the language governing monthly disposal ceilings. Revisiting this issue at this juncture might well expose the Corporation to allegations of negotiating in bad faith. These ceilings were negotiated when the full effect of the Goodwill freeze became apparent. Clearly, neither party could have anticipated the extraordinary burden caused by the delayed destruction of 1.6 million cubic feet in 1992 when the contract was awarded. The Division of Administration will modify the contract language on this issue no later than December 31, 2004, to further clarify the intent of these discussions so that future readers will have no doubt regarding the effect of the 10,000-20,000 cubic foot monthly disposal ceilings.

Other large Iron Mountain customers have monthly disposal ceilings, but the Corporation's monthly ceilings are far more generous. With other clients, a 10,000 cubic foot ceiling applies to the entire account. Thus, if the customer has multiple locations, the compiled monthly total is 10,000 cubic feet. Our national monthly ceiling for disposal is 200,000 cubic feet.

The best practice comparison with the National Archives and Records Administration (NARA) is not valid. If the Corporation's inactive records were stored in federal records centers and we directed the disposal of 1.6 million cubic feet within the 90-day window allowed by NARA, the burden on NARA might be so great as to generate a request for cost accommodations. In 2003, NARA destroyed 1,222,000 cubic feet for an average quarterly rate of 305,000 cubic feet. A request to destroy 1.6 million cubic feet in one quarter amounts to a five-fold increase and might well be unmanageable within the 90-day disposal window. In addition, the cost to the government of continued storage beyond the 90-day NARA window is the same, as either NARA or the federal agency storing the records absorbs the cost. Lastly, NARA has only recently begun the process of emulating private sector commercial vendors by charging back its costs through service fees. Comparing NARA's practices to Iron Mountain's will not be appropriate until NARA acquires additional experience with the private sector business model.

**Recommendation 6:** We recommend that the Director, DOA, negotiate with Iron Mountain to modify the Iron Mountain contract to specify that the conversion formula in Section V of the Statement of Work applies to all services billed on a cubic foot basis.

**Management Response:** FDIC concurs in part with this recommendation. While the Division of Administration will modify the contract, the Corporation will not realize any of the savings projected under this recommendation. No negotiations are required because Iron Mountain has already agreed that the 20% discount outlined in paragraph V of the Statement of Work applies to all other services provided by the vendor. Our review of extensive invoicing data from 2003 confirms that the discount was extended to services other than storage. Modifying the contract

will simply codify a pricing practice that has been in place since 2000 when the cubic foot was adopted as the standard unit for all services. The modification should be completed no later than December 31, 2004.

**Recommendation 7:** We recommend that the Director, DOA, negotiate with Iron Mountain to modify the Iron Mountain contract to obtain a more competitive disposal rate.

**Management Response:** FDIC does not concur with this recommendation. The Corporation will not realize any of the savings projected under this recommendation. When the contract was initially awarded in 1992, first extended in 2000, and extended again in 2003, the Division of Administration determined that the overall effect of the numerous line item charges was very favorable, especially with regard to records storage which represents 75% of our projected expenditures for 2005. Focusing on one of 46 line items unfairly distorts the overall value of the pricing. In addition, opening negotiations with Iron Mountain to secure a lower disposal rate might well be met with a response by the vendor to increase the cost of line items favorable to the FDIC.

The audit report states that the FDIC contract disposal rate is substantially higher than the GSA schedule rate. The reverse is actually the case. For the period September 30, 2001, through October 1, 2006, the GSA schedule rate is \$3.12 per cubic foot. The average FDIC contract rate for the same period is \$3.31 per cubic foot. Before comparing these two rates, the GSA schedule rate must be adjusted to account for the rounding formula in the FDIC contract. Under the FDIC contract, a 1.2 cubic foot container is charged at the stated 1.0 cubic foot rate. Iron Mountain has indicated to DOA that this 20% discount would not apply to other clients under the GSA schedule. Inflating the GSA schedule by 20% produces a disposal rate of \$3.74 ( $1.2 \times \$3.12$ ) which is \$0.43 higher than the FDIC average contract rate of \$3.31.

The audit report states that negotiating with Iron Mountain to obtain a disposal rate based on a 4% inflation increase beginning with the 1996 disposal rate will produce a more competitive disposal rate. The FDIC contract rate for disposal is competitive when factoring in a no cost additional disposal service negotiated in 2003. Before extending the contract in 2003, the Division of Administration negotiated an additional disposal service where Iron Mountain would shred our records at their records centers prior to shipping them to the pulping plants. This added process mirrored practices for financial industry clients of the vendor and was designed to further protect the sensitive information in the records during the disposal process. Under Modification 8 to the contract, the shredding service applies to all non-thrift records (1.2 million cubic feet) at no additional cost to the Corporation. The thrift records (1.6 million cubic feet) were excluded because they were the oldest portion of the records stored off site. As the usual fee for shredding is \$2.00 per cubic foot, Modification 8 produced significant cost savings of \$2,354,000 ( $\$2.00 \times 1,200,000$  cubic feet of non-thrift records).

The contract disposal rate for the period August 1, 2005, through July 31, 2006, is \$3.50 per cubic foot. Distributing the savings achieved by adding the \$2.00 per cubic foot shredding service at no charge over the entire collection of 2.8 million cubic feet produces an adjusted disposal rate of \$2.64.

$$\frac{(1.6 \text{ million cf thrift records} \times \$3.50) + (1.2 \text{ million cf non-thrift records} \times \$1.50)}{2,800,000 \text{ cf}} = \$2.64$$

This adjusted rate of \$2.64 is only \$0.04 more than the \$2.60 rate that would have resulted from 4% inflation. Also, the cost avoidance resulting from the DOA negotiations with Iron Mountain in 2003 will increase with time as new records are moved to storage because the free shredding service will apply to these additions. Therefore the cost avoidance projected in the audit report will not be realized.

Finally, we note that the audit report incorrectly states that Modification 8 excludes the thrift records from the pulping process. Instead, Modification 8 excludes the thrift records from the shredding process performed in the Iron Mountain records centers. *This is the relevant language from the modification: "Additionally, CLIN #10 'Disposals' shall be modified to include strip shredding prior to hydro pulping, for all records with the exception of institution records created by failed thrifts, at no additional cost to the FDIC."*

**Recommendation 8:** We recommend that the Director, DOA, negotiate with Iron Mountain to modify the Iron Mountain contract to require Iron Mountain to provide a price warranty such as that in Section 8.1 of the base contract before executing modifications for subsequent contract periods or exercising renewal options. The price warranty clause should permit the FDIC to review Iron Mountain contracts with other customers to determine if Iron Mountain has complied with the price warranty clause.

**Management Response:** The FDIC does not concur with this recommendation. The FDIC does not believe that negotiating a price warranty clause is an effective mechanism to guarantee that Iron Mountain prices are lower or equal to the prices provided to their most favored customer at this stage of the contract. This provision is best applied at the time of the initial contract award. However, as part of the FDIC's recognition to improve upon the application of the Price Warranty provision, an Interim Acquisition Policy memorandum will be issued revising the Price Warranty provision to ensure that the prices proposed to the FDIC by a given vendor represent pricing that is equivalent to their most favored customers at the time of award. This Interim Acquisition Policy will be issued no later than October 31, 2004.

#### **Finding D: Verification of Billable Container Size**

**Condition:** DOA has not provided adequate oversight of Iron Mountain's billing of storage fees for odd-sized boxes.

**Recommendation 9:** We recommend that the Director, DOA, validate the accuracy of the cubic foot displacement recorded for each container for storage billing purposes as boxes are retrieved.

**Management Response:** FDIC concurs in part with this recommendation. During our site visits to IM records centers, we routinely sample boxes to determine if they are appropriately

sized. None of the sampling done since 1992 has ever indicated a substantial problem with proper sizing. In the absence of evidence to the contrary, no additional oversight measures were taken.

No evidence has surfaced during the course of this audit to suggest that a substantial problem exists with regard to sizing containers. The Division of Administration provided data for this audit demonstrating that only 1,500 containers or 0.1% of the total 2.8 million were not correctly sized, and that the incorrect sizing resulted in lower annual storage costs for the Corporation because the vendor under billed for these oversized containers. In addition, data compiled by the OIG on sizing containers at three Iron Mountain locations demonstrated that the vendor under billed for containers stored in those locations as well.

Even though the data do not indicate a substantial problem with properly sizing oversized containers, the Division of Administration will take the following actions:

- o continue its practice of sampling containers during each site visit,
- o sample containers retrieved for reference by staff in the Dallas Regional Office and Headquarters to verify proper sizing, and
- o reconcile the volume reflected on the year-end IM invoices with the total captured in the IM data base.

The procedure of sampling retrieved records is already under way. The first annual reconciliation will be done by the end of December 2004. All three practices can be done at no additional cost to the Corporation and will confirm the accuracy of the sizing of oversized containers.

**Recommendation 10:** We recommend that the Director, DOA, coordinate and reconcile differences, on a quarterly basis, that are identified during the verification of cubic foot displacement.

**Management Response to Recommendations 10:** See response to Recommendation 9 above.

If you have any questions regarding the response, our point of contact for this matter is Andrew Nickle, Audit Liaison for the Division of Administration. Mr. Nickle can be reached at (202) 942-3190.

cc: James H. Angel, Jr., OERM  
 Glen Bjorklund, DOA  
 Michael J. Rubino, DOA CSB  
 Edward F. Barrese, DOA ASB  
 Stephen M. Hanas, Legal  
 Paul K. Sherman, DOA MSB

## CORPORATION COMMENTS

## General Counsel




**Federal Deposit Insurance Corporation**  
1717 H. Street NW, Washington, D.C. 20429-9990

Legal Division

September 17, 2004

**TO:** Stephen M. Beard  
Deputy Assistant Inspector General for Audits

**FROM:** William F. Kroener, III   
General Counsel

**SUBJECT:** Draft Report Entitled *Records Management and Storage*  
(Assignment Number 2004-024)

The Legal Division has completed its review of the above referenced Office of Inspector General (OIG) report and takes note of the fact that the review did not find any instances where FDIC was not in compliance with applicable laws and regulations. In the report, the OIG made ten recommendations for improvement; nine of which are being addressed under separate cover by the Division of Administration (DOA). Finding B, Recommendation #3 was addressed to the General Counsel, Legal Division and we, therefore, have evaluated the OIG's recommendation and have provided a detailed response to Finding B, Recommendation #3 as noted in the subject draft report, dated August 18, 2004; as follows:

**Finding B: Modification of Document Preservation Orders.**

**Condition:** Document preservation orders imposed by DOJ led the FDIC to store records related to all thrifts, whether or not they are related to pending goodwill litigation.

**Recommendation 3:** We recommend that the General Counsel expedite efforts to prepare the two documents for DOJ related to the destruction of records for thrifts not involved in the goodwill litigation so that DOJ can file a new motion for the Court, requesting permission to destroy these records.

**Management Response:** Finding B concerns modification of document preservation orders entered by a federal court in the so-called goodwill litigation. Finding B of the Report (at p. 11) recommends that the General Counsel:

Expedite efforts to prepare the two documents for DOJ related to the destruction of records for thrifts not involved in the goodwill litigation so that DOJ can file a new motion with the Court, requesting permission to destroy these records.

We agree with the need to expedite efforts to obtain relief from the document preservation orders of the U.S. Court of Federal Claims, and we are making every effort to do so. However, the recommendation as written reflects an apparent misunderstanding regarding the roles of FDIC,

DOJ and other parties in obtaining such relief. Finding B might more accurately be stated as a recommendation for FDIC to:

*Expedite efforts to obtain relief from the document preservation orders of the U.S. Court of Federal Claims, and continue in the attempt to obtain the concurrence of DOJ and PCC in those efforts.*

The FDIC-Legal Division agrees that this should be done.

We now briefly discuss important misunderstandings reflected in Finding B of the Report. We also provide an update on the FDIC's efforts in this area.

First, Finding B indicates, incorrectly, that DOJ imposed the orders preventing the documents' final disposition. Report at 9. In fact the relevant orders were issued by the U.S. Court of Federal Claims, which is hearing the goodwill-related cases. DOJ's role in the goodwill related cases is as counsel for the defendant United States, and in that capacity, DOJ has for the past several years resisted FDIC's efforts to obtain relief. For example, as Finding B notes, when in 2000 a small subset of thrift documents became eligible for destruction under FDIC's standard document destruction policies, FDIC sought concurrence from DOJ for a motion for permission from the Court to destroy them. FDIC complied with DOJ's request that FDIC provide a list of particular institutions whose documents FDIC sought to destroy, but DOJ nevertheless opposed FDIC's motion for limited relief. The Court never ruled on FDIC's February 2001 motion.

In light of the increasing volume of thrift documents becoming eligible for destruction under FDIC's standard document retention policies, as well as certain developments in the goodwill litigation, FDIC (plaintiff) renewed its efforts to obtain relief from the court's orders. To that end, FDIC has sought representations from DOJ and the PCC that they would not oppose a renewed motion by FDIC.

Finding B incorrectly implies that DOJ, not FDIC, would be the party seeking relief. Finding B also indicates that upon satisfaction of certain "requirements" imposed by DOJ, DOJ would support a motion for relief, Report at 4, 9, 10, and 11. In fact DOJ has not yet responded directly to FDIC-plaintiff concerning the current effort to obtain relief from the court's orders.

We understand that DOJ has advised FDIC counsel assisting DOJ in the goodwill litigation that DOJ *may* not oppose FDIC's motion, if 1) FDIC provides a list of the thrifts whose documents FDIC seeks to destroy, and 2) the PCC provides a letter both indicating its non-opposition to the FDIC's motion and agreeing that private plaintiffs in the goodwill litigation will not raise the destruction of such documents to undermine any defenses of the Government.

We have compiled a list of thrifts and have provided it to DOJ and the PCC, with our request that they not object to a new motion for relief from the court's document preservation orders. We do not, however, control PCC and cannot assure that they will satisfy DOJ's apparent requirements. Nor is it certain that DOJ will agree not to oppose FDIC's motion even if DOJ's conditions are met.



FDIC-plaintiff strongly agrees that this matter should be expedited. Thus FDIC-plaintiff recently sent DOJ and PCC a draft of FDIC's renewed motion. Attached as **Appendix 1** is a copy of our August 13, 2004 cover letter, including FDIC's formal request for the various litigation parties' consent to FDIC's renewed motion for relief. We intend to file the motion shortly, with or without the concurrence of DOJ or the PCC. Of course DOJ consent in particular would significantly enhance FDIC efforts to obtain relief from the document preservation orders.

If the court grants relief, the FDIC can commence destroying portions of this large collection of goodwill documents, and begin avoiding a gradually increasing portion of the recurring costs associated with their ongoing storage. We note finally that Finding B appears to assume that relief from the document preservation orders will permit FDIC immediately to destroy all records relating to the subject thrifts. In fact some of the thrift documents for which FDIC seeks relief may not yet be eligible for destruction under FDIC's general document destruction schedules.

If you have any questions regarding the response, our point of contact for this matter is John V. Thomas, Assistant General Counsel. Mr. Thomas can be reached at (202) 898-7417.

cc: Arleas Upton Kea, DOA  
Glen Bjorklund, DOA  
Michael J. Rubino, DOA CSB  
Edward F. Barrese, DOA ASB  
John V. Thomas, Legal  
Stephen M. Hanas, Legal  
Paul K. Sherman, DOA MSB  
James H. Angel, Jr., OERM

SEP-16-2004 15:26

FDIC LEGAL

202 736 0382 P.02

APPENDIX 1

**FDIC**

Federal Deposit Insurance Corporation  
550 Seventeenth Street, N.W.  
Washington, D.C. 20429

Legal Division

August 13, 2004

Counsel for the United States:

David M. Cohen, Director  
Jeanne E. Davidson, Deputy Director  
Jerome Madden, Esq.  
U.S. Department of Justice, Civil Division  
Commercial Litigation Branch (8<sup>th</sup> Floor)  
1100 L Street, N.W.  
Washington D.C. 20530

Counsel for Plaintiffs' Coordinating Committee:

Melvin C. Garbow, Esq.  
Edward H. Sisson, Esq.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington D.C. 20004

Charles J. Cooper, Esq.  
Cooper & Kirk  
1500 K Street, N.W. (Suite 200)  
Washington D.C. 20005

Jerry Stouck, Esq.  
Spriggs & Hollingsworth  
1350 I Street, N.W.  
Washington D.C. 20005

RE: Request for Consent to FDIC's Renewed Motion For Relief As To Document  
Preservation Orders

Dear Counsel:

FDIC requests your consent, or statement of non-opposition, to a proposed motion seeking certain relief as to document preservation orders previously entered by the United States Court of Federal Claims in the *Winstar* proceeding. Enclosed for your review is a draft motion, proposed order and supporting exhibits. As detailed therein, this is a matter involving very significant recurring costs to the FDIC, and FDIC believes the proposed relief can be granted without any burden or prejudice to all parties concerned. Thus, FDIC appreciates your expeditious consideration of the enclosed draft motion.

In brief, FDIC must pay off-site storage charges totaling more than \$200,000 per month to maintain more than a *million boxes* of inactive documents from the hundreds of thrift resolutions during the late 1980s and early 1990s. These documents are being retained because a series of orders issued by Judge Hodges in certain *Winstar*-related cases directed FDIC and the Office of Thrift Supervision, among others, to preserve all thrift and agency documents that may be relevant to the goodwill litigation. Consistent with those document preservation orders, the FDIC suspended its regular document destruction program with respect to *all* thrift records and *all* FSLIC, FHLBB, RTC or FDIC records pertaining to *any* thrift. In effect since 1996, the goodwill records freeze and total suspension of document destruction remains in effect today. As discussed below, and detailed in the enclosed draft motion, FDIC proposes that certain identifiable thrift records be released from the indefinite preservation directives where doing so would not impact any pending litigation.

Many *Winstar* cases have been finally resolved during the past eight years, and with very limited exceptions discovery is now closed in the cases that are still pending. Moreover, the time for filing any new case is past. Thus, from the total 1.7 million box repository of documents subject to the Goodwill Records Freeze, we have been able to identify only some 340,000 document boxes relating to 69 thrift receiverships that might have some possible association or relation to pending goodwill litigation. FDIC will continue its indefinite hold on destroying those records (pending the further order of the Court). However, FDIC wishes to have the Court lift the overall goodwill records freeze as to the remaining FSLIC/RTC thrifts -- 1,522 pass-through and final thrift receiverships identified in Appendix A of the enclosed draft motion. The proposed relief would allow FDIC, during ensuing months and likely years, to apply FDIC's ordinary retention and destruction procedures to finally dispose of the remaining 1.4 million boxes of documents otherwise subject to indefinite preservation, and indefinitely recurring storage costs.

The cost and burden of preserving these documents is considerable and unnecessary. No good cause remains for continuing to require this broad, indefinite and extra-ordinary preservation. Accordingly, as detailed in the enclosed draft motion, FDIC seeks permission to destroy, under its normal record retention and destruction schedules, thrift documents that have no relevance to any pending litigation.

Please contact either Andrew Gilbert (942-3822) or me (898-7417) once you considered this matter and the enclosed form of motion for which FDIC requests your consent, or statement of non-opposition. Unless for some reason you require more time, we intend to file a motion within thirty days.

Yours truly,



John V. Thomas  
Assistant General Counsel

# APPENDIX VII

## MANAGEMENT RESPONSE TO RECOMMENDATIONS

This table presents the management response on the recommendations in our report and the status of the recommendations as of the date of report issuance.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Monetary Benefits	Resolved: <sup>a</sup> Yes or No	Dispositioned: <sup>b</sup> Yes or No	Open or Closed <sup>c</sup>
1	DOA has moved microforms from vaults to general storage space.	August 2004	\$1,016,767 <sup>d</sup>	Yes	No	Open
2	DOA will prepare a policy for future use of climate-controlled storage and will coordinate with the Legal Division and the DRR.	December 31, 2004	N/A	Yes	No	Open
3	The FDIC's General Counsel has provided a list of thrifts to the DOJ and the Plaintiff's Coordinating Committee, with the request that they not object to a new motion for relief from the Court's document preservation orders.  The Assistant General Counsel intends to file the formal motion with the Court within 30 days, with or without concurrence of DOJ or the Plaintiff's Coordinating Committee.	August 13, 2004	Could not be reasonably estimated	Yes	No	Open
4	Obtain approvals from DOF, DRR, and the Legal Division to destroy non-goodwill-related financial institution records.	Not provided by management	N/A	No	No	Open
5	Management did not concur with our recommendation.	N/A	\$1,229,611 to \$1,651,670	No	No	Open
6	DOA will modify Iron Mountain's contract to clarify that the conversion formula in the Statement of Work applies to all services billed on a cubic-foot basis.	December 31, 2004	\$1,810,333	Yes	No	Open

## APPENDIX VII

7	DOA stated that it is unable to obtain a more competitive disposal rate.	N/A	\$1,509,440	No	No	Open
8	DOA does not agree that negotiating a price warranty clause is an effective means to obtain most-favored-customer pricing after the award of the original contract.	N/A	Could not be reasonably estimated	No	No	Open
9	DOA has instituted procedures to sample retrieved records to validate container size for billing purposes.	Ongoing	Could not be reasonably estimated	Yes	No	Open
10	DOA has agreed to perform annual reconciliations for verified and billed cubic-foot displacements	December 2004	N/A	Yes	No	Open

<sup>a</sup> Resolved – (1) Management concurs with the recommendation, and the planned corrective action is consistent with the recommendation.

(2) Management does not concur with the recommendation, but planned alternative action is acceptable to the OIG.

(3) Management agrees to the OIG monetary benefits, or a different amount, or no (\$0) amount. Monetary benefits are considered resolved as long as management provides an amount.

<sup>b</sup> Dispositioned – The agreed-upon corrective action must be implemented, determined to be effective, and the actual amounts of monetary benefits achieved through implementation identified. The OIG is responsible for determining whether the documentation provided by management is adequate to disposition the recommendation.

<sup>c</sup> Once OIG dispositions the recommendation, it can then be closed.

<sup>d</sup> This amount will be reduced to \$602,438 in our *Semiannual Report to the Congress*.