United States General Accounting Office

GAO

Report to the Honorable Kweisi Mfume, House of Representatives

August 1991

RESOLUTION TRUST CORPORATION

Progress Under Way in Minority and Women Outreach Program for Outside Counsel

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GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-245207

August 30, 1991

The Honorable Kweisi Mfume
House of Representatives

Dear Mr. Mfume:

In November 1990, you requested that we review the Resolution Trust Corporation's (RTC) policies and processes for obtaining outside services through contracts and for including minority- and women-owned law firms in these opportunities. This report focuses on RTC's outside counsel contracting program and provides information on (1) RTC's progress in establishing, implementing, and overseeing its minority and women outreach program for outside counsel; (2) program shortcomings that may prevent more referrals to minority- and women-owned firms; and (3) actions taken to increase the participation of minority- and women-owned firms. Appendix I contains our objectives, scope, and methodology. We will report separately on RTC's outreach program for asset management contracts.

Background

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 established RTC to manage and dispose of assets from failed financial institutions under its control. FIRREA also established the RTC Oversight Board and required it to develop a strategic plan for conducting RTC operations by December 31, 1989. Additionally, RTC operates under the direction of the RTC Board of Directors, which consists of the members of the Federal Deposit Insurance Corporation's (FDIC) Board of Directors.

Section 1216(c) of FIRREA required RTC to "prescribe regulations to establish and oversee a minority outreach program . . . to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women . . . in all contracts entered into by the agency . . . ." The Oversight Board's strategic plan directed RTC to develop and present to the Board for approval of a minority and women outreach program consistent with FIRREA requirements by January 31, 1990.

The FDIC Legal Division is responsible for providing legal services to RTC—including hiring all outside counsel. In August 1990, FDIC's General Counsel appointed a Special Counsel for RTC, and in October 1990 the General Counsel established the RTC Legal Branch, which is responsible for, among other things, coordinating legal services and assisting in the development of legislative and regulatory policies for RTC.

Within FDIC's Legal Division, the Office of Outside Legal Services and Minority Affairs (OOLSMA) was established in August 1989 to recruit and register minority- and women-owned firms to serve as outside counsel for FDIC and RTC. At that time OOLSMA operated under the direction of the Deputy General Counsel of the Liquidation Section. OOLSMA was the primary vehicle for establishing an outreach program for outside counsel until February 1991 when RTC designated an attorney to serve as its liaison with OOLSMA. This individual is responsible for assisting OOLSMA with tracking and reporting legal matters referred to minority- and women-owned firms and keeping the RTC Legal Branch informed concerning minority and women outreach policies. In addition, each of RTC's 4 regions and 14 consolidated offices has designated an in-house staff attorney to serve as the minority point person responsible for implementing the outreach program locally.

The RTC Legal Branch hires outside counsel to provide legal services on behalf of RTC and financial institutions in conservatorship or receivership. Any law firm or attorney interested in becoming an RTC-approved counsel must first register as a potential contractor by completing an RTC contractor registration form. Thereafter, when there is a need for outside legal services, firms are asked to provide additional detailed information, such as their billing rates and areas of expertise. This detailed information is then evaluated by staff in the regional and consolidated offices. If RTC is interested in the firm's services, the firm is interviewed by appropriate field staff, who determine whether to recommend the firm to headquarters for addition to the list of counsel utilized (LCU). The LCU is a listing of firms that may be used to provide legal services for RTC and FDIC. The addition of firms to the LCU generally takes 4 months or more. (See app. II for an overview of the registration process.)

At RTC, the selection of outside counsel is done by the in-house staff attorney who will oversee the particular legal matter. Individual firms are selected on the basis of such factors as firm expertise, capacity, and location. Some of the legal services for which outside counsel are hired include

- real estate transactional matters,
- real estate foreclosures,
- bankruptcy matters,

- collection suits,
- directors' and officers' liability, and
- bond claims.

During 1990, RTC paid a total of $45 million to outside counsel for receivership legal services and $94 million for conservatorship legal services. RTC was not able to tell us what percentage of these amounts was paid to minority- and women-owned firms.

RTC estimates that it will expend $221 million for outside legal services during calendar year 1991. As of June 30, 1991, RTC had paid a total of $98 million to outside counsel for receivership legal services and $38 million for conservatorship legal services. Of the total amount paid for receivership legal services, minority-owned firms were paid over $1 million (2 percent) and women-owned firms were paid $553,000 (less than 1 percent). Statistics on conservatorship legal fees paid to minority- and women-owned firms were not available from RTC.

Results in Brief

RTC was slow in establishing a minority and women outreach program for outside counsel. RTC and FDIC officials attributed the slow start to insufficient staffing. However, since April 1991 RTC has taken several actions to move the program forward, including (1) implementing and subsequently expanding a pilot program designed to increase the number of minority- and women-owned firms on the national LCU, (2) conducting several training seminars for outside counsel, and (3) participating in other outreach efforts. On July 30, the RTC Board of Directors approved regulations for including minority- and women-owned firms in all RTC contracting activities. The regulations were presented to the Oversight Board for approval on August 2, and the Oversight Board directed RTC to publish the regulations for comment in the Federal Register. The regulations were published in the Federal Register on August 15, 1991.

In the nine offices we visited, the minority point persons were charged with carrying out the outreach program responsibilities in addition to their legal work. The programs in these offices were at various stages of development. At two of the nine offices we visited in June 1991, the outreach programs were just getting started. In the other seven offices the programs had been under way for periods ranging from 6 to 8 months.

Several program shortcomings need to be corrected in order to enhance RTC's ability to refer more legal matters to minority- and women-owned firms. First, the LCU contains inappropriate firms as well as inaccurate and insufficient information. According to RTC officials, the LCU includes firms that should be removed because they represent clients that are suing RTC or have other conflict-of-interest problems. Officials also stated that vital information such as a firm's areas of expertise is not included on the LCU. Second, differing interpretations of certain factors used to select outside counsel, such as capacity in terms of the number of employees, may limit opportunities for minority- and women-owned firms. Third, RTC's monthly case referral reports do not track all legal matters referred to minority- and women-owned firms from conservatorships and receiverships. Furthermore, the reports do not track the amount of fees paid to these firms from conservatorships. Fourth, headquarters has limited oversight of outreach activities in the regional and consolidated offices.

Beginning in April 1991, RTC and FDIC initiated several actions, including specialized training seminars, joint venture programs, and a pilot project to increase minority- and women-owned firm participation. These actions, if properly implemented, should improve opportunities for these firms to serve as outside counsel for RTC.

Slow Start for the Minority and Women Outreach Program for Outside Counsel

Almost 2 years passed after FIRREA's enactment in August 1989 before RTC began developing regulations for a minority and women outreach program for outside counsel. In July 1991, RTC assigned an in-house staff attorney to develop regulations. The regulations were approved by the Board of Directors on July 30, 1991. According to RTC and FDIC officials, insufficient staff in headquarters delayed the development of these regulations. The regulations were presented to the Oversight Board for approval on August 2. In August 2, 1991, correspondence to the Executive Director of RTC, the Oversight Board said that RTC should publish the regulations in the Federal Register to avoid further delay. The Oversight Board also said that it did not have to approve the regulations, but that it would review them and provide RTC with suggestions if warranted. The regulations were published on August 15, 1991, in the Federal Register. In commenting on a draft of this report, RTC said it was moving forward with an outreach program without the regulations so that outreach needs could be addressed.

From August 1989 until July 1991, OOLSMA consisted of one senior counsel supported by a secretary. OOLSMA was responsible for developing an outreach program for ensuring that minority- and women-owned law firms were given adequate opportunities to provide legal services for RTC and FDIC. Its specific RTC responsibilities included

- participating in and leading RTC seminars,
- training the minority point persons within the RTC regional and consolidated offices,
- providing guidance and training to the RTC minority liaison,
- assisting and advising minority- and women-owned firms in the registration process,
- developing and maintaining a system for tracking the referral of legal matters to minority and women attorneys, and
- developing proposed procedures for operating and expanding the outreach program.

From April to July 1991, RTC and FDIC took actions to move the program forward. During April and May 1991, staff in RTC headquarters and field offices increased efforts to add more minority- and women-owned firms to the LCU. For example, one project entailed reviewing the applications of interested minority- and women-owned firms, interviewing these firms, and recommending them for addition to the LCU. This project resulted in increasing the number of Washington, D.C., minority-owned firms on the LCU from 3 to 16 and the number of women-owned firms from 1 to 7. In addition to the development of the program regulations in July 1991, RTC also assumed responsibility for developing statistical data on the referral of legal matters to minority- and women-owned firms. In July 1991, FDIC hired a management specialist and a legal technician to assist OOLSMA, on a full-time basis, with developing an outreach program for FDIC and RTC. RTC increased staff in headquarters to assist with the coordination and monitoring of outreach activities.

The Role of Minority Point Persons in Regional and Consolidated Offices Is Two-Fold

In each RTC region and consolidated office, an in-house staff attorney, generally a minority or woman, has been designated as the minority point person. RTC officials told us that they believe that these individuals are a vital link to the successful implementation of the regional minority and women outreach program. As such, minority point persons are responsible for (1) participating in national and local conferences and meetings to promote the outreach program; (2) recruiting, referring, and recommending minority and women applicants to management; (3) assisting in the development of regional training programs for outside counsel; (4) reviewing monthly and quarterly reports to assess the results of the program; and (5) meeting with the regional counsel and/or the managing attorney on the progress of the outreach program.

The minority point persons are to carry out these responsibilities in addition to their regular workloads, which typically include providing legal advice and assistance as well as handling litigation. Two of the six minority point persons we interviewed said that their regular work loads prevented them from spending sufficient time in carrying out their outreach program responsibilities and that additional staff or time were needed.

Outreach Program in RTC Regional and Consolidated Offices Is at Various Stages of Development

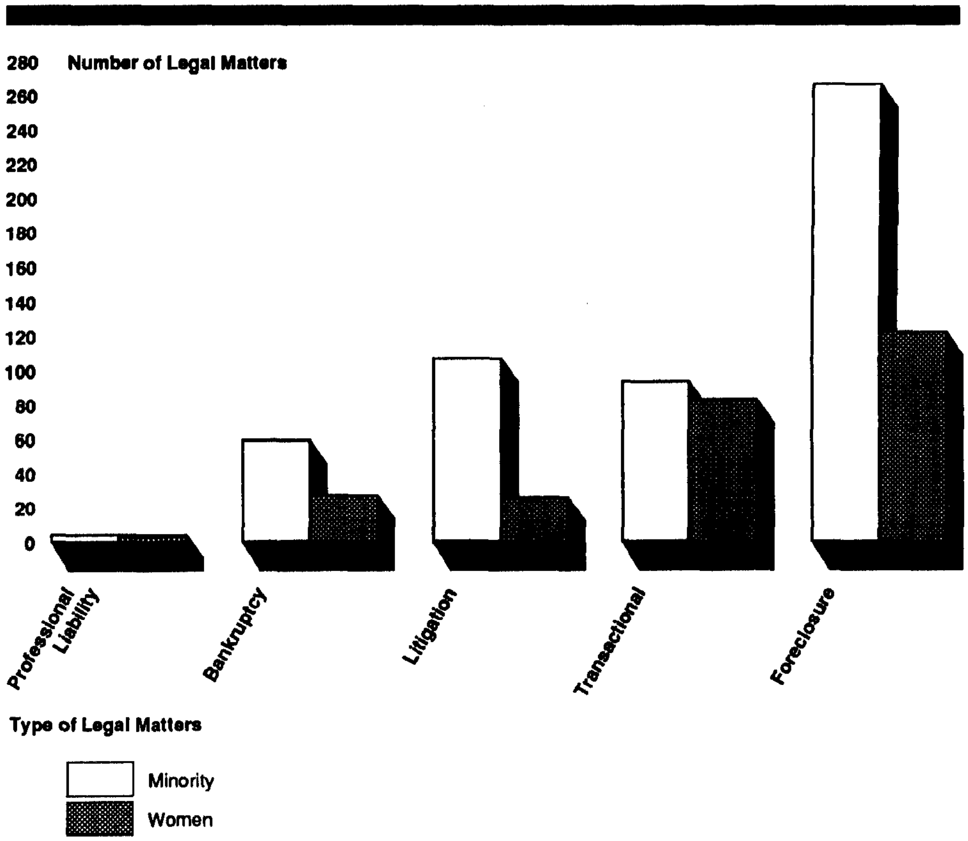
We found the outreach programs at various stages of development in the regional and field offices we visited. Essentially, seven of the nine offices we visited during April and June 1991 had programs that were well established and operating under their own direction. However, the programs at two of the nine offices were still being developed. For example, although national regulations for the outreach program were not developed, the Southwest and Western regional offices had developed policy statements for implementing the outreach program. These policy statements listed goals and objectives of their respective programs. Additionally, the Houston Consolidated Office program was well under way. As part of its outreach program, this office adopted a policy of referring specific legal matters, such as 1-4 residential nonjudicial foreclosures[1] and defensive tax litigation matters, to minority- and women-owned firms exclusively. However, this policy was adopted without surveying these firms to determine the types of legal services that interested them or that they were qualified to provide. While this policy has the effect of referring certain legal work to minority- and women-owned firms, it cannot fully achieve the goal of the outreach provision in FIRREA, which is that these firms be included to the maximum extent possible in all contracting activities for which they are qualified. In the Houston area, the fees paid to minority- and women-owned firms generally range from $300 to $400 per foreclosure and between $250 and $350 per case for tax litigation matters.

Although the Houston Consolidated Office had a local policy of referring 1-4 residential foreclosures to minority- and women-owned firms, we found that other RTC offices, without such a policy, were also referring this particular legal matter to minority- and women-owned firms.

[1] A 1-4 residential nonjudicial foreclosure is a procedure that involves terminating all rights and interests of the property's owner in the property; it is generally done outside the judicial system.

Figure 1 illustrates the distribution of legal matters referred to minorities and women by type during June 1991.[2]

Figure 1: Number and Type of RTC Legal Matters Referred to Minority- and Women-Owned Firms During June 1991



Source: RTC Legal Branch.

In contrast, the Central Regional Office program was just getting started. For example, a minority point person was initially designated in May 1991. This individual did not have a clear understanding of the responsibilities and was waiting for guidance from headquarters via a July 1991 training course. RTC and FDIC planned to provide information on issues such as the minority and women outreach program, the RTC legal information system, and the LCU in this course. Similarly, it was not until May 1991 that the initial minority point person was designated in the Intermountain Consolidated Office. Consequently, these offices had

[2]June was the only month for which distribution data were available.

done little in terms of identifying and registering minority- and women-owned firms.

Program Shortcomings Need to Be Corrected to Enhance Referrals

Program shortcomings related to the LCU, the factors used to select outside counsel, RTC's monthly case referral reports, and headquarters oversight of field outreach efforts need correcting to enhance RTC's ability to refer more as well as a broader range of legal matters to minority- and women-owned firms. In October 1990, an internal study prepared by the FDIC Outside Counsel Policy and Procedures Section also brought several of these shortcomings to FDIC management's attention and recommended corrective actions. Although FDIC acknowledged these shortcomings and made plans to correct them, many remained unresolved as of July 31, 1991.

LCU Inaccurate and Provides Insufficient Information

The national LCU is prepared by FDIC headquarters staff and is circulated to the field on a monthly basis. According to RTC and FDIC, it is used to select firms to provide legal services to RTC and FDIC. As of July 31, 1991, the LCU contained the names of 1,415 firms, of which 166 (12 percent) were minority-owned and 73 (5 percent) were women-owned.

Four of the nine offices we visited were not using the national LCU. Officials from these offices said that it contained firms that were inappropriate to do work for RTC and inaccurate and limited information. Inappropriate firms on the LCU included (1) firms that represent clients who are suing RTC, (2) firms that have other conflict-of-interest problems, and (3) firms with poor performance records. Also, data on the firms' areas of expertise or billing rates are not included. Furthermore, officials told us that when errors are detected and corrected they are not communicated to the field until the next month's LCU. This lag in communicating corrections increases the risk of referring legal matters to firms that may no longer be eligible to provide legal service to RTC.

The national LCU also provides limited information about each firm, such as its name, address, telephone number, contact person, and status (i.e., majority, minority-owned, or women-owned). Although this information is useful, it is not enough to allow in-house attorneys to make informed referral decisions. Therefore, rather than use the national LCU, the Southwest Region created a listing with additional firm profile information, such as each firm's areas of expertise and billing rates. The other five offices we visited were working with headquarters to correct the problems with the national LCU but were also continuing to use it.

The FDIC Outside Counsel Policy and Procedures Section's internal study also concluded that the national LCU is inaccurate and provides limited information to assist in firm selection, which makes it difficult to select outside counsel. In its written response to a draft of this report, RTC acknowledged the problems with the LCU but expressed the belief that the problems would be resolved once RTC's legal information system was operational. Additionally, RTC said a survey was sent to all firms listed on the LCU in May 1991. The purpose of the survey was to obtain information on such items as a firm's employee composition and fees paid by RTC to minority- and women-owned firms as well as, in majority-owned firms, the proportion of RTC fees paid as salaries to minority and women attorneys and paralegals working on RTC matters. According to RTC, this information was subsequently provided to RTC in-house attorneys to assist them in the selection of outside counsel but has not been included on the LCU.

Selection Factors May Limit Opportunities for Minority- And Women-Owned Firms

The selection of outside counsel is the responsibility of the in-house staff attorney handling a particular legal matter. When selecting outside counsel, in-house attorneys are asked but not required to consider such factors as areas of expertise, capacity (i.e., in terms of number of employees), current work load, proven past performance with FDIC, office location, minority and women ownership status, and whether conflicts of interest exist. Some of this information, such as the firm's location or minority and women ownership status, is available from the LCU. However, other data, such as the firm's areas of expertise, capacity, and proven past performance are available primarily from the firm's application package, which may not be readily available. Five of the seven minority- and women-owned firms we interviewed said they believed that differing interpretations of the selection factors, such as capacity, by in-house attorneys has limited their opportunity to serve as outside counsel for RTC. On the other hand, one minority firm attributed its prior work experience with FDIC as a major reason why it had been retained to provide legal services to RTC.

In its October 1990 internal study, the FDIC Outside Counsel Policy and Procedures Section described the factors used to select outside counsel as subjective and recommended that policies and procedures for the selection of outside counsel be reexamined. The study also pointed out that the use of these factors resulted in the referral of most legal matters to a group of counsel that FDIC and RTC have had a positive experience with in the past. This practice has been acknowledged by FDIC and

RTC, and procedures are being developed that should minimize this practice. For example, FDIC plans to revise its procedural memorandum for selecting and retaining outside counsel.

Reports for Tracking All Referrals to Minority- and Women-Owned Firms Are Inadequate

While the monthly case referral report contains information on the number of legal matters referred to minority- and women-owned firms for receivership legal matters, it does not include other information, such as firms retained for conservatorship legal matters and the amount of fees paid to minority- and women-owned firms for conservatorship and receivership work. Even though this information is not being tracked now, RTC officials believe that tracking and reporting these data are important and should be a part of the minority and women outreach program.

In April 1990, OOLSMA instructed field staff to provide headquarters with monthly case referral reports. These reports were intended to enable headquarters officials to monitor the use of minority- and women-owned firms and to inform others, such as Congress, about the program's progress.

These monthly case referral reports include such information as total matters referred, total matters received, total referrals to minority- and women-owned firms, and percentage of referrals to minority- and women-owned firms. Information on conservatorship legal work, amount of fees paid, and type of referral (such as bankruptcy and professional liability) is not included. The reports also do not distinguish between minority-owned firms and women-owned firms on matters referred.

Until June 1991, the lack of comprehensive monthly case referral reports for conservatorship and receivership legal matters has prevented RTC from providing complete information to Congress and others on the progress of the program and has hampered RTC's ability to focus efforts on areas where improvements are needed. RTC was not able to justify why comprehensive reports for tracking legal matters referred to minority- and women-owned firms had not been developed.

At the conclusion of our review, RTC was expanding the monthly case referral reports to include more categories of information, such as conservatorship matters referred to minority- and women-owned firms. Additionally, RTC has developed an automated legal information system, which is scheduled to be fully operational in November 1991. However, implementation of this system has been delayed several times because of start-up problems. This system, when it becomes operational, is intended to replace the existing case management system and is designed to monitor the use of outside counsel, including minority- and women-owned firms. It is designed to provide an expanded range of information, including data on the use of legal matter budgets, case management plans, and monthly invoices. Another system under development by RTC in conjunction with FDIC is a legal information payment system that is designed to capture extensive data on ownership of law firms, employee composition of law firms, and joint ventures. We did not do a detailed review of the legal information system or legal information payment system capabilities, but we believe that developing these systems is a positive step. RTC officials believe that both systems will address their needs.

Limited Headquarters Oversight of Field Outreach Activities

To date, RTC and FDIC headquarters officials have relied primarily on the monthly case referral reports for information on the outreach activities in the regional and consolidated offices to ensure that the objectives of the program are being achieved. However, these reports do not contain sufficient information on the outreach activities in these offices. As a result, headquarters officials do not receive information on the extent to which the regions and consolidated offices have staffed and are prepared to implement the outreach program. To some extent this is evidenced by the various developmental stages of the outreach programs in the regional and consolidated offices, as previously discussed. For example, although headquarters officials reviewed the monthly case referral reports, they were not aware that minimum outreach activities were occurring in the Central Regional Office and the Intermountain Consolidated Office.

In June 1991, RTC began requiring the field staff to provide narrative reports of their outreach activities on a monthly basis. In commenting on a draft of this report, RTC officials said they believe that these monthly reports will enhance their ability to monitor the outreach activities in the field. Additionally, these officials said increased numbers of headquarters staff will put them in a better position to oversee the outreach program in the regional and consolidated offices.

RTC and FDIC Have Taken Initiatives to Increase Participation of Minority- And Women-Owned Firms

RTC and FDIC have embarked upon several efforts to increase minority and women participation in RTC's legal contracts referred to minority-owned firms, women-owned firms, and majority-owned firms. In May 1990, a joint venture program was adopted. The program's goal is to provide minority- and women-owned firms with the opportunity to work on matters that have been traditionally referred to majority firms. Under the joint venture arrangement, a minority- or women-owned firm with some experience will work with another minority- or women-owned firm or a majority-owned firm that is more experienced in the particular legal matter being referred. As of June 30, 1991, a total of 16 joint ventures had been arranged by RTC field offices.

More recently, in April 1991, RTC and FDIC implemented a pilot project to increase the number of minority- and women-owned firms located in Washington, D.C., on the national LCU. The project primarily entailed updating existing profiles of Washington, D.C., firms, reviewing applications, interviewing firms, and recommending firms for addition to the LCU. As part of this project, RTC also surveyed firms on the LCU to determine the distribution of matters referred to minority- and women-owned firms as well as the distribution of RTC matters assigned to women and minorities within majority-owned firms. According to RTC and FDIC, this effort resulted in an increase of 16 minority-owned firms and 7 women-owned firms to the LCU compared with the 3 minority-owned firms and 1 woman-owned firm that were previously on the list. In May 1991, RTC expanded this project to its regional and consolidated offices.

Additionally, in June 1991, RTC and FDIC sponsored several specialized legal training seminars in Los Angeles and Philadelphia for all outside counsel. They also participated in a seminar series, "How To Work With RTC - Contracting for Services," most recently in Chicago on August 8 and in Atlanta on July 25, 1991. Furthermore, RTC participated in a number of outreach efforts to disseminate information regarding the minority and women outreach program as well as to identify and recruit minority- and women-owned firms. RTC also plans to participate in the last of the series of five seminars on "How to Work With RTC" scheduled for September 4, 1991, in Los Angeles.

Conscientious efforts are also being made in the field offices. In April 1991, RTC's Southwest Regional Office developed a how-to handbook that explains the basics of litigating cases with FDIC and RTC, completing real estate transactions, and other legal matters relevant to RTC. The Western Region and its consolidated offices have changed some procedures to expedite the processing of applications from minority- and women-owned firms. Officials in these offices state that the process now takes about 3 months compared to the 4 months or more in other offices.

Conclusions

FIRREA requires RTC to prescribe regulations to establish and oversee an outreach program for including minority-and women-owned firms to the maximum extent possible in all RTC contracting activities. FDIC and RTC officials attributed insufficient headquarters staff for the slow start they experienced in moving the outreach program for outside counsel forward. However, since July 1991, RTC has developed regulations for the establishment of a minority and women outreach program, and these regulations were published in the Federal Register on August 15, 1991. Resources to assist with the development of the program were provided through additional hiring. RTC and FDIC have also adopted a joint venture program that may increase the areas of expertise for minority- and women-owned firms.

However, a number of program shortcomings need to be corrected in order for RTC to enhance its ability to achieve the objectives of the program. The LCU, the factors used to select outside counsel, and the monthly case referral reports need improvement. Additionally, headquarters oversight of field outreach activities needs enhancement. Furthermore, adequate staffing levels in headquarters and the field offices need to be maintained. RTC and FDIC have acknowledged these program shortcomings, and said that some action plans exist. But until RTC and FDIC take the necessary actions to correct these shortcomings, the program remains vulnerable to the perception that it is not accomplishing its objectives.

Recommendations

To improve the minority and women outreach program for outside counsel, we recommend that RTC and FDIC

- assess the adequacy of staffing levels assigned both in headquarters and the field offices,
- enhance the usefulness of the LCU by including such information as the firms' areas of expertise and rates,
- develop and consistently implement procedures for selecting outside counsel to ensure that minority- and women-owned firms are considered for providing legal services for which they are qualified, and
- enhance oversight of the outreach activities at the regional and consolidated offices to ensure they are in agreement with the objectives of the outreach program.

Agency Comments

We obtained written comments on a draft of this report from RTC. Its comments are presented in appendix III. RTC said that the draft was a fair assessment of the progress of the outreach program, made valid observations, and contained some excellent, constructive suggestions concerning ways to improve the program. However, RTC did not believe that the draft report gave sufficient emphasis to the progress made and the changes that were implemented to address the challenges before them. We have acknowledged and incorporated RTC's comments in appropriate sections of the report.

RTC cited a number of actions that, when fully implemented, should improve the minority and women outreach program for outside counsel. RTC stated that a new outside counsel registration process that should reduce or eliminate subjectivity in the selection and retention of outside counsel is being developed. While RTC acknowledged that the LCU is problematic, it believes that the LCU will be enhanced once it is incorporated into the legal information system and the system becomes operational in November 1991. RTC also stated that staff have been reassigned to coordinate with OOLSMA. Finally, RTC noted that additional human and technical resources have been devoted to the program and that this should improve oversight of field outreach activities.

RTC also pointed out several activities under way that also demonstrate commitment to the outreach program. These activities, which occurred after our review or were outside the scope of our assignment, included

- developing a national minority counsel symposium designed to, among other things, expedite the qualification of minority counsel on the LCU, explain the mechanics of joint venture and co-counseling, and educate minority counsel about specific RTC and FDIC legal issues and
- ensuring that minority and women attorneys are employed internally; RTC said that as of June 30, 1991, out of a total of 511 staff attorneys, 13 percent were minorities and 33 percent were women while at the management level 11 percent were minorities and 23 percent were women.

RTC also suggested a number of technical clarifications that we made to the report where appropriate.

We are sending copies of this report to the Chairman and Executive Director of RTC, the President of the RTC Oversight Board, and the General Counsel of FDIC. We will also provide copies to other parties upon request.

This report was prepared under the direction of Gaston L. Gianni, Associate Director, Federal Management Issues. Other major contributors are listed in appendix IV. If you have any questions about this report, please call me on (202) 275-8387.

Sincerely yours,

J. William Gadsby
Director, Federal
Management Issues

Contents

Abbreviations

FDIC	Federal Deposit Insurance Corporation
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act
LCU	list of counsel utilized
OOLSMA	Office of Outside Legal Services and Minority Affairs
RTC	Resolution Trust Corporation

Objectives, Scope, and Methodology

In November 1990, Congressman Kweisi Mfume requested that we review RTC's policies and processes for contracting for outside services with businesses owned by minorities and women. Specifically, the objectives of this report were to review (1) whether RTC has established an outreach program and has developed regulations for including minority- and women-owned law firms as providers of legal services, (2) RTC's structure for administering and overseeing the outreach program, and (3) RTC's progress in referring legal matters to minority- and women-owned law firms.

To meet the first objective, we interviewed RTC and FDIC headquarters officials who were responsible for establishing an outreach program. We reviewed FDIC and RTC policy statements and memoranda for including minority- and women-owned law firms as providers of legal services. We also interviewed five minority-owned and two women-owned law firms that provided or attempted to provide legal services to RTC to obtain their opinions on RTC's outreach activities.

To accomplish our second objective, we visited 3 of RTC's 4 regional offices (Southwestern, Western, and Central) and 6 of its 14 consolidated field offices (Dallas, San Antonio, and Houston, TX; Kansas City, MO; Denver; and Costa Mesa, CA). These regions and offices were selected on the basis of the amount of legal matters that were referred to minority- and women-owned firms. At these offices, we interviewed the regional general counsels and minority point persons about their offices' outreach programs.

To meet our third objective, we reviewed the LCU and reports prepared by RTC and FDIC on registered firms, matters referred, and the amount of fees paid to outside counsel. These case referral reports are generally prepared on a monthly basis by RTC regional and consolidated offices. We did not independently verify the information we received from the RTC and FDIC reports.

Our work was done between November 1990 and July 1991 in accordance with generally accepted government auditing standards.

Overview of the Outside Counsel Registration Process

Step 1:	All law firms interested in providing legal services to RTC must first send a letter of inquiry to the FDIC Outside Counsel Unit in Washington, D.C. Upon receipt of the letter, RTC sends the firm an RTC contractor registration application, which must be completed and returned.
Step 2:	Following receipt of the completed registration form, the outside counsel is registered on RTC's nationwide contractor database. When there is a need for outside legal services, the outside counsel is asked to submit additional detailed information regarding such areas as billing rates, locations, conflicts of interest, capacity, expertise, resources, and equal employment opportunity characteristics.
Step 3:	This detailed information is then sent for review to the regional office covering the geographic location of the firm. At this time, the material is evaluated and numerical rankings of the firms' strengths and weaknesses are assigned. On the basis of this evaluation, the outside counsel is advised either that (1) RTC does not foresee using its services now but will retain the information and keep the firm on the registration list or (2) RTC may be interested in using the firm's services and will arrange for an interview.
Step 4:	An interview is arranged with the appropriate officials in the regional or consolidated offices. Firms are interviewed about proposed fees, relevant expertise, and other matters.
Step 5:	After the interview, the staff in the office that interviewed the firm will determine whether the firm should be recommended for addition to the LCU. If a positive recommendation is forwarded to Washington, D.C., the firm is added to the LCU.
Step 6:	Should RTC wish to retain the firm's services, the firm will be asked to execute a legal service agreement verifying the rate structure and confirming that no material changes have occurred.

Comments From the Resolution Trust Corporation

Resolution Trust Corporation

August 22, 1991

Mr. Richard L. Fogel
Assistant Comptroller General
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

This is in response to your letter of Agust 14, 1991, addressed to Mr. Alfred J.T. Byrne, General Counsel, Federal Deposit Insurance Corporation and Resolution Trust Corporation (RTC), enclosing a draft report to Representative Kweisi Mfume. We have reviewed the draft report on the RTC's minority and women outreach program and agree that it makes several valid observations and suggestions. However, in our opinion, the report does not emphasize enough the considerable progress which we have made and the changes which we have implemented in order to address the challenges before us. RTC Legal embarked upon an aggressive outreach program, even before the involvement of the GAO, which should be addressed and acknowledged.

Now on pp. 13-14.

A detailed pilot outreach program has been in place in the Washington, D.C. area since March 1991. As noted in the GAO report, the pilot program in the Washington, D.C. area has resulted in an increase in the number of minority-owned firms on the LCU from 7 to 23 (27 as of July 1991) and the number of women-owned firms from 1 to 7. Equally impressive is the fact that the numbers of legal matters referred to minority-owned and women-owned firms has increased from 0 to 96 between April and June of 1991.

Now on pp. 13-14.

Because of the success in Washington, the pilot program was extended to the field in May 1991. The objectives of Phase I of the program are to: (1) update firm profiles for each LCU minority-owned and women-owned firm; (2) conduct a firm-by-firm survey to determine the distribution of matters referred by RTC Legal to such firms; and (3) encourage the hiring of such firms. Phase II of the program is to increase the number of these firms on the LCU and to aggressively expand outreach efforts in all aspects.

Now on p. 12.

Standardized reporting procedures and formats for the regions and field have been developed for uniform implementation of the program. Please refer to the attached Monthly Report of New Legal Referrals as an example of one of these standardized reports. Narrative summaries of outreach activities in the field are now also required. It is clear from these summaries that extensive efforts are being made in the field. Please see the attached memorandum dated 7/2/91 for a compilation of these monthly narratives.

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Moreover, RTC Legal is actively participating in and sponsoring numerous training programs for minority-owned and women-owned firms as well as for internal personnel. RTC Legal is participating in a seminar series, "How to Work With the RTC - Contracting for Services," which will have been presented five times in 1991 in various locations around the country. These seminars address general RTC policies and procedures, and specifically, how minority-owned and women-owned firms can be retained.

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The RTC Legal is also seeking to provide qualified minority-owned and women-owned firms experienced in complex areas with an opportunity to handle more of such matters and is seeking to educate other minority-owned and women-owned firms that have no formal training in complex litigation and real estate matters so that they will gain sufficient experience in those areas. To obtain these objectives, RTC Legal is actively increasing its direct referrals, joint venture/co-counsel referrals, and other types of business engagements.

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In a constant effort to implement a variety of outreach programs, RTC Legal is currently developing a national minority counsel symposium designed to: (1) demonstrate RTC's commitment to advancement of opportunities for minority counsel; (2) expedite the qualification of minority counsel on the LCU; (3) expedite the assignment of work to minority counsel; (4) explain the mechanics of joint ventures and co-counseling; (5) educate minority counsel about specific RTC/FDIC legal issues; and (6) improve public perception of the program.

In addition, specialized legal training for all fee counsel, including minority and women firms, was given in Atlanta in 1990 and Philadelphia in June, 1991. A special presentation on outreach was given in Los Angeles in June, 1991 and in Chicago in July, 1991. Also, the OOLSMA delegate and RTC Liaison have attended or will be attending numerous bar association meetings in 1991, including minority bar meetings in Los Angeles, Indianapolis, San Antonio, Minneapolis, and Seattle.

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As mentioned in the GAO report, minority point persons ("MPPs") have been designated to serve as liaisons with Washington for all matters involving minority and women legal services contracts. Their efforts cannot be understated. MPPs take a proactive approach in the program by providing information, participating in training, contacting bar associations, developing strategies, and interviewing.

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It is certainly clear from the above that RTC's commitment to the outreach program is strong and will continue.

With respect to the specifics of the report itself, four program shortcomings were pinpointed (reporting, outside counsel retention, LCU, and oversight). RTC Legal has already made significant progress in each of these areas. Each area will be addressed in turn.

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Reporting. RTC Legal has made strides in data gathering and reporting, particularly since March 1991, despite the delayed implementation of a computerized data collection system. Of considerable importance has been our survey distributed to all law firms. This survey has been distributed quarterly since winter 1990 to track employee composition and billings as a statistical sampling. The results of these surveys (attached) indicate not only clear progression and improvement in our outreach efforts, but also indicate RTC Legal's commitment to the program in terms of manual effort and time.

For example, the latest survey results indicate that minorities are billing 7.48 percent of RTC dollars and women are billing 26.45 percent of RTC dollars. This compares very favorably to ABA and Bureau of Labor statistics which indicate that minority attorneys account for 6.81 percent of the legal population and women attorneys account for 20 percent.

Moreover, a massive data gathering effort related to all aspects of RTC Legal's work has been ongoing in the Regions and Administration section of RTC Legal since May. With respect to the use of outside counsel, results of this effort (attached) also show a clear progression in the numbers of minority and women firms which are available and used by RTC Legal. In June, 1990, there were 192 minority firms available for use and 30 such firms reporting fee payments. There were 45 women firms available and 4 reporting payments. By May of 1991, however, available minority firms had risen to 404 with 101 reporting payments, and available women firms had risen to 141 with 37 reporting payments.

Internally, it should not be overlooked that as of 6/30/91 RTC Legal employed 13 percent minority attorneys and 33 percent women attorneys out of a total of 511 attorneys. At the management level, 11 percent are minorities and 23 percent are women. We believe this also shows our strong commitment to the outreach effort.

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As an additional matter, discussion in the report directed to RLIS implementation should take into consideration the magnitude of this project. Its nationwide scale is unprecedented in government as well as in the private sector. Scheduled implementation of RLIS this year will be an incredible achievement given the fact that the only somewhat comparable system (at Cigna Insurance) took three years. Currently under development for RLIS, and in coordination with the FDIC, are forms which will be part of the fee bill payment system and designed to capture extensive data on ownership of law firms, employee composition of law firms, joint ventures, and other pertinent data.

We firmly believe, however, that even without RLIS, we have made substantial progress in capturing data and implementing the program by a massive manual effort. We try to be timely and responsive to all requests for information. If, as noted in the GAO report, we have been unable to provide certain data, it is only because the time frame for response was too short for the amount of data requested.

Outside Counsel. An entirely new outside counsel registration process is currently under development. One of the main objectives of the process is to reduce or eliminate subjectivity in selection and retention. Also, in the report there appears to be some misperceptions about the difficulties inherent in the retention process. For example, no allowance is made for the fact that huge numbers of our cases are being handled by inherited firms whose employee composition is beyond our control and that those cases generally must remain with the inherited firms for economic reasons.

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LCU. While we acknowledge that the LCU is presently problematic, it is nonetheless a valuable tool. It will be incorporated into RLIS but greatly enhanced with many increased capabilities and data availability to address our specialized needs.

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Oversight. Headquarters oversight of the program has increased dramatically since March 1991 and is continuing. It was primarily through the efforts of the Regions and Administration section that an extensive RTC outreach program was conceptualized and implemented in Washington and the field. Presently in Regions and Administration six employees, three essentially full-time, meet several times a week to coordinate activities for the program. With this increased coordination and increased staffing, oversight should not be an obstacle to the success of the program.

Finally, with respect to the promulgation of regulations, it should be borne in mind that there was a great deal of concern and discussion by the RTC Board and the Oversight Board regarding a number of important legal issues surrounding the outreach program. After considerable effort and discussion, it was decided that a regulation would be promulgated withouth the questionable parts to it. This was done. The Oversight Board also asked RTC Legal to obtain an opinion from the Justice Department on such issues, which we are awaiting. We felt we had to press on in our efforts even without the Justice Department opinion. Most importantly, it should be noted that in its commitment to the program, RTC Legal

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was clearly and effectively moving forward with an outreach program even without the regulations so that outreach needs could be addressed.

Our comments regarding the specific recommendations of the report are as follows:

(1) With respect to staffing, we have reassigned, as previously noted, a number of RTC personnel in headquarters who are coordinating with OOLSMA. OOLSMA itself is in the process of greatly expanding its staff.

(2) With respect to the usefulness of the LCU, we are anticipating that RLIS will address our needs in this area since it will include such information as rates and areas of specialization.

(3) With respect to the selection of outside counsel, as previously noted, we are currently in the process of developing a new selection and retention process that will enhance the ability of minorities and women to obtain legal work from the RTC.

(4) With respect to oversight, as previously noted, we are devoting more human and technical resources to the program. In addition, the Legal Division recognizes the need for more staffing and is examining possible reallocation of resources.

Overall, we agree that the GAO report sets forth valid observations and contains some excellent, constructive suggestions concerning ways to improve upon the program. There are important challenges facing us in the continuation of the outreach program and we welcome efforts to help us meet those challenges.

Sincerely yours,

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