

4 *Legal Referral*

4.1 Legal Referral

When the Legal Division retains you to provide services for a particular case or matter it will make a legal referral to you. A legal referral generally is for one matter but may encompass one or more “legal matters.” For example, a legal referral may encompass litigation of a particular case, assistance with a subsequent appeal and a related bankruptcy case. As stated in [Chapter 3](#), FDIC’s execution of an LSA with your firm does not constitute a legal referral and is not a guarantee that you will receive legal referrals from the FDIC.

The Legal Division reserves the right to terminate a legal referral or legal matter for any reason, including unsatisfactory performance. Refer to [Chapter 1, Section 1.12](#). In addition you may not subcontract any legal work referred to you without prior written authorization of your Oversight Attorney.

NOTE: *The Legal Division’s work continues to decline as a result of healthier banking and thrift industries in recent years and as a result of completion of legal work related to the thrift industry crisis. Therefore, referrals to Outside Counsel have also declined.*

4.2 Referral Letter

The referral letter identifies the specific services requested and the terms and conditions of the legal referral. The referral letter incorporates several documents, including your LSA, the Deskbook and the case/matter budget(s) which are required to be submitted by the Outside Counsel and approved by the Legal Division. The incorporated documents as well as the referral letter may be amended or modified. Refer to [Appendix E](#).

At the time the legal referral is made, you must confirm that no material changes have occurred that affect the representations and conflicts certifications contained in the application package submitted to the Legal Division.

4.3 Byrd Amendment -- Legal Referrals Over \$100,000

If the amount of the approved case/matter budget(s) exceeds \$100,000, you must comply with provisions of the Byrd Amendment. The Byrd Amendment requirements and applicable forms are found in [Appendix F](#).

4.4 Legal Division Participation

When making a legal referral, the Legal Division reserves the right to participate in or to assume complete responsibility for any matter referred to you. This may include providing you with prior briefs and research, or staffing a matter jointly with you.

4.5 Selection of Outside Counsel

For the Legal Division's policy on selecting Outside Counsel and other related policies refer to [Appendix G](#).

The Legal Division attempts to select Outside Counsel on a competitive basis whenever possible. When retaining Outside Counsel to perform legal services, the Legal Division considers several factors, including:

- The experience of Outside Counsel in the type of legal work required to be performed.
- The geographic location of Outside Counsel.
- Whether the firm is minority- or women-owned or will assign potential work on FDIC matters to minority or women attorneys. Refer to [Appendix G \(2-4\)](#).
- The capacity of Outside Counsel to handle the anticipated volume of work.

- Whether the fees or rates proposed by Outside Counsel are competitive in comparison to other firms' rates. Whether the proposed rates reflect discounts. *Refer to [Appendix G \(5\)](#).*
 - Whether FDIC payments to the firm exceed or are approaching the limits the FDIC has established for eligibility to receive new referrals. *Refer to [Appendix G \(6\)](#).*
 - Whether provision of legal services by Outside Counsel would constitute or give rise to an actual or potential conflict of interest or the appearance of a conflict of interest. *Refer to [Chapter 2](#).*
 - Whether the firm has a reputation for competence, integrity, cost effectiveness and cooperativeness.
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