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RFP Number: FHF-20-R-0001

Offeror's Name: Houlihan Lokey Capital, Inc.

Subcontractor Name(s), If Applicable: Not Applicable

Offeror's Tax Identification Number (TIN): 95-4024056

Offeror's Dun & Bradstreet Number (DUNS): 178296117

Contact Name: James Page

Contact Email Address: (b)(6)@HL.com

Contact Telephone Number: (b)(6) (Direct); (b)(6) (Mobile)

Complete Business Mailing Address: 245 Park Avenue, 20th Floor, New York, NY 10167

The Offeror takes no exception and completely accepts all the terms and conditions in the RFP and subsequent amendments.



HOULIHAN LOKEY

Houlihan Lokey appreciates the opportunity to present our Corporate Experience to the Federal Housing Finance Agency (FHFA).

Houlihan Lokey

Established in 1972, Houlihan Lokey⁽¹⁾ is a leading global independent investment bank with expertise in mergers and acquisitions (M&A), capital markets, financial restructurings and valuation services. Headquartered in Los Angeles, CA with offices worldwide including New York, NY and McLean, VA, we serve a diverse set of clients including corporations, institutional investors and government agencies.

Houlihan Lokey's commitment to client success combines deep industry and product expertise with intellectual rigor and independent advice. We believe our Corporate Experience for this assignment exhibits our expert knowledge of and demonstrated success in the areas of financial restructuring and capital raising for large, complex financial institutions and can be summarized in three equally important components:

- I. Financial Restructuring Expertise – #1 Global Financial Restructuring Advisor Ranked by Thomson Reuters
- II. Mortgage Industry Expertise – #1 Strategic Advisor to the U.S. Mortgage Industry 2009 – 2018-2019 Ranked by SNL Financial
- III. Government Experience – Successful Advisor to the U.S. Government on Precedent Transactions

Financial Restructuring Expertise

Houlihan Lokey has the largest worldwide financial restructuring practice of any investment banking firm having advised on more than 1,000 transactions since 1988 with aggregate debt claims in excess of \$2.5 trillion. This experience includes advising major parties-in-interest in 12 of the 15 largest corporate bankruptcies in U.S. history, of which six were financial institutions.

Our size, experience and interdisciplinary approach allows us to provide the immediate attention and staffing required for time-sensitive and mission-critical restructuring assignments including the most complex, highly leveraged situations.

Representative restructuring assignments related to financial institutions, including those requiring capital raises, include Lehman Brothers, Washington Mutual, CIT Group, Thornburg Mortgage, Walter Investment Management, Prospect Mortgage, Residential Capital, Ambac Financial Group, MBIA, Capmark Financial, Refco, Consec and Springleaf Financial (f.k.a. American General).

Mortgage Industry Expertise

Houlihan Lokey's Financial Institutions Group is the most active financial advisor on strategic transactions in the U.S. mortgage industry. Since 2009, Houlihan Lokey has completed 39 M&A

and strategic advisory transactions in the U.S. mortgage sector, more than double the amount of transactions of the next closest advisor⁽²⁾.

Our advisory practice has deep expertise across (i) industry subsectors (residential mortgage, reverse mortgage and commercial / multi-family mortgage), (ii) business models (originators, servicers, mortgage insurers and capital providers (mortgage REITs)) and (iii) advisory services (corporate M&A, capital raising, board or special committee advisory, asset sales, spin-outs, valuation and financial restructuring). Our valuation expertise includes sophisticated modeling at the loan level for QM, non-QM, performing and non-performing whole loans, structured products (agency and non-agency MBS, credit risk transfer securities), R&W claims and MSRs.

Representative advisory assignments include transactions related to Ditech, Greystone, Mr. Cooper, Lancaster Pollard, Apollo Commercial Mortgage, Roosevelt Management, Bayview Financial, New Residential, MetLife and loanDepot.

Government Experience

Houlihan Lokey has extensive experience advising the U.S. Government and its agencies on precedent assignments, including the U.S. Treasury, U.S. Department of Energy and the Federal Deposit Insurance Corporation (FDIC). We believe these large, complex and often multi-year assignments demonstrate (i) our successful track record advising the U.S. Government and (ii) our ability to implement and maintain programs to meet the U.S. Government's compliance and conflicts mitigation requirements.

Our Corporate Experience includes advising the U.S. Treasury from 2011 to 2016 on the management and disposition of corporate bank CPP investments under TARP, and in accordance with the Emergency Economic Stabilization Act of 2008; advising the FDIC on an ad hoc basis as an approved contractor from 2010 to the present on multiple valuation and asset sale transactions related to depository restructuring transactions; and the experience of key personnel⁽³⁾ having advised the U.S. Treasury in connection with the 2008 conservatorship of Fannie Mae and Freddie Mac.

Houlihan Lokey has also served as an advisor to the U.S. Department of Energy related to the restructuring of loans or guarantees made to corporations and as an ongoing advisor related to the debt issues in the Commonwealth of Puerto Rico.

Conclusion

In closing, we believe Houlihan Lokey is uniquely qualified to act as Contractor to the FHFA given our extensive strategic and financial restructuring experience involving mortgage finance, and other large complex financial institutions, and our precedent assignments with the U.S. Government. This is a marquee assignment for our firm, and we believe our Corporate Experience demonstrates the qualifications necessary to successfully meet FHFA's objectives. Thank you again for the opportunity to present our qualifications on this critical and important mandate of housing finance reform.

- (1) *Houlihan Lokey, Inc. is the parent company for Houlihan Lokey Capital, Inc. ("Houlihan Lokey" or "we" or "us" or "our"), a wholly owned subsidiary registered as a broker-dealer with the SEC under which advisory services are conducted.*
- (2) *Source: SNL Financial. Based on the cumulative number of whole company and asset transactions announced during the period excluding in-house advisors.*
- (3) *Transaction executed by Houlihan Lokey professionals while at a prior firm.*

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FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____)	
In the Matter of)	
)	
BRIGHTON BANK)	CONSENT ORDER
BRIGHTON, TENNESSEE)	FDIC-10-515b
)	
(Insured State Nonmember Bank))	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Brighton Bank, Brighton, Tennessee (“Bank”), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting board of directors (“Board”), has executed a “STIPULATION TO THE ISSUANCE OF A CONSENT ORDER” (“STIPULATION”), dated February 15, 2011, that is accepted by the FDIC. With the STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices and violations of law or regulation, to the issuance of this CONSENT ORDER (“ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) have been satisfied, the FDIC hereby orders that:

COMPLIANCE COMMITTEE

1. Within 30 days after the effective date of this ORDER, the Bank’s Board shall establish a subcommittee of the board of directors charged with the responsibility of ensuring

that the Bank complies with the provisions of this ORDER. The subcommittee must include outside directors. The subcommittee shall report monthly to the entire Bank's Board, and a copy of the report and any discussion related to the report or the ORDER shall be included in the meeting minutes of the Bank's Board. Nothing contained herein shall diminish the responsibility of the entire Bank's Board to ensure compliance with the provisions of this ORDER.

**ALLOWANCE FOR LOAN AND LEASE LOSSES
AND AMENDED CALL REPORTS**

2. (a) Within 30 days after the effective date of this ORDER, the Bank shall maintain adequate and appropriate provisions to its Allowance for Loan and Lease Losses ("ALLL"). The allowance should be funded by charges to current operating income, and should be calculated in accordance with generally accepted accounting standards and ALLL supervisory guidance. The Bank shall thereafter maintain a reasonable ALLL. Prior to the end of each calendar quarter, the Bank's Board shall review the adequacy of the Bank's ALLL. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and non-accrual loans and prevailing and prospective economic conditions. The minutes of the Bank's Board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the ALLL.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review Consolidated Reports of Condition and Income filed with the FDIC on or after March 31, 2010, and amend said reports if necessary to accurately reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain a reasonable

ALLL. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

RESTRICTION ON ADVANCES TO CLASSIFIED BORROWERS

3. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose existing credit has been classified Loss by the FDIC or the Tennessee Department of Financial Institutions (“State”) as the result of its examination of the Bank, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard by the FDIC or the State as the result of its examination of the Bank, either in whole or in part, and is uncollected, unless the Bank’s Board has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the applicable meeting minutes of the Bank’s Board.

BUDGET AND PROFIT PLAN

4. (a) Within 60 days after the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director of the FDIC Dallas Regional Office (“Regional Director”) or the Commissioner of the Tennessee Department of Financial Institutions (“Commissioner”) for review and comment a written profit plan and a realistic, comprehensive budget for all categories of income and expense for calendar years 2011 and 2012. The plan required by this paragraph shall contain formal goals and strategies, be consistent with sound banking practices, reduce discretionary expenses, improve the Bank’s overall earnings and net interest income, and shall contain a description of the operating assumptions that form the basis for major projected income and expense components.

(b) The written profit plan shall address, at a minimum:

- (1) An analysis of the Bank’s pricing structure; and
- (2) A recommendation for reducing the Bank’s cost of funds.

(c) Within 30 days after the end of each calendar quarter following completion of the profit plan and budget required by this paragraph, the Bank’s Board shall evaluate the Bank’s actual performance in relation to the written profit plan and budget, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the Board meeting when such evaluation is undertaken.

(d) A written profit plan and budget shall be prepared for each calendar year for which this ORDER is in effect and shall be submitted to the Regional Director and the Commissioner for review and comment within 30 days after the end of each year. Within 30 days after receipt of all such comments from the Regional Director and the Commissioner and after adoption of any recommended changes, the Bank shall approve the written profit plan and

budget, which approval shall be recorded in the minutes of a Board meeting. Thereafter, the Bank shall implement and follow the plan.

CAPITAL INCREASE AND MAINTENANCE

5. (a) On or before June 30, 2011, and while this ORDER is in effect, the Bank, after establishing an ALLL, shall maintain its Tier 1 Leverage Capital Ratio equal to or greater than 8 percent of the Bank's Average Total Assets. On or before December 31, 2011, after establishing an ALLL, the Bank shall maintain its Tier 1 Leverage Capital Ratio equal to or greater than 8.5 percent of the Bank's Average Total Assets; shall maintain its Tier 1 Risk-Based Capital Ratio equal to or greater than 10 percent of the Bank's Total Risk Weighted Assets; and shall maintain its Total Risk-Based Capital Ratio equal to or greater than 12 percent of the Bank's Total Risk Weighted Assets. Any increase in the Bank's Tier 1 Capital necessary to meet the capital ratios required by this ORDER may be accomplished by:

- (1) The sale of securities in the form of common stock; or
- (2) The direct contribution of cash subsequent to May 10, 2010, by the directors and shareholders of the Bank by the Bank's holding company; or
- (3) Receipt of an income tax refund or the capitalization subsequent to May 10, 2010, of a bona fide tax refund certified as being accurate by a certified public accounting firm; or
- (4) Any other method approved by the Regional Director and the Commissioner.

(b) If any such capital ratios are less than the percentages required by this ORDER, as determined as of the date of any Report of Condition and Income or at an examination by the FDIC or the State, the Bank shall, within 60 days after receipt of a written notice of the capital deficiency from the Regional Director and the Commissioner, present to the Regional Director and the Commissioner a plan to increase the Bank's Tier 1 Capital or to take other measures to bring all the capital ratios to the percentages required by this ORDER. The Capital Plan must include a contingency plan ("Contingency Plan") in the event that the Bank (i) fails to maintain the minimum capital ratios required by the ORDER, (ii) fails to submit an acceptable Capital Plan or (iii) fails to implement or adhere to a Capital Plan to which no written objection was provided by the Regional Director and the Commissioner. The Contingency Plan shall include, among the steps to be taken by the Bank, the option to pursue a sale or merger of the Bank if all other contingency measures have been ineffective. The Bank shall be required to implement the Contingency Plan only upon written notice from the Regional Director and the Commissioner. After the Regional Director and the Commissioner respond to the plan, the Bank's Board shall adopt the plan, including any modifications or amendments requested by the Regional Director and the Commissioner.

(c) Thereafter, the Bank shall immediately initiate measures detailed in the plan, to the extent such measures have not previously been initiated, to increase the Bank's Tier 1 Capital by an amount sufficient to bring all the capital ratios to the percentages required by this ORDER within 30 days after the Regional Director and the Commissioner respond to the plan.

(d) If all or part of the increase in Tier 1 Capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's Board shall adopt and implement a

plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 Capital is to be provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director and the Commissioner for prior approval.

(e) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(f) In addition, the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, App. A.

(g) For purposes of this ORDER, all terms relating to capital shall be calculated according to the methodology set forth in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

CLASSIFIED ASSETS - CHARGE-OFF AND PLAN FOR REDUCTION

6. (a) Within 30 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss by the FDIC or the State as a result of its examination of the Bank as of May 10, 2010. Elimination or reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner to reduce the remaining assets classified Doubtful and Substandard as of May 10, 2010. The plan shall address each asset so classified with a balance of \$200,000 or greater and provide the following:

- (1) The name under which the asset is carried on the books of the Bank;
- (2) Type of asset;
- (3) Actions to be taken in order to reduce the classified asset; and
- (4) Time frames for accomplishing the proposed actions.

The plan shall also include, at a minimum:

- (1) Review the financial position of each such borrower, including the source of repayment, repayment ability, and alternate repayment sources; and
- (2) Evaluate the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

In addition, the Bank's plan shall contain a schedule detailing the projected reduction of total classified assets on a quarterly basis. Further, the plan shall contain a provision requiring the submission of monthly progress reports to the Bank's Board and a provision mandating a review by the Bank's Board.

(c) The Bank shall present the plan to the Regional Director and the Commissioner for review. Within 30 days after the Regional Director's and the Commissioner's response, the plan, including any requested modifications or amendments shall be adopted by the Bank's Board, which approval shall be recorded in the meeting minutes of the Bank's Board. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of adversely classified assets as of May 10, 2010, shall be detailed using quarterly targets expressed as a percentage of the Bank's Tier 1 Capital plus the Bank's ALLL and may be accomplished by:

- (1) Charge-off;
- (2) Collection;

(3) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC or the State; or

(4) Increase in the Bank's Tier 1 Capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any future examination conducted by the FDIC or the State.

(f) Within 60 days after the effective date of this ORDER, the Bank shall correct all deficiencies in the loans classified as Special Mention in the Report of Examination as of May 10, 2010.

DIVIDEND RESTRICTION

7. As of the effective date of this ORDER, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the Commissioner.

INTERNAL AUDIT CONTROL PROGRAM

8. Within 30 days after the effective date of this ORDER, the Bank's Board shall implement an effective program for internal audit and control. The audit program shall provide procedures to test the validity and reliability of operating systems, procedural controls, and resulting records, and shall comply with the Interagency Policy Statement on the Internal Audit Function and its Outsourcing. The internal auditor shall report quarterly to the Bank's Board. The report and any comments made by the directors regarding the internal auditor's report shall be noted in the meeting minutes of the Bank's Board.

LIQUIDITY/ASSET/LIABILITY MANAGEMENT

9. (a) Within 90 days after the effective date of this ORDER, the Bank shall develop and submit to the Regional Director and the Commissioner for review and comment a written plan addressing liquidity and funds management. Annually thereafter, while this ORDER is in effect, the Bank shall review this plan for adequacy and, based upon such review, shall make necessary revisions to the plan to strengthen funds management procedures and to maintain adequate provisions to meet the Bank's liquidity needs. The initial plan shall include, at a minimum, provisions:

- (1) Establishment of periodic stress testing of the Funding Sources Budget over 3, 6, 12 and 24 month time horizons under various liquidity scenarios, with tests to include, at a minimum, the funding of off balance sheet funding commitments, loss of public funds, runoff of uninsured deposits, loss of borrowing lines, and loss of ability to purchase or renew brokered deposits;
- (2) Establishment of meaningful parameters relating to the use of wholesale funding sources including brokered deposits, borrowings from the Federal Home Loan Bank, and Internet deposits;
- (3) Establishment of a reasonable range for its net non-core funding ratio as computed in the Uniform Bank Performance Report;
- (4) Establishment of lines of credit at correspondent banks, including the Federal Reserve Bank of St. Louis, that would allow the Bank

to borrow funds to meet depositor demands if the Bank's other provisions for liquidity proved to be inadequate;

- (5) Requiring the retention of securities and/or other identified categories of investments that can be liquidated within one day in amounts sufficient (as a percentage of the Bank's total assets) to ensure the maintenance of the Bank's liquidity posture at a level consistent with short-term and long-term liquidity objectives;
- (6) Establishment of a minimum liquidity ratio and defining how the ratio is to be calculated; and
- (7) Establishment of contingency plans by identifying alternative courses of action designed to meet the Bank's liquidity needs.

(b) Within 30 days after the receipt of all such comments from the Regional Director and the Commissioner, and after revising the plan as necessary, the Bank shall adopt the plan, which adoption shall be recorded in the minutes of a Board meeting. Thereafter, the Bank shall implement the plan.

LOAN COMMITTEE AND LOAN REVIEW REQUIREMENTS

10. (a) Within 30 days after the effective date of this ORDER, the Bank's Board shall establish a loan review committee to conduct a quarterly review the Bank's loan portfolio and identify and categorize problem credits. The committee shall file a report with the Bank's Board at each Board meeting. This report shall include the following information:

- (1) The overall quality of the loan portfolio;

- (2) The identification, by type and amount, of each problem or delinquent loan;
- (3) The identification of all loans not in conformance with the Bank's lending policy; and
- (4) The identification of all loans to officers, directors, principal shareholders or their related interests.

(b) At least 50 percent of the members of the loan review committee shall be directors not employed in any capacity by the Bank other than as a director.

STRATEGIC PLAN

11. (a) Within 90 days after the effective date of this ORDER, the Bank shall prepare and adopt a comprehensive strategic plan. The strategic plan required by this paragraph shall contain an assessment of the Bank's current financial condition and market area, and a description of the operating assumptions that form the basis for major projected income and expense components.

- (b) The written strategic plan shall address, at a minimum:
- (1) Strategies for pricing policies and asset/liability management;
 - (2) Plans for sustaining adequate liquidity, including back-up lines of credit to meet any unanticipated deposit withdrawals;
 - (3) Goals for reducing problem loans;
 - (4) Plans for attracting and retaining qualified individuals to fill vacancies in the lending and accounting functions;

- (5) Financial goals, including pro forma statements for asset growth, capital adequacy, and earnings;
- (6) Formulation of a mission statement and the development of a strategy to carry out that mission.

(c) The Bank shall submit the strategic plan to the Regional Director and the Commissioner for review and comment. After consideration all such comments, the Bank shall approve the plan, which approval shall be recorded in the meeting minutes of the Bank's Board. Thereafter, the Bank shall implement and follow the strategic plan.

(d) Within 30 days after the end of each calendar quarter following the effective date of this ORDER, the Bank's Board shall evaluate the Bank's performance in relation to the strategic plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the meeting minutes of the Bank's Board at which such evaluation is undertaken.

(e) The strategic plan required by this ORDER shall be revised and submitted to the Regional Director and the Commissioner for review and comment 30 days after the end of each calendar year for which this ORDER is in effect. Within 30 days after receipt of all such comments from the Regional Director and the Commissioner and after consideration of all such comments, the Bank shall approve the revised plan, which approval shall be recorded in the meeting minutes of the Bank's Board. Thereafter, the Bank shall implement the revised plan.

CORRECTION OF VIOLATIONS

12. (a) Within 30 days after the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation noted in the Report of Examination.

(b) Within 30 days after the effective date of this ORDER, the Bank shall implement procedures to ensure future compliance with all applicable laws and regulations.

(c) Within 30 days after the effective date of this ORDER, the Bank shall address any contraventions of policy noted in the Report of Examination.

OTHER REAL ESTATE

13. Within 60 days after the effective date of this ORDER, the Board shall conduct a review of the Other Real Estate portfolio including loans in process of foreclosure. The review should address current marketing efforts; ensure Other Real Estate parcels have received updated appraisals; ensure carrying balances are updated to reflect fair market value less associated holding, maintenance and disposal costs; and include an analysis of carrying versus disposal cost. A copy of this analysis shall be sent to the Commissioner and Regional Director for review with the next progress report required by this ORDER.

SHAREHOLDER NOTIFICATION

14. After the effective date of this ORDER, the Bank shall send a copy of this ORDER, or otherwise furnish a description of this ORDER, to its shareholders (1) in conjunction with the Bank's next shareholder communication, and also (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review at least 20 days prior to dissemination

to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

PROGRESS REPORTS

15. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by the ORDER have been accomplished and the Regional Director has released the Bank in writing from making additional reports.

The provisions of this ORDER shall not bar, stop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the FDIC and the State.

Issued pursuant to delegated authority this 23rd day of February 2011.

/s/

Kristie K. Elmquist
Acting Regional Director
Dallas Region
Division of Supervision and Consumer Protection
Federal Deposit Insurance Corporation

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UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

Written Agreement by and between

CIT GROUP INC.
New York, New York

Docket No. 09-114-WA/RB-IIC

and

FEDERAL RESERVE BANK OF
NEW YORK
New York, New York

WHEREAS, CIT Group Inc., New York, New York ("Bancorp"), a registered bank holding company, owns and controls CIT Bank, Salt Lake City, Utah (the "Bank"), a state chartered nonmember bank, and various nonbank subsidiaries;

WHEREAS, it is the common goal of Bancorp and the Federal Reserve Bank of New York (the "Reserve Bank") to maintain the financial soundness of Bancorp so that Bancorp may serve as a source of strength to the Bank;

WHEREAS, Bancorp and the Reserve Bank have mutually agreed to enter into this Written Agreement (the "Agreement"); and

WHEREAS, on August 12, 2009, Bancorp's board of directors, at a duly constituted meeting, adopted a resolution authorizing and directing the Chief Executive Officer to consent to this Agreement on behalf of Bancorp, and consenting to compliance with each and every applicable provision of this Agreement by Bancorp and its institution-affiliated parties, as

defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. §§ 1813(u) and 1818(b)(3)).

NOW, THEREFORE, Bancorp and the Reserve Bank agree as follows:

Corporate Governance

1. Within 75 days of this Agreement, Bancorp shall provide the Reserve Bank with a written plan (the “Corporate Governance Plan”) outlining the specific actions Bancorp will take, including timeframes, to strengthen Bancorp’s management and corporate governance consistent with the responsibility of Bancorp’s board of directors to effectively and adequately oversee Bancorp’s senior management and business affairs. The Corporate Governance Plan shall, at a minimum, address, consider and include:

(a) The adequacy of staffing levels, including an assessment of whether the audit, risk management and control functions of Bancorp are adequately staffed and provided with adequate resources;

(b) measures to enhance Bancorp’s board of directors’ oversight of risk management processes in order that risk appetite decisions and the setting of risk tolerance levels, including, but not limited to, credit and liquidity risk exposures of the business lines and on a consolidated basis, are made and documented with an identification and consideration of, new and emerging risks, adverse trends, and the additional risk management controls needed to manage such risks and trends;

(c) measures to enhance the identification and reporting to Bancorp’s board of directors and senior management of deviations from established risk limits and risk management objectives; and

(d) steps so that compensation and other incentives provided to senior

management and other employees are risk sensitive and aligned with the long-term prudential interests of Bancorp.

Credit Risk Management

2. Within 60 days of this Agreement, Bancorp shall submit to the Reserve Bank an acceptable credit risk management plan to address and correct weaknesses identified by the Reserve Bank in Bancorp's risk rating process and to improve the accuracy of assigned credit risk ratings (the "Credit Risk Management Plan"). The Credit Risk Management Plan shall describe the specific actions that Bancorp proposes to take, and the timeframes for these actions. The Credit Risk Management Plan shall, at a minimum, address, consider and include:

- (a) Measures to enhance the internal credit risk rating system so that it is (i) commensurate with the complexity of lending activities; (ii) adequately integrated into the institution's overall analysis of capital adequacy; and (iii) supported by sufficient quantitative analysis;
- (b) strategies to minimize credit losses and reduce levels of problem assets;
- (c) measures to enhance the accuracy and consistency of loan risk ratings assigned by loan officers;
- (d) measures to require that all documentation necessary to adequately assess the current status and quality of each loan is maintained in the loan files; and
- (e) measures to address weaknesses identified by the Reserve Bank in problem loan accounting practices, including, but not limited to: loan reporting, troubled debt restructuring identification process, use of specific loan loss reserves, and nonaccrual and charge-off practices.

Allowance for Loan and Lease Losses

3. (a) Within 60 days of this Agreement, Bancorp shall review and revise, as appropriate, its consolidated allowance for loan and lease losses (“ALLL”) methodology to assure that it is consistent with relevant supervisory guidance, including the Interagency Policy Statements on the Allowance for Loan and Lease Losses, dated July 2, 2001 (SR 01-17 (Sup)) and December 13, 2006 (SR 06-17). Bancorp shall submit a description of the methodology to the Reserve Bank upon adoption.

(b) Within 60 days of this Agreement, Bancorp shall submit to the Reserve Bank an acceptable written program to be implemented for determining, documenting, and recording an adequate consolidated ALLL. The program shall include policies and procedures to ensure adherence to the consolidated ALLL methodology and provide for periodic reviews and updates to the consolidated ALLL methodology, as appropriate. The program shall also provide for a review of the consolidated ALLL by the board of directors on at least a quarterly calendar basis. Any deficiency found in the consolidated ALLL shall be remedied in the quarter it is discovered, prior to the filing of any required regulatory reports, by additional provisions. The board of directors, acting through the Audit Committee, shall maintain written documentation of its review, including the factors considered and conclusions reached by the Bancorp or any nonbank subsidiary in determining the adequacy of the consolidated ALLL. During the term of this Agreement, Bancorp shall submit to the Reserve Bank, within 30 days after the end of each calendar quarter, a written report regarding the board of directors’ quarterly review of the consolidated ALLL and a description of any changes to the methodology used in determining the amount of consolidated ALLL for that quarter.

(c) Bancorp shall, by the end of the quarter following the receipt of any

federal report of inspection, or more frequently if warranted, charge off all assets classified or identified as “loss” unless otherwise approved in writing by the Reserve Bank.

Capital Plan

4. Within 15 days of this Agreement, Bancorp shall submit to the Reserve Bank an acceptable written plan (the “Capital Plan”) to maintain sufficient capital at Bancorp, on a consolidated basis, and at the Bank, as a separate legal entity on a stand-alone basis. The Capital Plan shall describe the specific actions that Bancorp proposes to take, and the timeframes for these actions. The Capital Plan shall, at a minimum, address, consider, and include:

(a) The consolidated organization’s and the Bank’s current and future capital requirements, including Bancorp’s compliance with the Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure and Tier 1 Leverage Measure, Appendices A and D of Regulation Y of the Board of Governors of the Federal Reserve System (the “Board of Governors”) (12 C.F.R. Part 225, App. A and D) and the applicable capital adequacy guidelines for the Bank issued by the Bank’s federal regulator;

(b) the adequacy of Bancorp’s and the Bank’s capital, taking into account the volume of classified credits, concentrations of credit, ALLL, current and projected asset growth, and projected net income and retained earnings;

(c) enhancements to Bancorp’s stress testing and scenario analysis practices;

(d) the source and timing of additional funds necessary to fulfill the consolidated organization’s and the Bank’s future capital requirements, as well as the impact that the actions to generate such funds will have on projected net income and retained earnings;

(e) supervisory requests for additional capital at the Bank and the requirements of any supervisory action imposed on the Bank by its federal regulator; and

(f) the requirements of section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)) that Bancorp serve as a source of strength to the Bank.

5. Bancorp shall notify the Reserve Bank in writing, no more than 30 days after the end of any quarter in which any of Bancorp's or the Bank's capital ratios (total risk based, Tier 1 risk-based, or leverage) fall below the Capital Plan's minimum ratios. Together with the notification, Bancorp shall submit an acceptable written plan that details the steps that Bancorp and/or the Bank will take to increase Bancorp's and/or the Bank's capital ratios to or above the plan's minimums.

Liquidity and Funds Management

6. Within 15 days of this Agreement, Bancorp shall submit to the Reserve Bank an acceptable written plan designed to improve management of the consolidated entity's liquidity position and funds management practices (the "Liquidity Plan"). The Liquidity Plan shall describe the specific actions that Bancorp proposes to take and the timeframes for these actions. The Liquidity Plan shall, at a minimum, address, consider, and include:

(a) Measures to enhance the monitoring and measurement of the consolidated entity's liquidity positions, including cash flow projections to address future needs;

(b) measures to enhance the consolidated entity's ability to meet short-term funding needs, including the maintenance of an adequate liquidity cushion;

(c) a longer-term funding plan that includes strategies that do not rely on U.S. government funding programs or regulatory or supervisory waivers or exemptions;

- (d) a contingency funding plan that includes adverse scenario planning and periodic reporting;
- (e) specific liquidity targets and parameters, and the maintenance of sufficient liquidity to meet contractual obligations and unanticipated demands;
- (f) procedures to ensure discipline in adhering to liquidity targets and parameters;
- (g) systems to ensure that the consolidated organization's liquidity risk management process addresses off-balance sheet exposures and funding alternatives in a contingency liquidity plan; and
- (h) measures to ensure periodic written reports to Bancorp's board of directors and senior management on the consolidated entity's current and projected liquidity positions, including, but not limited to: (i) a complete review of the consolidated entity's liquidity position that includes the potential impact of demand upon liquidity arising from all contingent exposures; (ii) an analysis of strategies or steps taken or to be taken to address variances from targets and parameters; and (iii) a discussion of contingency plans if actual sources or uses of funds vary materially from projections.

Business Plan

7. Within 75 days of this Agreement, Bancorp shall submit to the Reserve Bank a business plan to improve Bancorp's overall financial condition (the "Business Plan"). The Business Plan shall, at a minimum, provide for or describe:

- (a) a comprehensive budget for the remainder of calendar year 2009 and the calendar year 2010, including income statement and balance sheet projections;

(b) the operating assumptions that form the basis for, and adequately support, major projected income, expense and balance sheet components; and

(c) a detailed description of any proposed restructuring (including any sales of lines of business) of Bancorp's activities.

Dividends and Distributions

8. (a) Bancorp shall not declare or pay any dividends without the prior written approval of the Reserve Bank and the Director of the Division of Banking Supervision and Regulation (the "Director") of the Board of Governors.

(b) Bancorp shall not directly or indirectly take dividends or any other form of payment representing a reduction in capital from the Bank without the prior written approval of the Reserve Bank.

(c) Bancorp and its nonbank subsidiaries shall not make any distributions of interest, principal or other sums on subordinated debentures or trust preferred securities without the prior written approval of the Reserve Bank and the Director.

(d) All requests for prior written approval shall be received at least 30 days prior to the proposed dividend declaration date, proposed distribution on subordinated debentures, and required notice of deferral on trust preferred securities. All requests shall contain, at a minimum, current and projected information, as appropriate, on Bancorp's capital, earnings, and cash flow; the Bank's capital, asset quality, earnings, and ALLL needs; and identification of the sources of funds for the proposed payment or distribution. For requests to declare or pay dividends, Bancorp must also demonstrate that the required declaration or payment of dividends is consistent with the Board of Governors' Policy Statement on the

Payment of Cash Dividends by State Member Banks and Bank Holding Companies, dated November 14, 1985 (Federal Reserve Regulatory Service, 4-877 at page 4-323).

Debt and Stock Redemption

9. (a) Bancorp, and any nonbank subsidiary, shall not, directly or indirectly, incur, increase, or guarantee any debt outside the ordinary course of business without the prior written approval of the Reserve Bank. All requests for prior written approval shall contain, but not be limited to, a statement regarding the purpose of the debt, the terms of the debt, and the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

(b) Bancorp shall not, directly or indirectly, purchase or redeem any shares of its stock without the prior written approval of the Reserve Bank.

Compliance with Laws and Regulations

10. (a) In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, Bancorp shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of Governors (12 C.F.R. §§ 225.71 *et seq.*).

(b) Bancorp shall comply with the restrictions on indemnification and severance payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and Part 359 of the Federal Deposit Insurance Corporation's regulations (12 C.F.R. Part 359).

Compliance with the Agreement

11. Within 10 days of this Agreement, Bancorp's board of directors shall appoint a committee (the "Compliance Committee") to monitor and coordinate Bancorp's compliance with

the provisions of this Agreement. The Compliance Committee shall include a majority of outside directors who are not executive officers or principal shareholders of Bancorp or the Bank, as defined in sections 215.2(e)(1) and 215.2(m)(1) of Regulation O of the Board of Governors (12 C.F.R. §§ 215.2(e)(1) and 215.2(m)(1)). The Compliance Committee shall meet at least monthly, keep detailed minutes of each meeting, and report its findings to Bancorp's board of directors.

Approval and Implementation of Plans and Program

12. (a) Bancorp shall submit written plans and a program that are acceptable to the Reserve Bank as follows: (i) within 15 days of this Agreement, plans addressing paragraphs 4 and 6; and (ii) within 60 days, a plan and program addressing paragraphs 2 and 3. Within 75 days of this Agreement, Bancorp shall submit written plans addressing paragraphs 1 and 7.

(b) Within 10 days of approval by the Reserve Bank (or submission with respect to paragraphs 1 and 7), Bancorp shall adopt the plans and program referred to in paragraph 12(a). Upon adoption, Bancorp shall promptly implement the plans and program, and thereafter fully comply with them.

(c) During the term of this Agreement, the plans and program shall not be amended or rescinded without the prior written approval of the Reserve Bank.

Progress Reports

13. (a) Within 30 days after the end of each calendar quarter following the date of this Agreement, Bancorp shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with this Agreement and the results thereof.

(b) On an ongoing basis, Bancorp shall promptly provide the Reserve Bank with the following reports as they become available: (i) minutes of the meetings of Bancorp's board of directors; (ii) minutes of the meetings of the audit and risk management committees of Bancorp's board of directors; (iii) minutes of the monthly meetings of the asset liability committee; (iv) minutes of the quarterly meetings of the capital committee; (v) daily cash position reports; (vi) weekly parent-only cash flow forecasts; (vii) weekly consolidated cash flow forecasts; (viii) daily liquidity update reports showing client funding requests and loan/credit collections by business segment, business unit, and by facility type, ongoing initiatives on new funding and asset sales, and derivative terminations; (ix) monthly reports of debt maturities; (x) enterprise risk management reports; (xi) rating agency action releases; (xii) reports of all contacts and discussions with rating agencies; (xiii) secured borrowing facilities reports; (xiv) monthly reports of margin sensitivity analysis; (xv) monthly reports of business segment income; (xvi) standardized board and board level committee liquidity risk management reporting packages; and (xvii) monthly derivative valuation reports.

Communications

14. All communications regarding this Agreement shall be sent to:

- (a) Lance Auer
Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

- (b) Robert Ingato
Executive V.P., General Counsel and Secretary
CIT Group Inc.
One CIT Drive
Livingston, NJ 07041

Miscellaneous

15. Notwithstanding any provision of this Agreement, the Reserve Bank may, in its sole discretion, grant written extensions of time to Bancorp to comply with any provision of this Agreement.

16. The provisions of this Agreement shall be binding upon Bancorp and its institution-affiliated parties, in their capacities as such, and their successors and assigns.

17. Each provision of this Agreement shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

18. The provisions of this Agreement shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any other action affecting Bancorp, the Bank, any nonbank subsidiary of Bancorp, or any of their current or former institution-affiliated parties and their successors and assigns.

19. Pursuant to Section 50 of the FDI Act (12 U.S.C. § 1831aa), this Agreement is enforceable by the Board of Governors under section 8 of the FDI Act (12 U.S.C. § 1818).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the 12th day of August, 2009.

CIT GROUP INC.

FEDERAL RESERVE BANK
OF NEW YORK

By: /s/ Jeffrey M. Peek
Jeffrey M. Peek
Chairman and Chief Executive Officer

By: /s/ William L. Rutledge
William L. Rutledge
Executive Vice President

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UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

In the Matter of:)
Flagstar Bank, FSB)
Troy, Michigan)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”), through his authorized representatives, has supervisory authority over Flagstar Bank, FSB, Troy, Michigan (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated October 23, 2012, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

Pursuant to the authority vested in it by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I

COMPLIANCE COMMITTEE

(1) Within thirty (30) days of the date of this Order, the Board shall re-designate its Regulatory Oversight Committee as its Compliance Committee, which Committee shall consist of at least three (3) outside directors, of which no more than two (2) shall be an employee or controlling shareholder of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee and, in the event of a change of the membership, the

name of any new member shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order.

(2) The Compliance Committee shall meet at least monthly.

(3) Beginning with the quarter ending December 31, 2012, the Compliance Committee shall submit a quarterly written progress report to the Board within sixty (60) days of the quarter end setting forth in detail:

- (a) a description of the action needed to achieve full compliance with each Article of this Order;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller within ten (10) days of receiving such report.

ARTICLE II

CAPITAL PLAN

(1) Within one hundred twenty (120) days of the date of this Order, and at least annually thereafter, the Board shall review and revise the Bank's written capital plan dated August 28, 2012 ("Capital Plan") to cover at least the next three (3) years. The capital planning process shall be consistent with OCC Bulletin 2012-16, dated June 7, 2012 (*Guidance for Evaluating Capital Planning and Adequacy*), and shall ensure the integrity, objectivity, and consistency of the process through adequate governance. The Board shall submit all updated Capital Plans to the Assistant Deputy Comptroller for written determination of no supervisory

objection. After the Bank receives a written determination of no supervisory objection, the Board shall adopt, implement, and thereafter ensure Bank adherence to the updated Capital Plan.

(2) The Capital Plan shall establish projections for the Bank's overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability and funding structure, and capital and liquidity adequacy that the Bank intends to achieve, and at a minimum, address or include:

- (a) the maintenance of adequate capital, which shall in no event be less than the capital levels that are set forth in the Board's Capital Plan, or an updated Capital Plan that has received a written determination of no supervisory objection from the Assistant Deputy Comptroller;
- (b) specific actions to monitor, control and reduce, where appropriate, significant areas of risk, including asset, liability, and revenue concentrations;
- (c) a requirement that the Bank obtain a prior written determination of no supervisory objection from the Assistant Deputy Comptroller before offering or introducing new products or services, or entering new market segments;
- (d) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (e) a contingency capital funding plan in accordance with paragraph (3) of this Article that forecasts capital needs and capital sources under various potential capital stress scenarios, including:
 - (i) a description of each potential capital stress scenario;

- (ii) the projected effect of each potential capital stress scenario on the Bank's capital adequacy and ability to maintain adequate capital as prescribed in the Board's approved Capital Plan; and
- (iii) action plans on how management will address each potential capital stress scenario.

(3) The Capital Plan shall establish a contingency capital funding process and plan that identifies alternative capital sources should the primary source(s) not be available. At a minimum, the contingency capital funding process and plan shall address or identify:

- (a) the amount needed to maintain capital adequacy;
- (b) timing of needed capital;
- (c) contingent sources and form of capital ranked by preference; and
- (d) financial analysis of the parent company's ability and willingness to inject needed capital.

(4) The Bank may pay a dividend or make a capital distribution only when the following conditions are met:

- (a) the Bank is in compliance with its approved Capital Plan and will remain in compliance with the Capital Plan immediately after making the dividend or capital distribution; and
- (b) following OCC approval in accordance with 12 C.F.R. Part 163, Subpart E.

ARTICLE III

ALLOWANCE FOR LOAN AND LEASE LOSSES AND REPRESENTATION AND WARRANTY RESERVE

(1) Within ninety (90) days of the date of this Order, the Board shall adopt written policies and procedures for maintaining adequate Allowance for Loan and Lease Losses (“ALLL”) in accordance with U.S. generally accepted accounting principles (“GAAP”). The ALLL policies and procedures shall be consistent with the guidance set forth in OCC Bulletin 2006-47, dated December 13, 2006 (*Guidance and Frequently Asked Questions on the ALLL*) (“Interagency Statement”) and shall at a minimum include:

- (a) procedures for determining whether a loan is impaired and measuring the amount of impairment, consistent with GAAP (including FASB ASC 310-10, *Receivables – Overall – Subsequent Measurement – Impairment*);
- (b) procedures for segmenting the loan portfolio and estimating loss or groups of loans that are consistent with GAAP (including FASB ASC 450-20, *Loss Contingencies*). These procedures shall require the Bank to document and fully support its estimation of credit losses and its analysis of the nine qualitative factors set forth in the Interagency Statement;
- (c) procedures for validating the ALLL methodology; and
- (d) a process for summarizing and documenting, for the Board’s prior review and approval, the amount to be reported in the Consolidated Reports of Condition and Income (“Call Reports”) for the ALLL.

(2) The policies and procedures shall provide for a review of the ALLL by the Board at least once each calendar quarter. Any deficiency in the ALLL shall be remedied in the quarter

it is discovered, prior to the filing of the Call Report, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL.

(3) Within ninety (90) days of the date of this Order, the Board shall adopt written policies and procedures for maintaining adequate representation and warranty reserves in accordance with GAAP. The policies and procedures shall be consistent with FASB Interpretation Number 45 and shall at a minimum include:

- (a) a methodology for calculating representation and warranty reserves based on expected charges from indemnification payments and loan repurchases;
- (b) processes to address loan repurchases in the pipeline, expected demand for repurchases, and the impact of loan performance on repurchase activity; and
- (c) procedures for validating the methodology.

(4) Upon adoption, the Board shall submit a copy of both the ALLL and representation and warranty reserve policies and procedures required by this Article, or any subsequent amendments or changes to those policies and procedures, to the Assistant Deputy Comptroller for determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and thereafter ensure Bank adherence to the programs.

ARTICLE IV

LIQUIDITY

(1) Within sixty (60) days of the date of this Order, the Board shall adopt a comprehensive written liquidity risk management policy that systematically requires the Bank to reduce liquidity risk and is consistent with OCC Bulletin 2010-13, dated March 22, 2010 (*Interagency Policy Statement on Funding and Liquidity Risk Management*). The Bank's policy shall address, at a minimum, the following requirements:

- (a) a statement of the Board's overall funds management strategy;
- (b) consideration of the liquidity, maturity, and pledging status of the investment portfolio;
- (c) limits on concentration of funding sources, with particular emphasis on non-core liabilities such as borrowings, escrow deposits held on behalf of others, public funds, Internet deposits, deposits obtained through the Certificate of Deposit Account Registry Service (CDARS), and other brokered deposits;
- (d) procedures for Board approval of funding concentrations above the Board-established limits;
- (e) development of a contingency funding plan that, among other things, addresses ways to improve the Bank's liquidity position and maintain adequate sources of stable funding given the Bank's anticipated liquidity and funding needs under various stress scenarios, including events leading to temporary, as well as intermediate or longer-term funding disruptions. The Bank shall update the contingency funding plan at least quarterly.

- (f) procedures for periodic testing of unused sources of liquidity and periodic review of the Bank's adherence to the policy adopted pursuant to this Article; and
- (g) adequate management reports that enable the Board and management to monitor the Bank's liquidity position on an ongoing basis and maintain liquidity at an adequate level. The reports shall include:
 - (i) cash flow gaps;
 - (ii) cash flow projections, including a statement of critical assumptions used in the projections;
 - (iii) rollover risk;
 - (iv) asset and funding concentrations;
 - (v) key early warning or risk indicators;
 - (vi) funding availability;
 - (vii) the status of contingent funding sources; and
 - (viii) collateral usage.

(2) A copy of the policy, or any subsequent amendments or changes to the policy, shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall implement and thereafter ensure Bank adherence to the policy.

ARTICLE V

INTERNAL AUDIT

(1) Within sixty (60) days of the date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program covering all areas of the Bank, sufficient to:

- (a) detect irregularities and weak practices in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) assess and report the effectiveness of policies, procedures, controls, and management oversight relating to accounting and financial reporting;
- (d) evaluate the Bank's adherence to established policies and procedures; and
- (e) establish an annual audit plan using a risk-based approach sufficient to achieve these objectives.

(2) As part of this audit program, the Board shall evaluate the audit reports of any party providing internal audit services to the Bank, and shall assess the impact on the Bank of any audit deficiencies cited in such reports.

(3) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board or a designated committee of the Board, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board or its designated committee and not through any intervening party, including an individual director.

(4) All audit reports shall be in writing and shall include the root causes of any identified significant deficiencies. Management shall identify and implement appropriate actions

to remedy deficiencies identified in audit reports, and the Board shall ensure that management has taken appropriate actions. The Bank shall maintain a written record describing these actions.

(5) The audit staff shall have access to any records necessary for the proper conduct of its activities. The OCC shall have access to all reports and work papers of the audit staff and any other parties working on the Bank's behalf.

ARTICLE VI

ENTERPRISE RISK MANAGEMENT

(1) Within ninety (90) days of the date of this Order, the Board shall develop and adopt a written enterprise risk management program consistent with the "Bank Supervision Process" booklet of the Comptroller's Handbook that is designed to ensure that the Bank effectively identifies, monitors, and controls its enterprise-wide risks, including developing risk limits for each line of business. The program shall include, at a minimum:

- (a) a statement from the Board communicating its underlying values, principles, and risk tolerances;
- (b) identification of existing credit, interest rate, liquidity, operational, compliance, strategic, reputation, and price risks, and a written analysis of those risks;
- (c) action plans and time frames to reduce risk where exposure is high, as fully discussed in the Report of Examination dated October 3, 2011 ("ROE");
- (d) policies, procedures or standards which limit the degree of risk the Board is willing to incur, consistent with the Bank's business plan and financial condition, including analyzing and limiting the risks associated with any

new lines of business which the Board undertakes (these procedures shall ensure that strategic direction and risk tolerances are effectively communicated and followed throughout the Bank and shall describe the actions to be taken where noncompliance with risk policies is identified);

- (e) systems to measure and control risks within the Bank that provide timely and accurate risk reports by customer, by department or division, and Bank-wide as appropriate;
- (f) procedures to ensure that Bank employees have the necessary skills to supervise effectively the current and the new business risks within the Bank, and procedures to describe the actions to be taken to address deficiencies in staff levels and skills; and
- (g) procedures for stress testing, including procedures for stress testing various business variables that affect risk to capital and liquidity.

(2) A copy of the program, or any subsequent amendments or changes to that program, shall be forwarded to the Assistant Deputy Comptroller for a determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall promptly implement and thereafter ensure Bank adherence to the program.

ARTICLE VII

INTERNAL LOAN REVIEW

(1) Within ninety (90) days of the date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, ongoing loan review system to review the Bank's loan and lease portfolios. The system shall provide for a written report to

be filed with the Board after each review and shall use a loan and lease risk grading system consistent with the guidelines set forth in “Rating Credit Risk” booklet of the Comptroller’s Handbook , dated April 2001, OCC Bulletin 2006-47, dated December 13, 2006 (ALLL Interagency Policy Statement), and 12 C.F.R. § 160.160. Such reports shall include, at a minimum, conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) an assessment of the accuracy of internal loan gradings;
- (d) the identification and amount of delinquent loans and leases;
- (e) credit and collateral documentation exceptions;
- (f) the identification and status of credit related violations of law, rule or regulation;
- (g) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (f) of this Article;
- (h) compliance with accounting requirements, including impairment analysis, troubled debt restructure recognition, and accrual determinations;
- (i) concentrations of credit; and
- (j) loans and leases not in conformance with the Bank’s lending and leasing policies, and exceptions to the Bank’s lending and leasing policies.

(2) The Board shall evaluate the internal loan and lease review report(s) and shall ensure that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

The loan review staff shall have access to any records necessary for proper conduct of its activities. The OCC shall have access to all reports and work papers of the loan review staff and any other parties working on its behalf.

ARTICLE VIII

CONCENTRATIONS

(1) Within ninety (90) days of the date of this Order, the Board shall establish and adopt written policies and procedures designed to identify, measure, monitor, and control concentrations consistent with the “Concentrations of Credit” booklet of the Comptroller’s Handbook, as revised December 2011, and OCC Bulletin 2011-48, dated December 13, 2011 (*Concentrations of Credit*). The policies and procedures shall include, but not be limited to, the following:

- (a) identification of the Bank’s known and potential asset, liability, and revenue concentrations, including but not limited to, the Bank’s concentrations identified in the ROE;
- (b) analysis of the risk that the Bank’s known and potential concentrations pose to the Bank’s earnings, capital, and operating strategy under stressed market conditions, economic downturns, and periods of general market illiquidity as well as normal market conditions;
- (c) establishment of specific limits by total committed exposure for each of the Bank’s known and potential concentrations relative to capital, based on the analysis performed under subparagraphs 1(b) of this Article;

- (d) development and implementation of action plans approved by the Board to reduce the risk of any concentration that exceeds the limitations established pursuant to subparagraph 1(c) of this Article; and
- (e) management information systems designed to ensure timely and accurate reporting of concentrations to the Board.

(2) The Board shall ensure that all concentrations are subjected to the analysis required by subparagraph 1(b) of this Article at least annually, and, if that analysis demonstrates that the concentration subjects the Bank to undue risk, the Board shall take immediate steps to mitigate such risk.

(3) A copy of the policies and procedures, or any subsequent amendments or changes to the policies and procedures, shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall implement and thereafter ensure Bank adherence to the policies and procedures.

ARTICLE IX

BANK SECRECY ACT RISK ASSESSMENT

(1) Within ninety (90) days of the date of this Order, the Board shall review, revise, and thereafter ensure Bank adherence to the Bank's written, Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Risk Assessment first approved by the Board on May 17, 2012 to ensure BSA/AML risks posed to the Bank are accurately identified after consideration of all pertinent information ("Risk Assessment"). The Risk Assessment shall reflect a comprehensive analysis of the Bank's vulnerabilities to money laundering and financial crimes activity and provide strategies to control risk and limit any identified vulnerabilities. The Risk Assessment

methodology shall follow the risk assessment expectations and logic set forth in the *FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual* (dated April 29, 2010) (“FFIEC BSA/AML Examination Manual”) and shall, at a minimum, include:

- (a) the identification of all operations and activities that pose BSA/AML risk to the Bank, including, but not limited to products, services, customers, entities, transactions, countries or geographic locations, and methods that the Bank uses to interact with its customers (collectively, “specific risk categories”);
- (b) a detailed analysis of all pertinent data obtained regarding the specific risk categories, including but not limited to volumes and types of transactions and services by country or geographic location and numbers of high-risk customers (by type of risk and by geographic location) to allow the Bank to review, establish, and implement appropriate policies, processes, and procedures to monitor and mitigate the Bank’s BSA/AML risks within those risk categories. This analysis shall include an evaluation of all relevant information obtained through the Bank’s Customer Identification Program and Customer Due Diligence Program (“CDD”);
- (c) an assessment of BSA/AML risk within each of the Bank’s business lines and on a consolidated basis across all Bank activities and product lines;
- (d) a provision requiring that the Bank update the Risk Assessment at least every twelve (12) months to identify and respond to changes in the Bank’s risk profile (such as new products or services, changes in existing products or services, opening or closing of high-risk customers accounts, or Bank

expansion through growth of existing business lines, strategic initiatives, mergers or acquisitions);

- (e) a provision requiring maintenance of appropriate documentation, including CDD information, so as to be able to support the Risk Assessment's conclusions; and
- (f) a provision requiring testing to confirm the reasonableness of the Risk Assessment. Test results shall be documented in writing and maintained in the Bank's records.

ARTICLE X

BANK SECRECY ACT PROGRAM AND INTERNAL CONTROLS

(1) Within ninety (90) days of the date of this Order, the Board shall review, revise, and thereafter ensure Bank adherence to the written program of policies and procedures first approved by the Board on May 17, 2012 to provide for compliance with the BSA, as amended (31 U.S.C. §§ 5311 et seq.), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, 12 C.F.R. §§ 163.177 and 163.180, and the rules and regulations of the Office of Foreign Assets Control ("OFAC") (collectively referred to as the "Bank Secrecy Act" or "BSA"). At all times, the written BSA program shall include the following:

- (a) enhanced policies and procedures for timely identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA;
- (b) enhanced policies and procedures for timely investigation and resolution of transactions that have been identified as posing greater than normal risk for compliance with the BSA;

- (c) enhanced policies and procedures for recording, maintaining, and recalling information about transactions that pose greater than normal risk for compliance with the BSA;
- (d) operating procedures for both the opening of new accounts and the monitoring of existing accounts, including collecting customers' identifying information, verifying customers' identification, maintaining identification records, and determining whether customers appear on any list of suspected terrorists or terrorist organizations; and
- (e) procedures for identification of varying risk factors and characteristics among those customers identified as "high-risk."

(2) The BSA program shall include policies and procedures for the Bank to produce and aggregate periodic reports designed to identify, monitor, and evaluate unusual or suspicious activity, including patterns of unusual or suspicious activity on a consolidated basis, and to maintain accurate information needed to produce these reports, to include at a minimum:

- (a) daily, weekly, and monthly reports to identify transactions that pose a greater than normal risk for compliance with BSA;
- (b) periodic reports of all high-risk accounts that are newly-established, renewed, or modified; and
- (c) other periodic reports deemed necessary or appropriate by the BSA Officer or the Bank.

(3) The BSA program shall include policies and procedures to provide for the application of appropriate thresholds for monitoring, both manual and automated systems, all types of transactions, accounts, customers, products, services, and geographic areas that pose

greater than normal risk for compliance with the BSA. At a minimum, these policies and procedures shall establish:

- (a) meaningful thresholds for filtering accounts and customers for further monitoring, review, and analyses; and
- (b) periodic testing and monitoring of thresholds for their appropriateness to the Bank's customer base, products, services, and geographic area, including maintenance of documentation supporting the Bank's methodology establishing and developing the testing thresholds.

(4) The BSA program shall include expanded account-opening procedures for all accounts that pose greater than normal risk for compliance with the BSA by requiring:

- (a) identification of all account owners and beneficial owners in compliance with applicable rules, regulations, and regulatory guidance;
- (b) documentation for all deposit account customers that pose greater than normal risk for compliance with the BSA consistent with that required by the FFIEC BSA/AML Examination Manual addressing enhanced due diligence for higher risk customers; and
- (c) any other due diligence required by this Order, the BSA Officer, or the Bank.

(5) The Bank shall obtain the information required in the preceding paragraph (4) of this Article before renewing or modifying an existing customer's account within the scope of the preceding paragraph (4).

(6) Within ninety (90) days of the date of this Order, the Board shall update the status of its plan and timeline for the implementation of enhanced BSA/AML internal controls,

including an enhanced transaction monitoring and suspicious activity identification system. The plan shall include:

- (a) enhanced automated and manual methods of transaction monitoring for identifying suspicious and unusual activity;
- (b) enhanced standards for review of customer activity, such as the use of customer profiles, CDD, and customer risk ratings;
- (c) enhanced documentation standards for customer and transaction reviews, and investigations; and
- (d) an enhanced high-risk country identification methodology.

(7) A copy of the plan and timeline, or any subsequent amendments or changes to the plan and timeline, shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall implement and thereafter ensure Bank adherence to the plan and timeline.

ARTICLE XI

BANK SECRECY ACT CUSTOMER DUE DILIGENCE

(1) Within ninety (90) days of the date of this Order, the Board shall review, revise and thereafter ensure Bank adherence to its risk-based processes to obtain and analyze appropriate CDD information at the time of account opening and on an ongoing basis, and effectively use this information to monitor for, and investigate, suspicious or unusual activity. The revised risk-based CDD processes shall include:

- (a) risk-based policy requirements regarding the identification of customers and the scope of due diligence information to be collected and documented;
- (b) for high-risk accounts, a requirement that Bank management shall conduct and document its analyses of enhanced due diligence gathered to facilitate ongoing monitoring efforts, including expectations for customer activities that are supported and periodically reviewed for reasonableness, are used as part of the ongoing monitoring process, and are adequately documented;
- (c) updates to CDD to reflect changes in customer's behavior, activity profile, derogatory information, periodic reviews of the customer relationship, or other factors that impact AML risk;
- (d) periodic evaluations of employee knowledge of, and adherence to, Bank policies and procedures for identifying customers and for gathering, analyzing, and documenting due diligence in order to determine whether additional or enhanced training should be conducted; and
- (e) procedures to address cases where there is ongoing suspicious activity to ensure appropriate management review and determination of whether the customer relationship should be continued.

ARTICLE XII

BANK SECRECY ACT INDEPENDENT TESTING

(1) Within ninety (90) days of the date of this Order, the Board shall review, revise, and thereafter ensure Bank adherence to its BSA independent testing program (whether performed by the audit staff not directly involved with BSA activities at the Bank or an independent third party). The revised program shall include appropriate scope, depth, timing, reporting, and documentation. At a minimum, the revised independent testing program shall include:

- (a) evaluation of the overall adequacy and effectiveness of the BSA/AML compliance program, including policies, procedures, processes, and internal controls;
- (b) review and evaluation of the BSA/AML risk assessment for reasonableness given the Bank's risk profile (products, services, customers, entities, and geographic locations);
- (c) appropriate risk-based transaction testing to verify the Bank's adherence to BSA recordkeeping and reporting requirements;
- (d) review of staff training for adequacy, accuracy, and completeness;
- (e) review and evaluation of the effectiveness of the suspicious activity monitoring systems (automated, manual, or combination) used for BSA/AML compliance; and
- (f) assessment of the process for identifying and reporting suspicious activity, including the accuracy, timeliness, completeness, and effectiveness of Suspicious Activity Reporting forms.

(2) Within thirty (30) days of receiving an independent audit report pursuant to this Article, the Board, or a designated committee of the Board, shall evaluate the reports of any party providing independent testing services to the Bank, shall assess the impact on the Bank of any deficiencies cited in such reports, and shall remedy or develop a plan to remedy any deficiencies identified. The Bank shall maintain a written record describing action taken pursuant to this Article.

(3) Within thirty (30) days of completion, the Board, or a designated committee of the Board, shall submit all finalized independent audit reports prepared in accordance with this Article to the Assistant Deputy Comptroller.

ARTICLE XIII

COMPLIANCE MANAGEMENT

(1) Within ninety (90) days of the date of this Order, the Board shall adopt, implement and thereafter ensure Bank adherence to a written program to improve the Bank's compliance management process. The program shall include, at a minimum:

- (a) a requirement that, at all times, a qualified individual will serve as the Bank's compliance officer. This individual shall be responsible for the supervision and administration of the Bank's compliance management program and provide effective compliance oversight for all areas of the Bank;
- (b) a requirement that the compliance department has sufficient staffing, including subject matter experts, to maintain the program and assist the compliance officer in providing sufficient oversight for all areas of the Bank;

- (c) clear reporting lines and responsibilities for compliance staff and management;
- (d) sufficient compliance policies and procedures throughout the Bank to provide standards and guidance for all business lines;
- (e) processes for updating compliance policies and procedures to address changes in applicable laws and regulations;
- (f) a sufficient compliance risk assessment process that includes qualitative and quantitative factors for measuring risk;
- (g) an effective monitoring and testing or quality assurance process to provide for ongoing assessment of compliance efforts between audits;
- (h) a customer complaint tracking and resolution process; and
- (i) the development and implementation of a bank-wide compliance training program that includes an ongoing evaluation of training needs, assesses the adequacy of training performed, identifies training gaps, and tracks training completed.

(2) A copy of the program, or any subsequent amendments or changes to the program, shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall implement and thereafter ensure adherence to the program.

ARTICLE XIV

FLOOD INSURANCE

(1) Within sixty (60) days of the date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to written Flood Disaster Protection Act (42 U.S.C. § 4002 and 12 C.F. R. § 172) policies and procedures detailing a coordinated program to ensure Bank compliance with laws and regulations. At a minimum, the program shall include:

- (a) a policy addressing major provisions of the Flood Disaster Protection Act (FDPA), staff roles and responsibilities, internal controls, review processes, and internal testing expectations;
- (b) written FDPA procedures for all applicable business lines covering, at a minimum, the following:
 - (i) flood hazard zone determinations;
 - (ii) flood zone discrepancy resolution processes;
 - (iii) notices to borrowers requiring purchase of flood insurance;
 - (iv) flood insurance coverage calculation methodologies, including methodologies for multiple properties or multiple buildings on a property;
 - (v) the implementation of flood calculation worksheets to document flood calculations;
 - (vi) life of loan monitoring to ensure adequate flood insurance coverage; and
 - (vii) force placement of flood insurance, including customer notifications;

- (c) pre-closing flood compliance verification reviews for Bank generated loans as well as loans generated from third parties; and
- (d) development and appointment of a FDPA subject matter expert responsible for administering the Bank's FDPA compliance program.

(2) Within sixty (60) days of the date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to a comprehensive FDPA training program for all applicable lending staff to ensure awareness of their responsibility for compliance with the requirements of the FDPA. This comprehensive training program shall include strategies for mandatory attendance, the frequency of training, processes to ensure the training remains current, and the method for delivering training. Documentation of training shall be maintained in the Bank's records.

ARTICLE XV

INFORMATION TECHNOLOGY

(1) Within one hundred eighty (180) days of the date of this Order, the Board shall adopt a comprehensive, written business continuity plan (BCP). The BCP shall be consistent with guidance communicated in the "Business Continuity Planning" booklet of the FFIEC Information Technology Examination Handbook. At a minimum, the BCP shall include:

- (a) a business impact analysis that includes:
 - (i) the identification of the potential impact of uncontrolled, non-specific events on the institution's business processes and its customers; and
 - (ii) an estimation of the maximum allowable downtime and acceptable levels of data, operations, and financial losses.

- (b) a risk assessment process that includes:
 - (i) the prioritization of potential business disruptions based upon severity and likelihood of occurrence;
 - (ii) a gap analysis comparing the institution's existing business resumption plans, if any, to what is necessary to achieve recovery time and point objectives; and
 - (iii) an analysis of threats based upon the impact on the institution, its customers, and the financial markets, not just the nature of the threat.

- (c) a risk monitoring process that includes:
 - (i) testing of the BCP on at least an annual basis;
 - (ii) independent audit and review of the BCP; and
 - (iii) updating the BCP based upon changes to personnel and the internal and external environments.

(2) A copy of the BCP, or any subsequent amendments or changes to the BCP, shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall implement and thereafter ensure Bank adherence to the BCP.

ARTICLE XVI

CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the

Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order, including ensuring that the Bank has necessary processes, control systems, and staff (with respect to both the experience level and number of individuals employed, whether staffed internally by Bank personnel or outsourced to an independent third party and control systems);

- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(7) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

(8) All submissions to the Assistant Deputy Comptroller required to be made pursuant to this Order shall be addressed to:

Joel Denkert
Assistant Deputy Comptroller
Office of the Comptroller of the Currency
1 South Wacker Drive, Suite 2000
Chicago, Illinois 60606

IT IS SO ORDERED, this 23 day of October, 2012.

/s/

William D. Haas
Deputy Comptroller
Midsize Bank Supervision

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

In the Matter of:)
Flagstar Bank, FSB)
Troy, Michigan)

**STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate cease and desist proceedings against Flagstar Bank, FSB, Troy, Michigan (“Bank”), pursuant to 12 U.S.C. § 1818(b) through the issuance of a Notice of Charges, for unsafe and unsound banking practices relating to capital, liquidity, credit risk management, loan review practices, concentrations, compliance management, and violations of law.

WHEREAS, the Bank, in the interest of compliance and cooperation, and without admitting or denying any wrongdoing, consents to the issuance of a Consent Order, dated October 23, 2012 (“Order”);

NOW THEREFORE, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

Jurisdiction

(1) The Bank is a Federal Savings Association examined by the Comptroller pursuant to the Home Owners’ Loan Act of 1933, as amended, 12 U.S.C. § 1461 *et. seq.*

(2) The Bank is a “savings association” within the meaning of 12 U.S.C. §§ 1813(b) and 1462(2). Accordingly, the Bank is an “insured depository institution” within the meaning of 12 U.S.C. §§ 1813(c) and 1818(b)(1).

(3) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

ARTICLE II

Agreement

(1) The Bank acknowledges that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and acknowledges that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(2) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

ARTICLE III

Waivers

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
 - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Order;
 - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 109;
 - (d) all rights to seek any type of administrative or judicial review of the Order; and
 - (e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

/s/

William D. Haas
Deputy Comptroller
Midsize Bank Supervision

10/23/12

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

<u>/s/</u> Joseph Campanelli	<u>10/10/12</u> Date
<u>/s/</u> Walter Carter	<u>10/10/12</u> Date
<u>/s/</u> Gregory Eng	<u>10 Oct 2012</u> Date
<u>/s/</u> Jay Hansen	<u>10/10/12</u> Date
<u>/s/</u> David Matlin	<u>10-10-2012</u> Date
<u>/s/</u> James Ovenden	<u>10-10-12</u> Date
<u>/s/</u> Peter Schoels	<u>10/10/12</u> Date
<u>/s/</u> Michael Shonka	<u>10-10-2012</u> Date
<u>/s/</u> David Treadwell	<u>Oct 10, 2012</u> Date

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UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

STATE OF
INDIANA DEPARTMENT OF FINANCIAL INSTITUTIONS
INDIANAPOLIS, INDIANA

Written Agreement by and among

Docket No. 08-035-WA/RB-HC
08-035-WA/RB-SM

IRWIN FINANCIAL CORPORATION
Columbus, Indiana

IRWIN UNION BANK AND TRUST
COMPANY
Columbus, Indiana

FEDERAL RESERVE BANK
OF CHICAGO
Chicago, Illinois

and

INDIANA DEPARTMENT OF FINANCIAL
INSTITUTIONS
Indianapolis, Indiana

WHEREAS, in recognition of their common goal to maintain the financial soundness of Irwin Financial Corporation, Columbus, Indiana (“Irwin”), a registered bank holding company, and its subsidiary bank, Irwin Union Bank and Trust Company, Columbus, Indiana (the “Bank”), an Indiana state chartered bank that is a member of the Federal Reserve System, Irwin, the Bank, the Federal Reserve Bank of Chicago (the “Reserve Bank”), and the Indiana Department of Financial Institutions (the “DFI”) have mutually agreed to enter into this Written Agreement (the “Agreement”);

WHEREAS, on October 10, 2008, the boards of directors of Irwin and the Bank at duly constituted meetings adopted resolutions authorizing and directing William I. Miller to enter into this Agreement on behalf of Irwin and the Bank and consenting to compliance with each and every provision of this Agreement by Irwin and the Bank, as applicable, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. §§ 1813(u) and 1818(b)(3)).

NOW, THEREFORE, Irwin, the Bank, the Reserve Bank, and the DFI agree as follows:

Board Oversight

1. Within 30 days of this Agreement, the board of directors of Irwin and the Bank shall submit to the Reserve Bank and the DFI a joint written plan to strengthen board oversight of the management and operations of Irwin and the Bank. The plan shall, at a minimum, address, consider, and include:

(a) The actions that the respective boards of directors will take to continue to improve Irwin's and the Bank's condition and maintain effective control over, and supervision of, Irwin's and the Bank's senior management and major operations and activities, including but not limited to, lending, credit administration, management of credit concentrations, and funds management;

(b) a description of the information and reports that will be regularly reviewed by the respective boards of directors in their oversight of the operations and management of Irwin and the Bank, including information on the Bank's adversely classified assets, concentrations of credits, allowance for loan and lease losses ("ALLL"), earnings, and liquidity; and

(c) continued efforts to enhance the organization's risk management framework and tools.

Management Review

2. Within 30 days of this Agreement, the Bank shall submit to the Reserve Bank and the DFI a report prepared by the independent consultant, who was previously retained by the Bank and approved by the Reserve Bank and the DFI, regarding its assessment of the Bank's management, including the qualifications and performance of all senior Bank management.

3. Within 60 days of this Agreement, the board of directors shall take steps based on the independent consultant's report to hire additional or replacement officers as are needed to properly manage the Bank.

Liquidity/Funds Management

4. (a) Within 30 days of this Agreement, Irwin and the Bank shall submit to the Reserve Bank and the DFI an acceptable joint written liquidity/funds management plan designed to improve management of Irwin's and the Bank's liquidity positions and funds management practices. The plan shall, at a minimum, address, consider, and include:

(i) Steps to diversify sources of funding and reduce reliance on short-term wholesale funding;

(ii) appropriate measures to monitor Irwin's and the Bank's liquidity position;

(iii) the maintenance of sufficient liquidity to meet contractual obligations and unanticipated demands; and

(iv) enhanced reporting to the boards of directors regarding liquidity.

(b) Within 30 days of this Agreement, Irwin and the Bank shall submit to the Reserve Bank and the DFI an updated joint contingency funding plan that, at a minimum, identifies available sources of liquidity and includes adverse scenario planning.

Capital Plan

5. (a) Within 30 days of this Agreement, Irwin and the Bank shall submit to the Reserve Bank and the DFI an acceptable joint written capital plan (the "Capital Plan") that will, at a minimum, ensure that Irwin, on a consolidated basis, and the Bank, as a separate legal entity on a stand-alone basis, maintain sufficient capital. The plan shall, at a minimum, address, consider, and include:

(i) Irwin's current and future capital requirements, including compliance with the Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure and Tier 1 Leverage Measure, Appendices A and D of Regulation Y of the Board of Governors of the Federal Reserve System (the "Board of Governors") (12 C.F.R. Part 225, App. A and D);

(ii) the Bank's current and future capital requirements, including compliance with the Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure and Tier 1 Leverage Measure, Appendices A and B of Regulation H of the Board of Governors (12 C.F.R. Part 208, App. A and B);

(iii) the volume of the Bank's adversely classified assets, concentrations of credit, adequacy of the ALLL, planned growth of assets, and anticipated level of retained earnings; and

(iv) the source and timing of additional funds that may be needed to fulfill Irwin's and the Bank's future capital requirements and the ALLL needs of the Bank.

(b) The boards of directors of Irwin and the Bank shall review the sufficiency of the capital position of Irwin and the Bank on a monthly basis and shall reflect such reviews in the minutes of their respective board of directors' meetings.

Allowance for Loan and Lease Losses

6. (a) The Bank shall, within 30 days from the receipt of any federal or state report of examination, charge off all assets classified "loss" unless otherwise approved in writing by the Reserve Bank and the DFI.

(b) Within 90 days of this Agreement, the Bank shall review and revise its ALLL methodology consistent with relevant supervisory guidance, including the Interagency Policy Statements on the Allowance for Loan and Lease Losses, dated July 2, 2001 (SR 01-17 (Sup)) and December 13, 2006 (SR 06-17), and the findings and recommendations regarding the ALLL set forth in the Supervisory Letter dated May 6, 2008 and subsequent examinations, and submit a description of the revised methodology to the Reserve Bank and the DFI. The revised ALLL methodology shall be designed to maintain an adequate ALLL and shall address, consider, and include, at a minimum, the reliability of the Bank's loan grading system, the volume of criticized loans, concentrations of credit, the current level of past due and nonperforming loans, past loan loss experience, evaluation of probable losses in the Bank's loan portfolio, including adversely classified loans, and the impact of market conditions on loan and collateral valuations and collectibility.

(c) Within 90 days of this Agreement, the Bank shall submit to the Reserve Bank and the DFI an acceptable written program for the maintenance of an adequate ALLL. The

program shall include policies and procedures to ensure adherence to the revised ALLL methodology and provide for periodic reviews and updates to the ALLL methodology, as appropriate. The program shall also provide for a review of the ALLL by the board of directors on at least a quarterly calendar basis. Any deficiency found in the ALLL shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions. The board of directors shall maintain written documentation of its review, including the factors considered and conclusions reached by the Bank in determining the adequacy of the ALLL. During the term of this Agreement, the Bank shall submit to the Reserve Bank and the DFI, within 30 days after the end of each calendar quarter, a written report regarding the board of directors' quarterly review of the ALLL and a description of any changes to the methodology used in determining the amount of ALLL for that quarter.

Dividends

7. (a) Irwin and the Bank shall not declare or pay any dividends without the prior written approval of the Reserve Bank, the Director of the Division of Banking Supervision and Regulation of the Board of Governors ("Director"), and, as to the Bank, also the DFI.

(b) Irwin shall not take, and the Bank shall not make, any other form of payment representing a reduction in capital from the Bank without the prior written approval of the Reserve Bank and, as to the Bank, also the DFI.

(c) Irwin and its nonbank subsidiaries shall not make any distributions of interest, principal, or other sums on subordinated debentures or trust preferred securities without the prior written approval of the Reserve Bank and the Director.

(d) All requests for prior approval shall be received at least 30 days prior to the proposed dividend declaration date, proposed distribution on subordinated debentures, and

required notice of deferral on trust preferred securities. All requests shall contain, at minimum, current and projected information, as appropriate, on Irwin's capital, earnings, and cash flow; the Bank's capital, asset quality, earnings and ALLL; and the identification of the sources of funds for the proposed payment or distribution. For requests to declare or pay dividends, Irwin and the Bank, as appropriate, must also demonstrate that the requested declaration or payment of dividends is consistent with the Board of Governors' Policy Statement on the Payment of Cash Dividends by State Member Banks and Bank Holding Companies, dated November 14, 1985 (Federal Reserve Regulatory Service, 4-877 at page 4-323) and, as to the Bank, with the limitations contained in Ind. Code 28-13-4 *et seq.*

Debt and Stock Redemption

8. (a) Irwin and its nonbank subsidiaries shall not, directly or indirectly, incur, increase, or guarantee any debt without the prior written approval of the Reserve Bank. All requests for prior written approval shall contain, but not be limited to, a statement regarding the purpose of the debt, the terms of the debt, and the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

(b) Irwin shall not, directly or indirectly, purchase or redeem any shares of its stock without the prior written approval of the Reserve Bank.

Strategic Plan and Budget

9. (a) Within 60 days of this Agreement, Irwin and the Bank shall submit to the Reserve Bank and the DFI, a three-year strategic plan and a 2009 operating plan and budget for Irwin on a consolidated basis, and the Bank, as a separate legal entity, on a stand-alone basis, that shall, at a minimum, address, consider, and include:

(i) goals and strategies for improving Irwin's and the Bank's earnings;

(ii) the responsibilities of the board of directors regarding the definition, approval, implementation, and monitoring of the earnings plan and budget;

(iii) an identification of the major areas in, and means by which the board of directors and management shall seek to improve Irwin's and the Bank's earnings and operating performance; and

(iv) a comprehensive budget that includes the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) Irwin and the Bank shall establish a monthly review process to monitor Irwin's and the Bank's financial performance and to compare the actual income and expenses to budgetary projections. Irwin and the Bank shall submit a monthly report regarding its financial performance to the Reserve Bank and the DFI within ten days of the end of each month.

(c) A business plan and budget for each calendar year subsequent to 2009 shall be submitted by Irwin and the Bank to the Reserve Bank and the DFI at least 30 days prior to the beginning of that calendar year.

Compliance with Laws and Regulations

10. In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, Irwin and the Bank shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of Governors (12 C.F.R. §§ 225.71 *et seq.*).

11. Irwin and the Bank shall comply with the restrictions on indemnification and severance payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and Part 359 of the Federal Deposit Insurance Corporation's regulations (12 C.F.R. Part 359).

Compliance with the Agreement

12. (a) Within 10 days of this Agreement, the boards of directors of Irwin and the Bank shall appoint a joint committee (the "Compliance Committee") to monitor and coordinate Irwin's and the Bank's compliance with the provisions of this Agreement. The Compliance Committee shall include at least three outside directors who are not executive officers or principal shareholders of Irwin or the Bank, as defined in sections 215.2(e)(1) and 215.2(m)(1) of Regulation O of the Board of Governors (12 C.F.R. §§ 215.2(e)(1) and 215.2(m)(1)). At a minimum, the Compliance Committee shall meet at least monthly, keep detailed minutes of each meeting, and report its findings to the boards of directors.

(b) Within 30 days after the end of each calendar quarter following the date of this Agreement, Irwin and the Bank, as applicable, shall submit to the Reserve Bank and the DFI written progress reports detailing the form and manner of all actions taken to secure compliance with this Agreement and the results thereof.

Approval, Implementation, and Progress Reports

13. (a) Irwin and the Bank, as applicable, shall submit written plans and a program that are acceptable to the Reserve Bank and the DFI within the applicable time periods set forth in paragraphs 4, 5 and 6(c) of this Agreement.

(b) Within 10 days of approval by the Reserve Bank and the DFI, Irwin and the Bank, as applicable, shall adopt the approved plans and program. Upon adoption, Irwin and

the Bank, as applicable, shall promptly implement the approved plans and program, and thereafter fully comply with them.

(c) During the term of this Agreement, the approved plans and program shall not be amended or rescinded without the prior written approval of the Reserve Bank and the DFI.

Communications

14. All communications regarding this Agreement shall be sent to:

(a) Ms. Cathy Lemieux
Senior Vice President
Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, Illinois 60690

(b) Ms. Judith G. Ripley
Director
Indiana Department of Financial Institutions
30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204

(c) Mr. William I. Miller, Chairman, and Chief Executive Officer
Irwin Financial Corporation
Irwin Union Bank and Trust Company
500 Washington Street
Columbus, IN 47202-0929

Miscellaneous

15. Notwithstanding any provision of this Agreement to the contrary, the Reserve Bank and the DFI may, in their sole discretion, grant written extensions of time to Irwin and the Bank to comply with any provision of this Agreement.

16. The provisions of this Agreement shall be binding upon Irwin, the Bank and their institution-affiliated parties, in their capacities as such, and their successors and assigns.

17. Each provision of this Agreement shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank and the DFI.

18. The provisions of this Agreement shall not bar, estop or otherwise prevent the Board of Governors, the Reserve Bank, the DFI or any other federal or state agency from taking any other action affecting Irwin, the Bank, any nonbank subsidiaries of Irwin, or any of their current or former institution-affiliated parties and their successors and assigns.

19. Pursuant to section 50 of the FDI Act (12 U.S.C. §1831aa), this Written Agreement is enforceable by the Board of Governors under section 8 of the FDI Act (12 U.S.C. § 1818). This Written Agreement is enforceable by the DFI under Ind. Code 28-11-4-10.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of this 10th day of October, 2008.

IRWIN FINANCIAL CORPORATION

FEDERAL RESERVE BANK OF CHICAGO

By: /s/ William I. Miller
William I. Miller
Chairman and Chief Executive Officer

By: /s/ Cathy Lemieux
Cathy Lemieux
Senior Vice President

IRWIN UNION BANK AND TRUST
COMPANY

INDIANA DEPARTMENT OF FINANCIAL
INSTITUTIONS

By: /s/ William I. Miller
William I. Miller
Chairman and Chief Executive Officer

By: /s/ Judith G. Ripley
Judith G. Ripley
Director

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UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of: _____)
)
Riggs Bank N.A.,)
McLean, Virginia)

AA-EC-04-54

MODIFICATION OF EXISTING CONSENT ORDER DATED MAY 13, 2004

The Comptroller of the Currency of the United States of America (“Comptroller”) and Riggs Bank N.A., McLean, Virginia (“Bank”) hereby agree to the following modifications to the existing Consent Order dated May 13, 2004 (“Consent Order”). The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Modification of the Consent Order,” dated January 27, 2005 (“Modified Order”), which is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Modification Order by the Comptroller. This Modified Order supplements, but does not replace, the Consent Order. Specifically, Articles III, V, and VI of the Consent Order shall remain in effect without modification; Articles I and IV of the Consent Order shall be replaced as set forth below; Article II of the Consent Order shall be supplemented as set forth below; and Articles IV and V of this Modified Order shall be additional obligations as set forth below.

Pursuant to the authority vested in her by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I

BOARD TO ENSURE COMPETENT MANAGEMENT

This Article shall replace Article I of the Consent Order to read as follows:

(1) Within sixty (60) days, the Bank's Board shall cause the Bank to complete an updated written report regarding the staffing skills and levels required to fulfill the Bank's continuing obligations pursuant to the Consent Order, to fulfill its continuing obligations pursuant to the Consent Order dated July 16, 2003, and to implement the Bank's Capital Plan, Strategic Plan, and Contingency Plan required by this Modified Order, as set forth below. The Report shall also include a listing of positions that are open and need to be filled; a listing of positions that are open, but do not need to be filled, with documentation supporting the reasons those positions do not need to be filled; a methodology for filling vacant positions, timeframes, and a methodology for identifying and retaining current employees, especially employees necessary to ensure compliance with the Consent Order and this Modified Order.

(2) Within thirty (30) days of completion of the updated written report, the Board shall: (i) evaluate the report; (ii) determine whether to adopt the report in part or in full; (iii) determine whether management or staff changes should be made, including the need for additions to or deletions from current management or staffing; (iv) determine whether the skills of management and staff need improvement; and (v) cause the Bank to develop an action plan to implement the Board's determinations about the report ("Action Plan").

(3) Upon completion of the Action Plan, a copy of the written report and the Action Plan shall be submitted to Assistant Deputy Comptroller John F. Curtis ("Assistant Deputy Comptroller"), Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219, for his prior written determination of no supervisory objection to the Action Plan.

(4) Upon receipt of a written determination of no supervisory objection, the Board shall immediately implement and thereafter ensure adherence to the Action Plan.

(5) The Bank's management shall provide a monthly, written progress report to the Assistant Deputy Comptroller and the Board, or its Executive Committee, regarding the Bank's efforts to meet the goals and objectives of the Action Plan, and shall update the Action Plan as needed. Prior to making any changes that will cause, result or bring about a significant deviation or material change to the Action Plan adopted pursuant to this Article, the Board shall submit the changes to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

(6) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the Action Plan developed pursuant to this Article.

(7) The Board shall ensure that any third party consultants, i.e., auditors and/or attorneys, are subject to oversight and coordination by Bank management and are subject to appropriate contractual arrangements and applicable OCC guidance related to third-party relationships. The Bank shall ensure that all third-party relationships have appropriate documentation to segregate expenses between the Bank and its affiliates, including the Bank's parent company.

ARTICLE II

BOOKS AND RECORDS

This Article shall supplement Article II of the Consent Order as an additional paragraph as follows:

(1) The Bank shall take all steps necessary to ensure the maintenance and availability to supervisory authorities of all records of the Bank and its subsidiaries (including the books and records of Riggs International Banking Corporation, Riggs Bank Europe Limited, Riggs &

Company International, Limited, and Riggs Bank & Trust Company (Channel Islands), Limited, in the possession, custody or control of the Bank).

ARTICLE III

CAPITAL PLAN AND DIVIDEND POLICY

This Article shall replace Article IV of the Consent Order to read as follows:

(1) Within thirty (30) days, the Board shall cause the Bank to develop a capital plan that includes:

- (a) The Bank's current and future capital requirements;
- (b) Projections for growth and capital requirements based upon a detailed analysis of the Bank's risk profile and its assets, liabilities, earnings and off-balance sheet activities; and
- (c) The sources and timing of additional capital to meet the Bank's current and future needs.

(2) Upon completion, the Bank's Capital Plan shall be submitted to the Assistant Deputy Comptroller for his prior written determination of no supervisory objection.

(3) Upon receipt of a written determination of no supervisory objection, the Bank shall immediately implement and thereafter ensure adherence to the Capital Plan.

(4) The Board shall review and update the Bank's Capital Plan on a quarterly basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller. Prior to making any changes that will cause, result or bring about a significant deviation or material change to the Capital Plan, the Board shall submit the changes to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the Capital Plan developed pursuant to this Article.

- (6) The Bank shall declare and pay a dividend only:
- (a) When the Bank is in compliance with its Capital Plan, following supervisory non-objection of the Capital Plan and all changes to the Plan;
 - (b) When the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
 - (c) With the prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

ARTICLE IV

STRATEGIC PLAN

This Article shall supplement the Consent Order as an additional Article, as follows:

(1) Within sixty (60) days, the Board shall cause the Bank to develop a strategic plan that includes:

- (a) A detailed analysis of the Bank's current financial condition, strategic goals, product lines, market demand, competition and economic conditions;
- (b) Provisions for maintenance and growth of the Bank's earnings, capital and liquidity, consistent with the Capital and Contingency Plans required by this Order; and
- (c) Strategies to address significant external risks, including actions to be taken in response to varying contingencies that might affect the Bank's ability to implement its strategic goals.

(2) Upon completion, the Bank's Strategic Plan shall be submitted to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

(3) Upon receipt of a written determination of no supervisory objection, the Bank shall immediately implement and thereafter ensure adherence to the Strategic Plan. Prior to making any changes that will cause, result or bring about a significant deviation or material change to the Strategic Plan adopted pursuant to this Article, the Board shall submit the changes to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

ARTICLE V

CONTINGENCY PLANNING

This Article shall supplement the Consent Order as an additional article as follows:

(1) Within sixty (60) days, the Board shall cause the Bank to develop a contingency plan to address the Bank's current and future liquidity and funding requirements ("Contingency Plan"). The Contingency Plan shall address, at a minimum:

- (a) The Bank's current and future liquidity and funding requirements, under various scenarios;
- (b) Projections of the sources and timing of additional liquidity and funding to meet the Bank's current and future needs, including the resolution of issues relating to compliance, internal controls, risk management, the Consent Order, and any actual or potential litigation on related matters; and
- (c) The source(s) from which the Bank will seek to increase its liquidity and funding to meet the Bank's needs, including an analysis of the volatility and availability of funding sources.

(2) Upon completion, the Bank's Contingency Plan shall be submitted to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

(3) Upon receipt of a written determination of no supervisory objection, the Bank shall immediately implement and thereafter ensure adherence to the Contingency Plan. Prior to making any changes that will cause, result or bring about a significant deviation or material change to the Contingency Plan adopted pursuant to this Article, the Board shall submit the changes to the Assistant Deputy Comptroller for prior written determination of no supervisory objection.

ARTICLE VI

CLOSING

(1) Although the Board is by this Modified Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Modified Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Modified Order shall begin to run from the effective date of this Modified Order. Any time limitations imposed by the Consent Order shall remain in effect unless specifically amended by this Modified Order. Any time limitations may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Modified Order are effective upon issuance of this Modified Order by the Comptroller, through her authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Modified Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller; provided however, that the provisions of this Modified Order will not be assumed by an entity which acquires all or substantially all of the assets and liabilities of the Bank or to any successor in interest in a merger or acquisition of the Bank..

(5) In each instance in this Modified Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) Authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Modified Order;
- (b) Require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Modified Order;
- (c) Follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) Require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) In the event of an inconsistency between this Modified Order, the Consent Order or the Consent Order dated July 16, 2003, the terms of this Modified Order shall control.

(7) This Modified Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(8) The terms of this Modified Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 27 day of January, 2005.

/s/ Tim Long

1/27/05

Timothy W. Long
Senior Deputy Comptroller

Date

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:)
)
Riggs Bank N.A.)
McLean, Virginia)

**STIPULATION AND CONSENT TO THE ISSUANCE
OF MODIFICATION OF EXISTING CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) has initiated proceedings against Riggs Bank N.A., McLean, Virginia (“Bank”) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consented to the issuance of a Consent Order, dated May 13, 2004 (“Consent Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

ARTICLE II
AGREEMENT

(1) The Bank hereby consents and agrees to the issuance of the Modification of the Existing Consent Order by the Comptroller (“Modified Order”).

(2) The Bank further agrees that said Modified Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Modified Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of its supervisory responsibilities.

ARTICLE III
WAIVERS

(1) The Bank, by signing this Stipulation and Consent, hereby waives:

(a) The issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);

- (b) Any and all procedural rights available in connection with the issuance of the Modified Order;
- (c) All rights to seek any type of administrative or judicial review of the Modified Order; and
- (d) Any and all rights to challenge or contest the validity of the Modified Order.

ARTICLE IV

OTHER ACTION

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon her by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as her representative, has hereunto set his hand on behalf of the Comptroller.

/s/ Tim Long

01/27/05

Timothy W. Long
Senior Deputy Comptroller

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Signed	01/26/05
_____ Robert L. Allbritton	_____ Date
Signed	01/26/05
_____ Nathan D. Baxter	_____ Date
Signed	01/26/05
_____ Jacqueline C. Duchange	_____ Date
Signed	01/26/05
_____ Thomas F. Fitzgerald	_____ Date
Signed	01/26/05
_____ Heather S. Foley	_____ Date
Signed	01/26/05
_____ Lawrence I. Hebert	_____ Date
Signed	01/26/05
_____ Frederick J. Ryan, Jr.	_____ Date
Signed	January 26, 2005
_____ John A. Sargent	_____ Date
Signed	26 Jan. 05
_____ Stephen J. Trachtenberg	_____ Date
Signed	01/26/05
_____ Stuart Yarbrough	_____ Date

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FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

AND

NEW MEXICO FINANCIAL INSTITUTIONS DIVISION
SANTA FE, NEW MEXICO

In the Matter of)

CONSENT ORDER

SOUTHWEST CAPITAL BANK)
ALBUQUERQUE, NEW MEXICO)

FDIC-19-0191b

(INSURED STATE NONMEMBER BANK))

FID-2019-BK-01

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for SOUTHWEST CAPITAL BANK, ALBUQUERQUE, NEW MEXICO, (“Bank”), under 12 U.S.C. § 1813(q).

The New Mexico Financial Institutions Division (“FID”) is the appropriate state banking agency for the Bank, under Article 1, of Chapter 58 of the New Mexico Statutes, § 58-1-1 NMSA 1978, *et seq.*

The Bank, by and through its duly elected and acting board of directors (“Board”), has executed a “STIPULATION TO THE ISSUANCE OF A CONSENT ORDER” (“STIPULATION”), dated February 5, 2020, that is accepted by the FDIC and FID. With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER (“ORDER”) by the FDIC and the FID.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and § 58-1-34 NMSA 1978, have been satisfied, the FDIC and the FID hereby order that:

CAPITAL

1. Within 30 days of the date of this ORDER, the Board shall achieve and thereafter maintain the following minimum capital ratios, as defined in Part 324 of the FDIC Rules and Regulations:

Leverage Ratio	10%
Total Capital Ratio	13%

Should the Board elect to opt into the Community Bank Leverage Ratio framework, the minimum leverage ratio will be greater than 9.00% and will replace the minimums described above. Regardless, these ratios shall be achieved and maintained through retention of earnings, collection of charged-off assets, reduction in total assets, sale of new equity, or any combination thereof. Any increase in Tier 1 Capital necessary to meet the capital maintenance requirements of this ORDER may not be accomplished through a deduction from the Bank's ALLL.

DIVIDEND RESTRICTION

2. Following the date of this ORDER, the Bank shall not pay any cash dividends without the prior written consent from the Director of the Financial Institutions Division of New Mexico ("Director") and the Regional Director for the FDIC's Dallas Regional Office ("Regional Director"). Written requests for such approval shall be submitted at least 45 days prior to the anticipated dividend declaration date.

MANAGEMENT – BOARD SUPERVISION

3. Within 30 days after the effective date of this ORDER, the Bank's Board shall increase its participation in the affairs of the Bank by assuming full responsibility for the approval of the Bank's policies and objectives and for the supervision of the Bank's management, including all the Bank's activities. The Board's participation in the Bank's affairs shall include, at a minimum, monthly meetings in which the following areas shall be reviewed and approved by the Board: reports of income and expenses; new, overdue, renewed, restructured, insider, charged-off, delinquent, nonaccrual, and recovered loans; investment activities; operating policies; organizational changes, including staff hiring, promotion, demotion, reassignment, termination and attrition; and, individual committee actions. The Bank's Board minutes shall document the Board's reviews and approvals, including the names of any dissenting directors.

MANAGEMENT

4. (a) The Bank shall have and retain qualified officers within management. Each member of management shall possess qualifications and experience commensurate with his or her duties and responsibilities at the Bank. The qualifications of management personnel shall be evaluated on their ability to:

1. Comply with the requirements of the ORDER;
2. Operate the Bank in a safe and sound manner;
3. Comply with applicable laws and regulations; and
4. Restore all aspects of the Bank to a safe and sound condition, including improving the Bank's asset quality, capital adequacy, earnings, management effectiveness, and its sensitivity to market risk.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Director in writing of any changes of any Senior Executive Officers. The notification must include the name(s) and background(s) of any such Senior Executive Officers and must be provided 30 days prior to the individual(s) assuming the new position(s).

MANAGEMENT PLAN

5. (a) Within 60 days after the effective date of this ORDER, the Bank shall retain a bank consultant or employee acceptable to the Regional Director and the Director. The consultant or employee shall develop a written analysis and assessment of the Bank's management and staffing needs ("Management Plan") for the purpose of providing qualified management for the Bank. The Bank shall provide the Regional Director and the Director with a copy of the proposed engagement letter or contract with the consultant for review before it is executed, or in the case of an employee a Board resolution approving the scope of work of the review. The engagement letter, contract, or scope of work, at a minimum, should include:

1. A description of the work to be performed under the contract, engagement letter, or scope of work;
2. The responsibilities of the consultant/employee and procedures for reporting review results;
3. An identification of the professional standards covering the work to be performed;
4. Identification of the specific procedures to be used when carrying out the work to be performed;
5. The qualifications of the consultant or employee(s) who are to

perform or oversee the work;

6. The time frame for completion of the work;
7. Any restrictions on the use of the reported findings; and
8. A provision for unrestricted examiner access to work papers.

(b) The Management Plan shall be developed within 120 days after the effective date of the approval of the consultant/employee engagement letter, contract, or scope of work. The Management Plan shall include, at a minimum:

1. Identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Bank;
2. Identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;
3. Evaluation of all Bank officers and staff members to determine whether these individuals possess the ability, experience, and other qualifications required to perform present and anticipated duties, including adherence to the Bank's established policies and practices, and restoration and maintenance of the Bank in a safe and sound condition; and
4. A plan to recruit and hire any additional or replacement personnel if necessary with the requisite ability; experience and other qualifications to fill those officer [or staff member] positions identified in the Management Plan.

(c) The Management Plan shall be submitted to the Regional Director and the Director for review, comment, and approval upon its completion. Within 30 days from the receipt of

any comments from the Regional Director and the Director, and after the adoption of any recommended changes, the Bank shall approve the Management Plan, and record its approval in the minutes of the Board meeting. Thereafter, the Bank, its directors, officers, and employees shall implement and follow the Management Plan and/or any subsequent modification, subject to approval by the FDIC and the FID.

REDUCTION OF CLASSIFIED ASSETS

6. Within 30 days of the date of this ORDER, the Board shall develop a written plan to reduce the volume of all adversely classified assets and submit the plan to the Regional Director and the Director for approval. The plan shall include a schedule establishing target levels of classified assets, including as a percentage of Tier 1 Capital + Allowance for Loan and Lease Losses ("ALLL"), at the end of each calendar quarter. The plan shall account for all classified assets listed in the Report and be updated as warranted to include any significant assets subsequently classified internally or by regulatory authorities. The plan will also include the rationale used in formulating the reduction schedule. Quarterly, the Board will review and compare actual and targeted levels of classified assets, discuss the reasons for any material deviations from the plan, and document the review in the minutes.

RESTRICTIONS ON ADDITIONAL ADVANCES

7. During the term of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower whose extension of credit is classified "Doubtful" or "Substandard", unless the Board has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Board meeting.

The requirements of this provision shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of all interest due from the borrower.

NONACCRUAL LOANS

8. Within 30 days from the date of this ORDER, the Board shall adopt procedures to ensure that any loans meeting the definition of “nonaccrual,” as contained in the Instructions for Preparation of Reports of Condition and Income, are placed on nonaccrual status.

LOAN REVIEW PROGRAM

9. Within 60 days of the date of this ORDER, the Board shall implement a loan review program to periodically review the Bank's loan portfolio and identify and categorize problem credits. The loan review program should be governed by a written loan review policy that shall be submitted to the Director and the Regional Director for approval. The loan review policy shall address the following components of the loan review program:

- a) The responsibility for conducting the loan reviews (internal or external);
- b) The frequency and scope of loan reviews;
- c) The identification of each problem loan by type and amount;
- d) The identification of loans not in conformance with the Bank's lending policy, loan covenants, or applicable laws and regulations;
- e) The method of reporting findings, including an assessment of the overall quality of the loan portfolio, to the Board; and
- f) The documentation requirements for workpapers to support assigned credit grades.

ALLOWANCE FOR LOAN AND LEASE LOSSES

10. Effective immediately, the Board shall establish an adequate ALLL, and such ALLL shall be established by charges to current operating earnings. In complying with this requirement of the ORDER, the Board shall review the adequacy of the ALLL prior to the end of each calendar quarter and make any necessary provisions to the ALLL. The methodology used shall be in conformance with outstanding accounting and regulatory guidance. The results of the ALLL adequacy review shall be recorded in the minutes of the Board meeting at which the review was undertaken.

INTERNAL CONTROL

11. Within 30 days of the date of this ORDER, the Board shall establish and implement an effective internal control structure. The internal control structure shall ensure the establishment of an appropriate internal audit program that provides procedures for testing the validity and reliability of operating systems, procedural controls, and resulting records. The internal auditor shall report quarterly to the Bank's board of directors. The report and any comments made by the directors regarding the internal auditor's report shall be noted in the minutes of the Bank's board of directors' meeting. The Board shall ensure that necessary action is taken to eliminate or correct all internal routine and control deficiencies described in the report, and a system to prevent recurrence developed and implemented.

BSA - INTERNAL CONTROLS / SUSPICIOUS ACTIVITY MONITORING

12. The system of internal controls shall provide policies, procedures, processes, and systems for identifying, evaluating, monitoring, investigating, and reporting suspicious activity in the Bank's products, accounts, customers, services, and geographic areas, including but not limited to:

- a) Establishment of meaningful rules and thresholds for identifying accounts and customers for further monitoring, review, and analyses and the validation of rules and thresholds;
- b) Periodic testing and monitoring of such rules and thresholds for their appropriateness to the Bank's products, customers, accounts, services, and geographic areas;
- c) Review of existing systems to ensure adequate referral of information about potentially suspicious activity through appropriate levels of management, including a policy for determining action to be taken in the event of multiple filings of SARs on the same customer, or in the event a correspondent or other customer fails to provide due diligence information. Such procedures shall describe the circumstances under which an account should be closed and the processes and procedures to be followed in doing so;
- d) Procedures, processes, and systems for each business area of the Bank to produce periodic reports designed to identify unusual or suspicious activity, to monitor and evaluate unusual or suspicious activity, and to maintain accurate information needed to produce these reports with the following features:
 - 1. The Bank's procedures and/or systems should be able to identify related accounts, countries of origin, location of the customer's businesses and residences to evaluate patterns of activity; and
 - 2. The periodic reports should cover a broad range of time frames, including individual days, a number of days, and a number of

months, as appropriate, and should segregate transactions that pose a greater than normal risk for non-compliance with the BSA;

- e) Documentation of management's decisions to not to file a SAR;
- f) Systems to ensure the timely, accurate, and complete filing of reports required by law. The written procedures must particularly ensure the accuracy of SARs and CTRs. The written procedures will ensure report accuracy, and require a secondary review process to ensure errors are identified and corrected prior to report submission.

CALL REPORT AMENDMENTS

13. Within 30 days of the date of this ORDER, the Board shall ensure that amendments to the June 30, 2019, and December 31, 2018, Reports of Condition and Income are filed. The Board shall also adopt procedures to ensure accurate reporting in the future.

VIOLATIONS

14. Within 30 days of the date of this ORDER, the Board shall, consistent with sound banking practices, ensure that all apparent violations cited in the August 5, 2019 Report of Examination (2019 ROE) are corrected. The Board shall also adopt procedures to prevent recurrence of apparent violations.

PROGRESS REPORTS

15. The Board shall provide written reports to the Director and Regional Director outlining its progress toward complying with each provision of this ORDER. The Board will provide these reports within 30 days after each calendar quarter end. This requirement for progress

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FEDERAL DEPOSIT INSURANCE CORPORATION

In Re: Community Bank of the Carolinas
(In Organization)
Winston-Salem, Forsyth County, North Carolina

Application for Federal Deposit Insurance

ORDER

The undersigned, acting on behalf of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to delegated authority, has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act and relating to the application for Federal deposit insurance for Community Bank of the Carolinas ("Bank"), a proposed new State nonmember bank to be located in Winston-Salem, Forsyth County, North Carolina, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted by the Bank for Federal deposit insurance be, and the same hereby is, approved subject to the following conditions:

- (1) That beginning paid-in capital funds of not less than \$25,000,000 be provided.
- (2) That the Tier 1 capital to assets leverage ratio (as defined in the capital regulations of the institution's primary federal regulator) be maintained at not less than eight percent (8.00%) throughout the first three years of operation and that an adequate allowance for loan and lease losses be provided.
- (3) That the Bank shall pay no dividends during the first three years of operations without prior written approval of the FDIC Atlanta Regional Director.
- (4) That any changes in proposed management or proposed ownership of ten percent (10.00%) or more of the Bank's stock, including new acquisitions of or subscriptions to ten percent (10.00%) or more of the stock, must be approved by the FDIC prior to the Bank's opening.
- (5) During the first three years of operation, the Bank shall notify the FDIC Atlanta Regional Director of any plans to establish a loan production office at least 60 days prior to opening the facility.
- (6) The Bank shall operate within the parameters of the business plan submitted to the FDIC. During the first three years of operation, the Bank must obtain prior written non-objection from the FDIC Atlanta Regional Director of any proposed major deviation or material change from the submitted business plan. The notice of any proposed change must be submitted at least 60 days before the intended consummation of the change.
- (7) That, during the Bank's first three years of operation, the Bank must obtain the written non-objection of the FDIC's Atlanta Regional Director

prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer of the Bank. With respect to any proposed director or senior executive officer of the Bank, the Bank shall take such action(s) as the FDIC Atlanta Regional Director may require if the FDIC objects to any such person based on information obtained during a background check. The term "senior executive officer" shall have the meaning set forth in 12 C.F.R. 303.101.

- (8) That the Bank shall provide to the FDIC Atlanta Regional Director, the final employment agreements, Organizer's Stock Warrant Plan, and compensation arrangements (including bonus plans) for the Bank's senior executive officers, and obtain the prior written non-objection of the FDIC Atlanta Regional Director for those agreements and compensation arrangements prior to execution if they were not previously reviewed by the FDIC as part of the application for deposit insurance.
- (9) During the first three years of operation, the institution shall submit copies of and obtain the written non-objection of the FDIC Atlanta Regional Director prior to implementing any stock benefit plan, including with respect to stock options, stock warrants, stock grants, or other similar stock-based compensation.
- (10) During the first three years of operation, the institution shall submit written notice at least 60 days prior to, and obtain the FDIC Atlanta Regional Director's written non-objection prior to implementing any major change to or material deviation from any previously submitted stock benefit plan.
- (11) That the persons selected to serve as the Chief Credit Officer shall be acceptable to the FDIC Atlanta Regional Director.
- (12) That the third party IT contracts are subject to regulatory review and non-objection.
- (13) That an accrual accounting system be adopted for maintaining the financial records of the Bank in accordance with U.S. Generally Accepted Accounting Principles.
- (14) That sufficient fidelity coverage on the bank's active officers and employees to conform with generally accepted banking practices be obtained prior to opening for business;
- (15) That the bank obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective and submit to the Atlanta Regional Office: (i) a copy of the audited annual financial statements and the independent auditor's report within 90 days following the end of the bank's fiscal year; (ii) a copy of any other reports by the independent auditor (including any management letters) within 15 days of receipt by the Bank; and (iii) written notification within 15 days when a change in its independent auditor occurs.

- (16) That Federal deposit insurance will not become effective until the Bank has been granted a charter and has authority to conduct a banking business, and that its establishment and operation as a depository institution has been fully approved by the appropriate federal and state supervisory authorities.
- (17) That, until deposit insurance becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment should any interim development be deemed by the FDIC to warrant such action.
- (18) That if deposit insurance has not become effective within twelve months from the date of this ORDER, or unless, in the meantime, a request for an extension of time has been approved by the Corporation, the consent granted shall expire at the end of the said twelve-month period.

By Order of the Regional Director of the Atlanta Regional Office, acting pursuant to delegated authority for the Board of Directors of the FDIC.

Dated in Atlanta, Georgia this 3rd day of December, 2018.

By: _____ /S/
Michael J. Dean
Regional Director

FEDERAL DEPOSIT INSURANCE CORPORATION

Re: Community Bank of the Carolinas
(In Organization)
Winston-Salem, Forsyth County, North Carolina

Application for Federal Deposit Insurance

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. § 1815), the Federal Deposit Insurance Corporation ("FDIC") received an Interagency Charter and Federal Deposit Insurance Application on behalf of Community Bank of the Carolinas, a proposed new state nonmember-bank that will be located in Winston-Salem, North Carolina ("Bank"). The organizers concurrently applied to the North Carolina Commissioner of Banking ("State") for a state bank charter and is awaiting the State's conditional approval.

Notice of the Federal deposit insurance application, in a form approved by the FDIC, was published pursuant to the FDI Act on May 14, 2018.

The organizers have not established a bank holding company. The opening capital of the Bank will be obtained from a private offering of 2,466,522 shares of common stock at a price of \$11.00 per share. The Bank's business plan is to operate a state nonmember bank that serves individuals and small- and medium-sized businesses located in Forsyth County, North Carolina. The Bank will offer traditional products and services and will be overseen by an experienced management team, including a diversified and knowledgeable Board of Directors who is committed to serving the Bank's local community.

The Bank will operate with sufficient capital and managerial resources to accomplish the strategies and goals in the business plan. The Bank will be capitalized with an amount sufficient to achieve and maintain a Tier 1 capital to assets leverage ratio, as defined in the capital regulations of the FDIC, of not less than eight percent (8.00%) throughout the Bank's first three years of operation. Projected growth and earnings appear attainable. The Bank's plans appear to satisfy the convenience and needs of the community. Corporate powers to be exercised are consistent with the purposes of the FDI Act, and no undue risk to the Deposit Insurance Fund is evident.

Accordingly, based upon a careful evaluation of all available facts and information, and in consideration of the factors of Section 6 of the FDI Act, the Atlanta Regional Director, pursuant to delegated authority, has concluded that approval of the application is warranted, subject to certain prudential conditions.

**REGIONAL DIRECTOR
DIVISION OF RISK MANAGEMENT SUPERVISION
FEDERAL DEPOSIT INSURANCE CORPORATION**

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FEDERAL DEPOSIT INSURANCE CORPORATION

Re: CommerceOne Bank
(In organization)
Birmingham, Jefferson County, Alabama

Application for Federal Deposit Insurance

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. § 1815), the Federal Deposit Insurance Corporation ("FDIC") received an Interagency Charter and Federal Deposit Insurance Application on behalf of CommerceOne Bank, a proposed new state nonmember bank that will be located in Birmingham, Alabama ("Bank"). The organizers concurrently applied to the Alabama State Banking Department ("State") for a state bank charter and received the State's conditional approval on March 14, 2018.

Notice of the Federal deposit insurance application, in a form approved by the FDIC, was published pursuant to the FDI Act on January 12, 2018.

The organizers have not established a bank holding company. The opening capital of the Bank will be realized from a public offering of 3,000,000 shares of common stock at a price of \$10.00 per share. The Bank's business plan is for a state nonmember bank that serves small- and medium-sized businesses and individuals located in Jefferson County, Alabama. The Bank will offer traditional products and services and will be overseen by an experienced management team, including a diversified and knowledgeable Board of Directors who is committed to serving the Bank's local community.

The Bank will operate with sufficient capital and managerial resources to accomplish the strategies and goals in the business plan. The Bank will be capitalized with an amount sufficient to achieve and maintain a Tier 1 capital to assets leverage ratio, as defined in the capital regulations of the FDIC, of not less than eight percent (8.00%) throughout the Bank's first three years of operation. Projected growth and earnings appear attainable. The Bank's plans appear to satisfy the convenience and needs of the community. Corporate powers to be exercised are consistent with the purposes of the FDI Act, and no undue risk to the Deposit Insurance Fund is evident.

Accordingly, based upon a careful evaluation of all available facts and information, and in consideration of the factors of Section 6 of the FDI Act, the Atlanta Regional Director, pursuant to delegated authority, has concluded that approval of the application is warranted, subject to certain prudential conditions.

**REGIONAL DIRECTOR
DIVISION OF RISK MANAGEMENT SUPERVISION
FEDERAL DEPOSIT INSURANCE CORPORATION**

FEDERAL DEPOSIT INSURANCE CORPORATION

Re: CommerceOne Bank
(In Organization)
Birmingham, Jefferson County, Alabama

Application for Federal Deposit Insurance

ORDER

The undersigned, acting on behalf of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to delegated authority, has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act, as they relate to the application for Federal deposit insurance with membership in the Deposit Insurance Fund for CommerceOne Bank ("Bank"), a proposed state nonmember bank to be located at 2100 Southbridge Parkway, Suite 385, Birmingham, Jefferson County, Alabama 35209, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted by the Bank for Federal deposit insurance be, and the same hereby is, approved, subject to the following conditions:

- (1) That initial paid-in capital funds of not less than \$30,000,000 will be provided.
- (2) That the Bank's Tier 1 capital to total assets or leverage ratio (as defined in the capital regulations of the FDIC) be maintained at not less than eight percent (8.00%) throughout the first three years of operation, and that an adequate Allowance for Loan and Lease Losses ("ALLL") be provided from the date insurance is effective.
- (3) That the Bank shall pay no dividends during the first three years of operation without the prior written approval of the FDIC's Atlanta Regional Director and the Alabama State Banking Department.
- (4) That any changes in the Bank's proposed management or the proposed ownership of ten percent (10.00%) or more of the Bank's stock, including new acquisitions of or subscriptions for ten percent (10.00%) or more of stock, must be approved by the FDIC prior to the Bank's opening.
- (5) The Bank must operate within the parameters of the business plan submitted to the FDIC. During the first three years of operation, the Bank must obtain prior written non-objection from the FDIC's Atlanta Regional Director for any proposed major deviation or material change from the submitted business plan, at least 60 days prior to implementation of any such major deviation or material change.

- (6) That, during the Bank's first three years of operation, the Bank must obtain the written non-objection of the FDIC's Atlanta Regional Director prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The term "senior executive officer" shall have the meaning set forth in 12 C.F.R. § 303.101.
- (7) That, prior to the Bank's opening, full disclosure must be made to all proposed directors and stockholders of the Bank of the facts concerning the interest of any insider in any transactions being effected or contemplated, including the identity of the parties to the transaction and the terms and costs involved. An "insider" is a person who: (i) is or is proposed to be a director, officer, or incorporator of the Bank; (ii) is a shareholder who directly or indirectly controls ten percent (10.00%) or more of any class of the Bank's outstanding voting stock; or (iii) is an associate or related interest of any such person.
- (8) That, during the first three years of operation, the Bank must notify the FDIC's Atlanta Regional Director of any plans to establish a loan production office at least 60 days prior to opening the facility.
- (9) The Bank will provide to the FDIC's Atlanta Regional Director the final agreements for the Bank's information technology service providers and obtain the prior written non-objection of the FDIC's Atlanta Regional Director for those agreements.
- (10) That, during the Bank's first three years of operation, the Bank must obtain the written non-objection of the FDIC's Atlanta Regional Director prior to the implementation of any stock benefit plans, including stock options, stock warrants, or other similar stock-based compensation plans established by the Bank not previously reviewed by the FDIC as part of the application for Federal deposit insurance.
- (11) That the Bank will obtain an audit of its financial statements by an independent public accountant annually for the first three years of operation and submit to the FDIC's Atlanta Regional Office: (i) a copy of the audited annual financial statements and the independent auditor's report within 90 days following the end of the Bank's fiscal year; (ii) a copy of any other reports by the independent auditor (including management letters) within 15 days after receipt by the Bank; and (iii) written notification within 15 days when a change in the Bank's independent auditor occurs.
- (12) That the Bank will adopt an accrual accounting system for maintaining the financial records of the Bank in accordance with U.S. Generally Accepted Accounting Principles.

- (13) That, prior to the effective date of Federal deposit insurance, the Bank must obtain adequate fidelity coverage.
- (14) That Federal deposit insurance will not become effective until the Bank has been granted a charter and has authority to conduct a banking business, and that its establishment and operation as a depository institution has been fully approved by the FDIC and the Alabama State Banking Department.
- (15) That, until deposit insurance becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment should any interim development be deemed by the FDIC to warrant such action.
- (16) That, the approval granted in this ORDER will expire if Federal deposit insurance has not become effective within one year from the date of this ORDER, unless a written request for an extension of time by the Bank has been approved by the FDIC.

By Order of the Regional Director of the Atlanta Regional Office, acting pursuant to delegated authority for the Board of Directors of the FDIC.

Dated in Atlanta, Georgia, this 21st day of March, 2018.

 /s/
Michael J. Dean
Regional Director

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FEDERAL DEPOSIT INSURANCE CORPORATION

RE: Bank of Bird-in-Hand
(In Organization)
Bird-in-Hand, Lancaster County, Pennsylvania

Application for Federal Deposit Insurance

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. § 1815), the Federal Deposit Insurance Corporation ("FDIC") received an Interagency Charter and Federal Deposit Insurance Application on behalf of Bank of Bird-in-Hand, a proposed new community bank that will be located in Bird-in-Hand, Pennsylvania ("Bank"). The application is intended to establish a newly-chartered state nonmember commercial bank. The organizers concurrently applied to the Commonwealth of Pennsylvania Department of Banking and Securities ("Department") for a state bank charter, and received conditional approval on May 31, 2013 from the Department for the Bank's Articles of Incorporation.

Notice of the Federal deposit insurance application, in a form approved by the FDIC, was published pursuant to the FDI Act on January 8, 2013.

The organizers have not established a bank holding company. The opening capital of the Bank will be realized from a public offering of a minimum of 1,600,000 shares of common stock, and a maximum of 2,500,000 shares, at a price of \$10.00 per share.

The Bank's Business Plan is for a community bank that provides banking services throughout Lancaster County and the western portion of Chester County. The majority of deposits and loans are expected to originate from within a five-mile radius around Bird-in-Hand, which is located about nine miles east of the city of Lancaster, Pennsylvania. The local community includes numerous farms, small- and medium-sized commercial businesses, professionals, and consumers. A significant part of the community to be served by the Bank is Amish. A majority of the Amish residents in Lancaster County reside within the Bank's primary service area. Loans will predominantly be farm, agricultural product, and owner-occupied commercial real estate loans, as well as home equity lines of credit, and residential mortgage, construction, and consumer loans. The Bank intends to attract a traditional mix of local deposit accounts, including interest and non-interest bearing checking accounts, savings accounts, money market deposit accounts, and certificates of deposit.

The Bank will be managed by an experienced management team, including lending and credit officers with many years of experience in the Lancaster County market. Most of the outside directors on the Bank's Board of Directors are well-respected members of the community who operate successful businesses in the community, and live within and have strong ties to the community. Two of the outside directors have prior experience as bank directors. FDIC Staff has analyzed the Federal deposit insurance application and concluded that the Bank will operate with sufficient capital and managerial resources to accomplish the strategies and goals

in the Business Plan. The financial projections show that the Bank will be capitalized with an amount sufficient to achieve and maintain a Tier 1 capital-to-assets leverage ratio, as defined in the capital regulations of the FDIC, of not less than eight percent (8.00%) throughout the Bank's first seven years of operation. Moderate growth is projected, and future earnings prospects appear attainable. The Bank's plans appear to satisfy the convenience and needs of the community. Corporate powers to be exercised are consistent with purposes of the FDI Act, and no undue risk to the Deposit Insurance Fund is evident.

Accordingly, based upon a careful evaluation of all available facts and information, and in consideration of the factors of Section 6 of the FDI Act, the New York Regional Director, pursuant to delegated authority, has concluded that approval of the application is warranted, subject to certain prudential conditions.

**REGIONAL DIRECTOR
DIVISION OF RISK MANAGEMENT SUPERVISION
FEDERAL DEPOSIT INSURANCE CORPORATION**

FEDERAL DEPOSIT INSURANCE CORPORATION

RE: Bank of Bird-in-Hand
(In Organization)
Bird-in-Hand, Lancaster County, Pennsylvania

Application for Federal Deposit Insurance

ORDER

The undersigned, acting on behalf of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") pursuant to delegated authority, has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act and relating to the application for Federal deposit insurance with membership in the Deposit Insurance Fund for Bank of Bird-in-Hand ("Bank"), a proposed new state nonmember bank to be located at 309 North Ronks Road, Bird-in-Hand, Lancaster County, Pennsylvania 17505, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted by the Bank for Federal deposit insurance be, and the same hereby is approved, subject to the following conditions:

1. That beginning paid-in capital funds of not less than \$16,000,000 be provided.
2. That the Bank's Tier 1 capital-to-assets leverage ratio (as defined in the capital regulations of the FDIC) be maintained at not less than eight percent (8.00%) throughout the first seven years of operation, and that an adequate allowance for loan and lease losses ("ALLL") be provided from the date insurance is effective.
3. That the Bank must operate within the parameters of the Business Plan submitted to the FDIC. During the first seven years of operation, the Bank must obtain prior written approval from the FDIC's New York Regional Director of any proposed major deviation or material change from the submitted Business Plan, before implementation of such major deviation or material change.
4. That, within 60 days before the end of the third year of operation, the Bank must submit to the FDIC's New York Regional Office pro forma financial statements and a business plan for operating years four through seven.

5. That, prior to commencing bank operations, the Bank shall have appointed and shall thereafter retain senior executive officers and a board of directors acceptable to the FDIC and who possess the knowledge, experience, and capability to carry out the responsibilities of those positions in a safe and sound manner. For purposes of this Order, such senior executive officers shall include the Chief Executive Officer, President, Chief Lending Officer, Chief Financial Officer, and Chief Credit Officer (or those employees that have duties and responsibilities typical for persons with the foregoing titles).
6. That, within 60 days of this ORDER, at a minimum two additional outside Bank directors with prior bank board-level experience, and who are acceptable to the FDIC, shall be appointed to the Board of Directors.
7. That, with respect to any proposed Bank director or senior executive officer for whom background checks have not been completed, the Bank must take such action as required by the FDIC's New York Regional Director, if the FDIC objects to any such person based on information obtained during the background check.
8. That, the Bank must provide to the FDIC's New York Regional Director, the final employment agreements and compensation arrangements (including salary, benefits, deferred compensation, stock options and/or incentives, and bonus and severance payments) for the Bank's senior executive officers, and obtain the written nonobjection of the FDIC's New York Regional Director for those agreements and compensation arrangements, prior to execution. The submission must include a compensation study or similar documentation to support the reasonableness of the proposed compensation.
9. That, during the Bank's first seven years of operation, the Bank must obtain the written nonobjection of the FDIC's New York Regional Director prior to the implementation of any stock benefit plans, including stock options, stock warrants, or other similar stock-based compensation plans established by the Bank not previously reviewed by the FDIC as part of the application for Federal deposit insurance.
10. That any changes in the Bank's proposed management or proposed ownership of ten percent (10.00%) or more of the Bank's stock, including new acquisitions of or subscriptions to ten percent (10.00%) or more of the stock, must be approved by the FDIC prior to the Bank's opening.

11. That, during the Bank's first seven years of operation, the Bank must obtain the written nonobjection of the FDIC's New York Regional Director prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer of the Bank.
12. That, prior to the effective date of Federal deposit insurance, the Bank must obtain adequate fidelity coverage.
13. That the Bank will obtain an audit of its financial statements by an independent public accountant annually for the first seven fiscal years after Federal deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the FDIC's New York Regional Office within fifteen (15) days after their receipt by the Bank, and notify the same office within 15 days when a change in the Bank's independent auditor occurs.
14. That the Bank will develop and implement a Community Reinvestment Act ("CRA") plan appropriate for the Bank's business strategy.
15. That the Bank must notify the FDIC's New York Regional Director of any plans to establish a loan production office 60 days before opening the facility.
16. The Bank will adopt an accrual accounting system for maintaining the books of the Bank in accordance with U.S. Generally Accepted Accounting Principles.
17. That full disclosure must be made to all proposed directors and stockholders of the Bank of the facts concerning the interest of any insider in any transactions being effected or contemplated, including the identity of the parties to the transaction and the terms and costs involved. An "insider" is a person who (i) is or is proposed to be a director, officer, or incorporator of the Bank; (ii) is a shareholder who directly or indirectly controls ten percent (10.00%) or more of any class of the Bank's outstanding voting stock; or (iii) is an associate or related interest of any such person.
18. That Federal deposit insurance will not become effective until the Bank has been granted a charter and has authority to conduct a banking business, and that its establishment and operation as a depository institution has been fully approved by the appropriate Federal and state supervisory authorities.

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APPLYING FOR DEPOSIT INSURANCE

A Handbook for Organizers of De Novo Institutions

Division of Risk Management Supervision | December 2019



APPLYING FOR DEPOSIT INSURANCE

*A Handbook for Organizers
of De Novo Institutions*

Division of Risk Management Supervision

December 2019

The information contained in this Handbook is intended to assist organizers in forming a new insured depository institution. Users of the Handbook should review all applicable statutes, rules, regulations, and policies for formal application requirements.

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INTRODUCTION

This Handbook is designed to help potential organizers of new or “*de novo*” institutions become familiar with the deposit insurance application process and the path to obtaining deposit insurance.¹ It provides an overview of the various requirements and considerations involved in the application process. The Handbook additionally incorporates answers to the questions raised during *de novo* outreach meetings conducted by the FDIC as well as advice and commentary shared by chief executive officers of successful *de novo* institutions who participated in those events. The Handbook is divided into three sections:

- **Section I: Pre-Filing Activities** highlights important considerations for the early stages of institution formation such as identifying organizers, directors, and key officers; developing the institution’s business plan; determining the appropriate amount of capital to be raised; and engaging in pre-filing meetings.
- **Section II: The Application Process** discusses the statutory framework for applications for deposit insurance; provides tips for a successful filing; and describes the FDIC’s application evaluation process, including field investigations.
- **Section III: Pre-Opening Activities** discusses other key aspects related to the successful opening and operation of an institution.

The FDIC is committed to working with, and providing support to, any group with an interest in starting a *de novo* financial institution. History shows that *de novo* institutions with well-conceived business plans, qualified management, and appropriate financial support can be successful in addressing financial service needs of the communities to be served.

We encourage organizers or their representatives to contact the FDIC with questions at any stage of the application process. Based on the state in which the proposed institution will be headquartered, you can use the map below to identify the appropriate FDIC regional office. Refer to [Appendix 1](#) for contact information for each FDIC regional office. When calling an FDIC regional office main number, request to speak with the Assistant Regional Director assigned to the proposed institution’s geographic location.



¹ For purposes of this Handbook, the term *de novo* refers to newly established institutions with no existing operations and new institutions that result from the conversion of an operating, non-insured entity.

Overview of the Application Process

[Section 5 of the Federal Deposit Insurance Act](#) (FDI Act) requires any proposed depository institution² seeking federal deposit insurance to file an application with the FDIC. The FDIC Rules and Regulations describe the application requirements in detail.³ Proposed new depository institutions apply for federal deposit insurance by filing an [Interagency Charter and Federal Deposit Insurance Application](#) (Application Form) with the appropriate FDIC regional office.

Most commonly, the FDIC receives applications to insure traditional community banks. In general, traditional community banks focus on providing banking services, including loans and core deposits, typically relied on by individuals and businesses in their local communities. The FDIC also receives applications to insure proposed institutions that present added complexity with regard to their business models or organizational structures.⁴ In all cases, the FDIC must consider the statutory factors enumerated in [Section 6 of the Federal Deposit Insurance Act](#) (FDI Act).^{5, 6}

Preparing the Application

The [Application Form](#) collects information that the chartering authority and the FDIC will need to evaluate the charter and insurance applications, respectively. The [Application Form](#) requests information on seven main topics: an overview of the proposed institution's operations; its business plan and proposed policies; details on its management team, including its board of directors; a description of the type and amount of capital to be raised, including any plans for employee stock ownership plans or stock incentives; how the institution will meet the convenience and needs of the community to be served; a description of the premises and fixed assets at inception; and a description of the information systems to be used by the institution. The [Application Form](#) also collects any other relevant information.

Applicants must answer all questions in the [Application Form](#) and provide appropriate supporting information. If information is not available at the time of filing, the FDIC will determine whether the information is necessary to begin the evaluation of the application. If additional information is needed, the FDIC will provide the applicant a written request

² For purposes of this Handbook, "institution" generally refers to the following charter types: state nonmember bank, mutual savings bank, industrial bank, national bank, state member bank, district bank, trust company, federal or state savings association, or any other depository institution engaged in the business of receiving deposits other than trust funds.

³ Institutions that apply for federal deposit insurance must meet the FDIC's statutory, regulatory, and other application requirements as well as satisfy separately all of the requirements of the chartering agency, as contained in applicable state or federal chartering law.

⁴ These include applications to insure a "non-bank," which refers to an insured depository institution that is a "bank" for purposes of the FDI Act, but is not a "bank" for purposes of the [Bank Holding Company Act \(BHCA\)](#), or a "non-community bank," which refers to an insured depository institution that may involve more complexity than a traditional community bank in terms of its business model, products, services, activities, market segments, funding, delivery channels, geographic footprint, operations, or intercompany or other third-party relationships.

⁵ 12 U.S.C. § 1816.

⁶ Organizers may reference the FDIC's [Deposit Insurance Applications Procedures Manual](#) and the Supplement entitled, [Applications from Non-Bank and Non-Community Bank Applicants](#), for further details regarding how the FDIC processes deposit insurance applications.

identifying the items needed. If no additional information is needed, the FDIC will notify the applicant that the application is substantially complete and begin its evaluation.

Evaluating the Application

Since 1935, governing statutes have required that the FDIC consider specific factors when evaluating applications for deposit insurance. The statutory factors, set forth in [Section 6 of the FDI Act](#), include: the institution's financial history and condition; the adequacy of its capital structure; its future earnings prospects; the general character and fitness of its management; the risk presented by the institution to the Deposit Insurance Fund (DIF); the convenience and needs of the community to be served by the institution; and whether the institution's corporate powers are consistent with the purposes of the FDI Act. The [FDIC Statement of Policy on Applications for Deposit Insurance](#) (SOP) provides additional information to FDIC staff and the industry about the statutory factors.⁷

The application is evaluated at both the field office and regional office levels, and is coordinated by a regional office case manager, who is assigned responsibility for the ongoing supervision and monitoring of the institution when it opens for business. The case manager will serve as the applicant's point of contact throughout the process.

The FDIC encourages organizing groups to communicate with the local regional office early in the pre-filing process. Early communication allows the FDIC to explain the application requirements and identify any issues that may need to be addressed, reducing the chances of issues potentially slowing the application process at later stages.

The soundness of the business plan; the qualifications of the proposed board of directors and senior management; and the adequacy of the proposed capital are the FDIC's key considerations in evaluating the overall proposal and the statutory factors.

Generally, if the statutory factors are favorably resolved, the application will be approved. If the statutory factors cannot be favorably resolved, the FDIC may, at its discretion, give the applicant an opportunity to withdraw the application, or the application will be recommended for denial.

Each approval will be conditioned on the applicant's satisfaction of certain conditions, including requirements for minimum initial capital, minimum ongoing capital maintenance for the three-year *de novo* period, fidelity bond insurance coverage, and financial statement audits during the *de novo* period. The FDIC may also impose non-standard or prudential conditions on a case-by-case basis. Refer to [Appendix 2](#) for a list of conditions that are frequently imposed in an Order granting deposit insurance.

Applications involving an institution that would be significantly involved in transactions or relationships with the parent company or any affiliates, including a proposed institution that is not a "bank" for purposes of the [BHCA](#), present unique characteristics that may warrant the imposition of prudential conditions beyond those routinely imposed in approving community bank proposals. [Appendix 3](#) presents examples of those conditions.

⁷ [63 Fed. Reg. 44756, August 20, 1998, effective October 1, 1998; amended at 67 Fed. Reg. 79246, December, 27, 2002.](#)

SECTION I: PRE-FILING ACTIVITIES

Like any new business, a *de novo* bank starts as a concept. An individual or group identifies a need for certain products and services in a market that may not be met by existing market participants. This section highlights the steps and important considerations for the early stages of institution formation.

These considerations include, among other items, identifying organizers, directors, and key officers; developing the institution's business plan; and determining the appropriate amount of capital to be raised. Organizers are encouraged to communicate with the FDIC early during the pre-filing process. The organizing group should schedule a formal pre-filing meeting with the FDIC and other relevant agencies as soon as these preliminary considerations have been addressed.

Organizers

Organizers play a central role in all aspects of establishing a new insured depository institution. Establishing a new institution requires careful and in-depth planning by the institution's organizers. Organizers are typically individuals with business interests and community involvement in the proposed institution's identified geographic market(s). The term "organizer"⁸ generally refers to any person or entity that is significantly involved in the organization of a proposed depository institution. An organizer could be:

- A proposed director or officer involved in establishing the institution;
- An incorporator (a person or entity that signs the institution's articles of incorporation); or
- An investor (a person or entity that contributes or commits funds toward an institution's organizational expenses or capitalization).

These descriptions of an organizer are not mutually exclusive. For example, an individual organizer may be a proposed director or officer, as well as a proposed investor.

Well before a deposit insurance application is filed, organizers collectively make important decisions regarding the proposed institution's business focus, target geographic markets, potential board members and officers, and options for raising capital. The organizers also communicate with the regulatory agencies during the pre-filing period. While organizers are initially focused on various pre-filing activities, they ultimately play a central role in all aspects of establishing the proposed institution.

⁸ In some cases, the chartering authority may specifically define the terms organizer, incorporator, founder, or other similar terms. As used in this Handbook, the term organizer should be interpreted broadly.

Assembling the Board of Directors and Management Team

Selecting a qualified board of directors and management team is one of the organizers' most significant responsibilities. The quality of management (including directors and officers) is the single most important contributor to the success of any institution. For this reason, it is important that candidates for director and officer positions have experience that corresponds to the proposed institution's specific products and services, markets, and activities.

Given the importance of director and officer selections, organizers should establish a process to identify, evaluate, and select candidates. The selection process should be based on well-defined position descriptions consistent with the proposed business plan and organizational structure. While one designated organizer may guide the recruitment process, all organizers' views should be considered when making final selections.

Assembling the Board of Directors

The FDIC expects institutions to have a minimum of five directors. When selecting board members, organizers should consider the board's composition to ensure it encompasses diverse business and financial backgrounds, including appropriate banking experience and community involvement in the identified geographic market area. The FDIC's expectations for bank directors embody basic, common sense principles. See additional discussion in the [Pocket Guide for Directors](#) (Pocket Guide); the [Statement Concerning the Responsibilities of Bank Directors and Officers](#) (D&O Statement); the special edition of the FDIC's [Supervisory Insights, A Community Bank Director's Guide to Corporate Governance: 21st Century Reflections on the FDIC Pocket Guide for Directors](#); and the [SOP](#).

As noted in the [Pocket Guide](#), a financial institution's board of directors oversees the conduct of the institution's business. The board of directors should:

- Select and retain competent management;
- Establish, with management, the institution's long- and short-term business objectives, and adopt operating policies to achieve these objectives in a legal and sound manner;
- Monitor operations to ensure that they are controlled adequately and are in compliance with laws and policies;
- Oversee the institution's business performance; and
- Ensure that the institution helps to meet the credit needs of the community to be served.

In addition, directors should ensure that management is appropriately supervised. Directors should be active and involved in carrying out these responsibilities, remain fully informed, and exercise independent judgment.

Organizers should also consider the framework provided by the FDIC and other federal banking regulators for institutions to create and strengthen their diversity policies and practices, including an organizational commitment to diversity, workforce and employment practices, procurement

and business practices, and practices to promote transparency of organizational diversity and inclusion.⁹

Other Considerations Regarding Director Selection

The FDIC does not require directors to be U.S. citizens. However, prior to considering a foreign citizen to serve as a director, organizers should determine if the individual can fulfill the obligations of a director due to possible travel restrictions and other challenges. Foreign directors will be treated similarly to domestic directors with respect to the FDIC's information needs. In addition, foreign directors will be expected to execute agreements consenting to jurisdiction and service of process to facilitate any necessary legal proceedings with respect to the institution within the United States. The chartering authority may also have specific citizenship requirements for directors and should be consulted if a foreign director is proposed.

The FDIC issued its [D&O Statement](#) in response to concerns regarding the personal liability of directors and officers of FDIC-insured institutions. The [D&O Statement](#) emphasizes how important it is for institutions to attract and retain experienced and conscientious directors and officers, and addresses their obligations to discharge their duties owed to the institution. These obligations are similar to those owed by directors and officers of other business corporations, and include the duties of loyalty and care.

In addition to describing the responsibilities of the directors and officers, the [D&O Statement](#) notes that the FDIC will not bring civil suits against directors and officers who fulfill their responsibilities, including the duties of loyalty and care, and who make reasonable business judgments on a fully informed basis and after proper deliberation. In other words, the FDIC only brings suits when such action is believed sound on the merits. Thus, bank directors can exercise reasonable business judgment without incurring legal liability.

MORE TO KNOW: Director Litigation Involving Failed Banks

In addition to supervisory and other authorities, the FDIC may bring actions against directors of failed financial institutions. However, the FDIC does not bring actions against directors lightly or in haste. Potential claims are evaluated based on the legal standards established by applicable law, including the business judgment rule where applicable, and are pursued only if the claims are deemed meritorious. Before any lawsuit against a director or officer can be filed, the FDIC completes a multi-layer review and approval process that includes approval, with limited exceptions, by the FDIC Board of Directors. During the last two crises, the FDIC pursued claims against directors and officers (on average) in approximately one-third of the failure cases. Current information regarding professional liability lawsuits may be found at www.fdic.gov/bank/individual/failed/pls/.

⁹ Refer to the [Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies](#).

Assembling the Management Team

Organizers must identify the proposed full-time chief executive officer (CEO) and may identify other key executive officers in the deposit insurance application. Key executive officers typically include the chief financial officer, chief lending officer, and chief operating officer, but may include others as well, depending on the proposed business plan and the institution's size, complexity, and risk profile. While these individuals do not need to be formally employed by the proposed institution when they are submitted for consideration, the application should describe the nature of the individuals' commitment to joining the new organization.

In some instances, identifying satisfactory candidates for certain positions can take additional time. In such cases, organizers should identify acceptable candidates as soon as practicable to enable review of the executive management team during the field investigation. The FDIC recognizes that certain management candidates may be employed by other companies or institutions prior to formally joining the proposed institution. The FDIC will, to the extent required or permitted by law, maintain the confidentiality of the affected candidates until employment arrangements are finalized.

Evaluating Management, including the Board of Directors

When evaluating applications for deposit insurance, the FDIC considers the experience and backgrounds of all proposed organizers, directors, officers, and principal shareholders. The proposed CEO should have strong leadership skills, along with strong skills in strategy and execution, customer relations, operations, and risk management. In addition, the FDIC expects the CEO to have a demonstrated record of performance at the executive level with an institution of comparable size, complexity, risk profile, and business model. While prior successful CEO experience is strongly encouraged, it is not required. If the candidate has not previously served as a CEO, the candidate's background and experience should demonstrate the breadth of knowledge, skills, and abilities necessary to successfully fulfill the requirements of the position, including with respect to the products and services to be offered, financial and operational management, and other significant responsibilities.

As part of the application filing, each organizer,¹⁰ proposed director, senior executive officer,¹¹ and 10-percent-or-more shareholder submits an *Interagency Biographical and Financial Report* (IBFR) and fingerprints.¹² The FDIC and the chartering authority, which will be either the state banking authority in the case of proposed state-chartered institutions or the Office of the Comptroller of the Currency (OCC) in the case of proposed national banks or federal savings associations, will use this information to conduct a background check.

¹⁰ Generally, each organizer will be required to submit an [IBFR](#) unless the organizer has no involvement in policy or decision making, or strategic development, and will not be a 10-percent-or-more shareholder.

¹¹ [Section 303.101 of the FDIC Rules and Regulations](#) defines "senior executive officer" as a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. Other individuals may also be deemed a senior executive officer depending on their influence over the institution, participation in developing policies or strategies, or other facts and circumstances.

¹² As announced in [Financial Institution Letter \(FIL\)-21-2018](#), the FDIC implemented electronic fingerprinting to facilitate background checks performed in connection with applications.

The background and experience of the proposed directors and officers will be evaluated largely on the basis of the following:

- Financial institution and other business experience;
- Duties and responsibilities in the proposed depository institution;
- Personal and professional financial responsibility;
- Reputation for honesty and integrity; and
- Familiarity with the economy, financial needs, and general character of the community in which the depository institution will operate.

In assessing the management factor, the FDIC will also review compensation arrangements and any related plans for the institution's proposed directors, officers, and employees. Refer to [Appendix 4](#) for a list of important considerations regarding compensation and related plans, including stock benefit plans, severance packages, and employment agreements.

Prior to submitting candidates for consideration, the organizing group should perform its own due diligence on each proposed individual to ensure that they are suitable for their respective roles. Background and experience issues that have made approval of applications for deposit insurance problematic include the following:

Financial Institution and Other Business Experience – Proposals that consider individuals for CEO or other key decision making positions who have limited executive level experience or who have been associated with failed financial institutions or financial institutions that are or were in troubled condition as a result of their actions or decisions.

Personal and Professional Financial Responsibility – Proposals that include principals, particularly directors and senior executive officers, either individually or through related business interests, who have a history of bankruptcy filings or defaults on obligations that have resulted in losses to insured financial institutions or the DIF, or exhibit other behaviors that indicate a lack of financial responsibility; or that include individuals unable or unwilling to demonstrate the financial capacity to meet their personal obligations.

MORE TO KNOW: Additional Considerations in Board/Management Selections

Board Member Independence

- Typically, the FDIC expects the majority of the board of directors to be independent directors. An independent director is generally a director that is (a) not a principal, member, officer, or employee of the institution, and (b) not a principal, member, director, officer, or employee of any affiliate or principal shareholder.
- The proposed institution's audit committee should meet applicable independent director requirements as set forth in [Part 363 of the FDIC Rules and Regulations](#). See also the [Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations](#). Institutions with less than \$500 million in assets are strongly encouraged to establish an audit committee consisting entirely of outside directors.

Individuals with Substantial Influence

- The FDIC closely evaluates any circumstance in which a proposed individual will substantially influence the institution beyond that expected given their official role. In such situations, organizers should ensure that appropriate mitigating factors are implemented, such as well-developed business plans, sufficient board independence and oversight, a comprehensive audit program, appropriate segregation of duties, and effective internal controls.

Management Succession Planning and Talent Development

- Management succession planning and talent development are important for a new institution to ensure continuity in key senior management positions.

Setting Business Goals and Objectives

Achievable business goals and objectives form the starting point for organizers and investors as they begin to establish a new institution. Broadly speaking, institutions are generally organized to:

- Provide depository and credit services in local or other defined markets;
- Attain profitable banking operations that augment shareholder equity; and
- Foster community development through banking products, services, or programs.

Institutions can achieve these goals by developing and implementing realistic, sound business plans. While specific products, services, and activities differ between institutions, the typical focus of an institution is to provide lending, deposit, and other banking services to customers in its identified markets. As opposed to many other types of financial services companies, FDIC-insured depository institutions have access to certain cost-effective funding sources (including insured deposits, as well as other types of funding) and the payment system.

The organizers should have a clear and consistent view of the institution's objectives, which will help shape the business plan and ultimately give the institution its own identity within the highly competitive financial services industry.

Charter, Ownership Structure, and Tax Election

In order for an institution to obtain deposit insurance from the FDIC, it must have a charter to conduct its proposed business activities. Institutions may obtain either a bank or savings association¹³ charter from the appropriate state banking authority or the OCC.

In addition to traditional bank and savings association charters, the OCC and some states offer limited or special purpose charters. These charter types may include, for example, insured and uninsured limited purpose trust company charters, and charters for institutions whose operations are limited to credit card operations. The OCC and some states also offer charters that envision business models that are narrower in scope than traditional institutions. For example, charters may be granted to institutions that are primarily focused on community development or cash management activities, or that may operate as bankers' banks. Chartering agencies have also granted "shelf" charters,¹⁴ whose operations commence with the acquisition of one or more failed banks, and certain states also offer insured industrial loan company charters.

Organizers should carefully review the federal and state laws applicable to each charter type, as charter selection will generally relate to the proposed business model. Such reviews should also consider any implications under the [BHCA](#) or, as applicable, the [Home Owners' Loan Act](#).¹⁵ Organizers should engage in early discussions with the FDIC and the chartering agency regarding charter selection, particularly if the organizers contemplate a distinctive charter type. Importantly, regardless of charter type, each applicant must meet the same statutory requirements to be granted deposit insurance.

All institutions have a primary federal regulator (PFR), which serves as the federal agency responsible for supervising the institution. The FDIC is the PFR if the institution is a state-chartered institution that is not a member of the Federal Reserve System (FRS); the Federal Reserve Board (FRB) is the PFR if the institution is a state-chartered, FRS-member institution; and the OCC is the PFR for all institutions with a national bank or federal savings association charter.¹⁶

If an institution will be owned by a regulated bank or savings and loan holding company, the FRB will supervise the institution's parent company (or companies). The FDIC does not have a preference with regard to the organizers' charter and ownership decisions. The FDIC expects organizers to determine the charter and ownership structure most appropriate to the proposed business to be conducted, markets to be served, and individual circumstances.

Exhibit 1 summarizes the primary supervisory roles of each federal banking agency and describes the state banking authorities' role.

¹³ The term "savings association" is defined in [Section 3\(b\)\(1\) of the FDI Act](#). Savings associations, which may include federal or state savings associations, are also commonly referred to as thrift institutions.

¹⁴ Shelf charters enable potential bank owners who are not currently affiliated with an insured depository institution to qualify to bid on failed financial institutions for which the FDIC is acting as receiver.

¹⁵ Certain limited or special purpose banks and industrial loan companies may not be considered "banks" for purposes of the [BHCA](#).

¹⁶ In addition, the [Consumer Financial Protection Bureau](#) supervises and examines consumer financial service providers under its jurisdiction for compliance with federal consumer financial laws.

Exhibit 1: Federal Banking Agency and State Banking Authority Roles

Agency	Primary Roles
FDIC	<ul style="list-style-type: none"> • Insures the deposits of all depository institutions approved for federal deposit insurance. • Together with the respective chartering state authority, supervises state-chartered institutions (state-chartered banks and savings associations) that are not members of the FRS. • Maintains backup supervisory responsibility for institutions for which the FRB and the OCC are the PFRs. • Acts as receiver for all failed insured banks and savings associations, and may be appointed to resolve non-bank financial companies if their failure would have serious adverse effects on U.S. financial stability and other statutory requirements are met. • Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the Financial Stability Oversight Council (FSOC) for FRB supervision that describe the company’s strategy for its rapid and orderly resolution under the bankruptcy code in the event of the company’s material financial distress or failure.
FRB	<ul style="list-style-type: none"> • Serves as PFR for state-chartered banks that are members of the FRS, as well as bank and financial holding companies (and certain subsidiaries), and savings and loan holding companies. • Supervises other firms designated as systemically significant by the FSOC and other entities pursuant to the Dodd-Frank Act. • Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the FSOC for FRB supervision.
OCC	<ul style="list-style-type: none"> • Charters and serves as PFR for national banks and federal savings associations.
State Banking Authorities¹⁷	<ul style="list-style-type: none"> • Charters state banks and savings associations, regardless of whether the institution is a member of the FRS. • Together with the respective PFR, supervises state-chartered institutions and certain holding companies.

Depending on the institution’s planned charter type and organizational structure, organizers likely will interact with multiple government agencies (federal as well as state, if a state charter is pursued) in pre-filing matters and the application process. If the relevant filings are approved and the institution commences operations, interactions between the institution and applicable regulatory agencies will continue after opening through established supervisory processes (*e.g.*, visitations, examinations, and other on-site or off-site reviews).

¹⁷ Refer to the [Conference of State Bank Supervisors](#) website for a directory of banking authorities for each of the 50 states, the District of Columbia, and the U.S. territories. Also, refer to the [National Credit Union Administration](#) (NCUA) website for information regarding the supervision, chartering, and insurance of credit unions. The NCUA is an independent federal agency responsible for regulating and supervising federal credit unions. The NCUA insures deposits in federal and most state-chartered credit unions across the U.S.

Although each federal agency and state authority makes independent decisions regarding applications, they also collaborate on pre-filing activities, application reviews, examinations, and supervisory activities for institutions, as appropriate.¹⁸

Organizers should provide information on the institution's anticipated ownership structure and the status of capital raising efforts at the time of filing. Such information should include an organizational chart detailing, for example, parent companies, affiliates, and subsidiaries, if any; as well as draft or final offering statements and subscription agreements; the status of subscriptions; and planned investments by organizers, proposed directors and officers, and investors proposing to subscribe to 10 percent or more of equity.

Investors acting as a group may be aggregated and considered a control group. Any individual investors proposing to acquire 10 percent or more of any class of voting securities in either the institution or a parent company will be required to submit an [IBFR](#), along with details regarding how the securities will be acquired and held (such as personally, jointly, through a trust or family office, or other investment vehicle).

Foreign investors will be treated similarly to domestic investors with respect to the FDIC's information needs and any possible aggregation among a group of investors. In addition, foreign investors may be required to execute agreements consenting to jurisdiction and service of process.

A de novo institution may elect to be incorporated as a C Corporation (C Corp), an S Corporation (S Corp), or a limited liability company (LLC). There are notable differences between organizational forms with respect to the number of allowable shareholders, the terms of prospective capital distributions, and the tax treatment of income and losses.

For example, a C Corp allows for an unlimited number of shareholders, while S Corps are restricted by Internal Revenue Service regulations as to the number of shareholders. A C Corp pays taxes on its income directly, while its shareholders are taxed on cash dividends. Alternatively, an S Corp passes through taxable income or losses directly to shareholders, who report those earnings on individual tax returns. Shareholders of both the C Corp and S Corp are generally subject to limited shareholder liability. Rules for LLCs are provided in state law and [Section 303.15 of the FDIC Rules and Regulations](#).

De novo organizers should thoroughly consider the legal, tax, and capital implications associated with a particular organizational form and choose the corporate structure that best suits their business strategy.

¹⁸ In addition to the other federal agencies and state authorities, the FDIC will also consult with the appropriate functional regulators regarding the affiliation of an institution with a company subject to functional regulation (*e.g.*, insurance companies, securities companies, broker-dealers, *etc.*) pursuant to the [Gramm-Leach-Bliley Act](#).

Defining the Institution's Market and Identifying Office Locations

A *de novo* institution's target market can be defined both in terms of the geographic market area(s) and the communities or clients the institution intends to serve. Organizers can determine the target market by taking into account the institution's planned products and services, economic and market conditions, the competitive landscape, and population, income, industry, and housing trends.

Small banks often serve local geographic areas and easily identifiable customer bases, and larger institutions often serve wider geographic areas and may define market segments on broader terms. Regardless of the size of the institution's target market area, organizers should develop a map that identifies anticipated office locations, be able to describe the market characteristics, and discuss the overall marketing/advertising strategy. Careful thought should also be given to how the institution will serve its customers in terms of operational and technological infrastructure, staffing, and deployment of resources. Organizers must also consider the proposed institution's obligations under the [Community Reinvestment Act](#) (CRA), including the needs of low- and moderate-income geographies and individuals.

The specific address of the proposed institution's main office location does not need to be determined at the time an application is filed.¹⁹ In such circumstances, the application (including the public and confidential portions) and the published notice should include a reasonable description of the anticipated location of the main office. A reasonable description may be based on street boundaries within a neighborhood or city block. Alternatively, a broader area may be presented if supported by additional information, such as a quadrant within a census tract, zip code, or municipal boundaries.

The description should be sufficient to provide an understanding of the general location and geographic market of the proposed institution, such that the FDIC may evaluate the application pursuant to the statutory factors and regulations for which the institution's location is relevant, including consumer protection and community reinvestment laws and rules. The information provided should also be sufficient to enable the general public to reasonably comment on the application. In reviewing the reasonableness of the described location, the FDIC may consider issues such as the nature of the area (e.g., urban, suburban, or rural), population, physical boundaries, historic preservation or environmental issues, and political subdivisions, metropolitan statistical areas, or census tracts.²⁰

The FDIC may act on an application for which a specific location of the main office has not yet been identified, provided that the applicant agrees in writing to appropriate non-standard conditions involving the specific location of the institution prior to the effective date of deposit insurance. Such conditions may require FDIC non-objection to the proposed location, chartering authority approval, satisfactory resolution of outstanding historical preservation and environmental matters, and appropriate plans to reasonably inform the public.

The institution's proposed main office and branch locations should make prudent business sense and enable the institution to reach its target customer base. In selecting office locations,

¹⁹ The FDIC will continue to require an address for purposes of corresponding with the organizing group.

²⁰ The FDIC will advise an applicant if additional information is necessary regarding the physical location of the main office and whether re-publication is required.

organizers should consider applicable laws, tax consequences, future growth plans, real estate lease and purchase options, and budget implications. The basis for the selected target market and planned office locations should be explained in detail in the institution's business plan.

In addition, applicants are cautioned against purchasing any fixed assets or entering into any non-cancelable construction contracts, leases, or other binding arrangements related to the proposal unless and until the FDIC approves the application. If the main office location will involve an insider transaction, the organizing group should refer to the [SOP](#) discussion of the financial history and condition factor for specific considerations.

Developing the Business Plan

All *de novo* institutions must prepare a business plan to guide the first three years of the institution's operations. The business plan should be the result of thorough planning and research by the institution's organizers and management team, including its board members. It should be forward-looking and dynamic to enable the institution to evolve over time to meet the challenges of a changing operating environment.

A comprehensive, well-constructed, and well-supported business plan is used to demonstrate that the institution has a reasonable probability of success, will operate in a safe and sound manner, and will have adequate capital to support the institution's risk profile. The business plan also serves as the "business case" for the *de novo* institution and outlines specifically how the institution will compete in its chosen market and derive a reasonable return.

A business plan is a necessary element of the application process, but it should not be created for the benefit of the regulators. Organizers should view the business plan as an essential tool for the organization that will help guide decisions in the early stages of operations. While the institution is raising capital, key elements of the business plan will be evaluated by potential investors as they consider becoming a shareholder. Once the institution is open and operating, the business plan will guide daily operations and strategic decisions. As a result, it is important for the organizers and board of directors to fully understand and have confidence in the plan that is submitted with the application.

Guidance for developing a business plan is included within the [Application Form](#). As described in the [Application Form](#), the business plan content should cover the following areas: executive summary; description of business; marketing plan; management plan (including directors and officers); records, systems, and controls; financial management plan; monitoring and revising the plan; and financial projections. The business plan should be tailored to the institution's size, complexity, and risk profile. For example, smaller, non-complex community institutions may require a less extensive plan.

Business Plan Content

The FDIC does not require a specific format for a business plan. While each of the following areas should be addressed, as described in the [Application Form](#), certain areas may require more depth or explanation depending on the proposed institution's strategies.

Description of the Business

This section discusses the proposed location of the institution and any future branching or expansion plans, the organizational structure of the institution, any insider transactions, and the legal form of stock ownership.

Marketing Plan

In addition to describing target markets and the products and services to be offered, this section discusses the analyses and assumptions with respect to products and services, the selected markets, relevant economic considerations, and the competitive environment.

Management Plan

This section discusses the number of organizers and directors, board committees and their responsibilities, the duties and responsibilities of the senior executive officers and employees, and the institution's plans to address management succession.

If the proposed institution will be significantly involved in transactions or relationships with the parent company or any affiliates, the majority of the institution's board of directors should be independent from the parent and any affiliates. Further, such proposals must demonstrate that the institution has a sustainable financial structure.

Records, Systems, and Controls

This section discusses the institution's plans for accounting and internal control systems, the proposed internal audit function, compliance management programs (including the Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) program), and annual audits by independent public accountants. Proposals involving transactions or relationships with affiliates should describe all planned arrangements and include service level agreements that comply with [Section 23A](#) and [Section 23B of the Federal Reserve Act](#).

This section also addresses information technology (IT), which involves the institution's core banking systems, internal networks, internet and mobile applications, and payment and settlement systems that may be hosted internally or externally. Effective IT and cybersecurity strategies that are aligned with the institution's overall strategies are critical due to the role of technology in supporting and delivering most business activities. As such, appropriate strategies should be adopted for the institution's business activities (such as commercial lending and asset management) and enterprise-wide activities (such as security and business continuity planning), and should address system development, acquisition, and outsourcing requirements.

For outsourced solutions, the strategies should identify functions or services the institution will outsource, and include the name of each third party under consideration, due diligence performed, costs, and an assessment of external dependency risks. Contracts should be made contingent on obtaining the necessary regulatory approvals for both the bank charter and deposit insurance, and should limit personal liability should approval not be obtained. For internal solutions, the strategies should address facilities, capacity, and skill requirements, and should be supported by projected technology-related budgets.

Cyber threats and other operational issues can disrupt, degrade, or compromise an institution's operations thereby affecting capital and liquidity, or harm the institution's customers. Organizers should develop strategies to protect the institution from ongoing and emerging threats. These strategies should address operational resilience, including back-up and disaster recovery, incident response, cyber threat intelligence, governance, skills, testing of plans, and independent review of controls. Non-standard conditions regarding technology strategies may be imposed on a case-by-case basis. The regulatory agencies have provided guidance on third-party relationships and outsourcing, information security and business continuity planning, and cybersecurity.²¹

Financial Management Plan

This section discusses the institution's capital goals; earnings goals; plans for raising capital; dividend policy; funding plans, including how the institution will identify and measure liquidity risk; and types of investment securities to be held. This section also discusses the institution's objectives, strategies, and risk tolerance for interest rate risk, including how the institution will identify and measure interest rate risk. Further, this section addresses the loan review program, including how the institution will identify and measure credit risk, and its methodology for determining the allowance for loan and lease losses (ALLL).²²

Narrow focus proposals, including monoline operations or other proposals considering a limited set of banking activities, should address in this section how the institution will mitigate concentration risk, how the institution intends to maintain adequate liquidity, and how credit-sensitive funding risks will be managed. This section should also demonstrate that sufficient capital is available to address uncertainties, as well as a clear ability to raise capital if needed.

Monitoring and Revising the Plan

This section discusses how the board of directors will monitor adherence to the business plan, and how it will adjust and amend the plan to accommodate significant or material changes; for example, the board's proposed responses to greater or lesser than expected growth, greater or lesser than expected market penetration, *etc.*

Narrow focus proposals should clearly define strategic alternatives for redirecting efforts, which may include self-liquidation, if the business plan proves unsuccessful.

²¹ See, for example, [FIL-44-2008, *Guidance for Managing Third-Party Risk*](#), the Federal Financial Institutions Examination Council (*FFIEC Information Technology Handbook, booklets on Outsourcing Technology Services, Information Security, and Business Continuity Management*); and [FFIEC Cybersecurity Awareness](#).

²² In June 2016, the Financial Accounting Standards Board issued Accounting Standards Update No. 2016-13, Topic 326, Financial Instruments—Credit Losses (ASU No. 2016-13), which revises the accounting for credit losses under U.S. generally accepted accounting principles (U.S. GAAP). ASU No. 2016-13 introduces the current expected credit losses (CECL) methodology to replace the incurred loss methodology. Under the CECL methodology, allowances for credit losses (ACL) cover a broader range of financial assets than the ALLL under the incurred loss methodology. The effective date of ASU No. 2016-13 is either fiscal years beginning after December 15, 2019, or fiscal years beginning after December 31, 2022. While the term ALLL is used in this Handbook, proposed institutions may prepare their financial projections using either ACL or an ALLL depending on their anticipated CECL adoption date. All institutions must adopt CECL beginning in 2023.

Financial Projections

This section provides financial information for opening day *pro forma* and quarterly projections for three years of operations, and includes projected balance sheet, income statement, and regulatory capital schedules; details of all assumptions used, including the assumed interest rate scenario; discussion of market studies or surveys used to support projected growth; discussion of the level of marketing expenses necessary to achieve the projected market share for both loan and deposit products, consistent with those experienced by other institutions in the market; and a sensitivity analysis of the financial projections to reflect the effects of adverse changes in interest rates, changes in the asset/liability mix, higher than expected operating expenses, marketing costs, and/or growth rates. All financial projections should be well-supported and sufficiently detailed.

Additional Considerations Regarding Business Plans

Bank CEOs who have successfully opened a *de novo* institution have, in a variety of settings, provided advice regarding several important aspects of the organization of an institution. The CEOs discussed best practices and shared advice from their experiences with other meeting participants during *de novo* outreach events and through participation in the FDIC's Advisory Committee on Community Banking.

The CEOs have noted that institutions should develop a business plan that is sustainable through each stage of the business cycle, and then operate under the established plan. The CEOs further indicated that organizers should regularly discuss the business plan to ensure everyone has confidence in the plan and should ensure that potential investors understand the plan and are investing for long-term growth.

With respect to IT and the proposed institution's core processing environment, the CEOs also advised that management take the time to fully consider vendor and product options, as this is one of the most important decisions to be made. The CEOs suggested thinking about the services customers will want and the institution's proposed growth plans. The CEOs characterized this initial contract negotiation as critical in terms of its importance. The CEOs suggested that if management is not familiar with the primary IT vendors, management should talk to other bankers or, as appropriate, engage a qualified consultant before making any vendor selection and negotiating a contract. They believed these additional steps in the due diligence process would enable management to carefully consider the selection of a core processor and best negotiate the related contracts.

During the first three years of operation, a newly insured institution will be required to operate within the parameters of its business plan and provide prior notice²³ to the FDIC or its PFR, if not the FDIC, for any material change to, or major deviation from, the business plan. The board should regularly monitor actual performance in relation to the business plan projections, budgets, and other benchmarks. Any significant deviations in balance sheet composition, financial performance, or other key metrics should be promptly identified, and remedial strategies should be developed to bring the institution into conformance with the approved business plan.

²³ The FDIC may require the applicant to seek prior approval of a business plan change in cases involving higher complexity or elevated risk.

In limited instances, a *de novo* institution's circumstances may necessitate a change to its business plan. Major deviations or material changes from the plan could involve adjustments to the target geographic market, additional branching or expansion plans, new products or services, new activities or third-party relationships, growth that significantly exceeds or falls short of projections, and other unexpected outcomes that could influence the institution's risk profile. *De novo* institutions contemplating business plan changes should contact the appropriate FDIC regional office and other relevant agencies, including the institution's chartering authority, to discuss potential changes.²⁴

Planning for Organizational Expenses

De novo institutions incur certain organizational expenses before they open for business. For example, all organizing groups expend time and resources to prepare an application and supporting documentation including a business plan, feasibility studies, and *pro forma* financial projections. There also are costs associated with facilitating a capital raise, retaining members of the management team, and completing other organizational activities. Planning for such organizational expenses at the outset of the pre-filing process can help minimize unforeseen expenditures and funding needs.

Many organizers rely on third parties (*e.g.*, attorneys, consultants, or other professionals) to assist in the organizational process. Although these parties may be experienced and helpful in navigating regulatory requirements, the FDIC does not require organizers to engage third-party firms to facilitate the application process. The use of third parties should be carefully considered based on the nature of the proposal and the level of expert guidance needed by the organizers. In many cases, sufficient expertise may exist within the organizing group to handle key aspects of the institution's organization.

Organizers can play an important role in containing organizational costs by performing due diligence on third parties, ensuring that the use of such parties is in fact necessary given existing internal resources, submitting all required information for the deposit insurance application, and responding in a timely manner to requests from the regulatory authorities. Further, organizers should not prematurely enter into definitive, final, or long-term contracts or agreements related to institution offices, service relationships, employment, or other relationships due to the potential costs associated with terminating such agreements or arrangements.

Determining the Initial Amount of Capital

Adequate capital is essential for all banking institutions. In determining the proposed initial capital, organizers should consider the risks inherent in the institution's business model, the potential variability in earnings projections, and the skill and ability of the management team to carry out the business plan.

²⁴ Refer to the FDIC's [Applications Procedures Manual](#) and the [Deposit Insurance Applications Procedures Manual](#) for further details regarding how the FDIC processes business plan changes.

Because each proposed *de novo* institution is unique in terms of its business plan, management team, market competition, and local economy, the FDIC does not prescribe a minimum dollar level of capital for any given proposal. Instead, the FDIC considers the unique factors of each application and sets a minimum capital requirement based on an evaluation of the proposed institution's market dynamics, anticipated size, complexity, activities, concentrations, and business model. The FDIC will require higher capital if the proposal presents more than routine risk or novel characteristics. For example, proposals involving limited or specialty business models may need higher capital to mitigate the inherent risks.

The FDIC expects the initial capital of each *de novo* institution to be sufficient to provide a tier 1 capital to assets leverage ratio²⁵ of not less than 8 percent throughout the first three years of operation.²⁶ In addition, the institution must maintain an adequate ALLL. The business plan should not assume, for the first three years of operation, any new or additional capital raises beyond the initial capital contributions made during the institution's organization phase. During the first three years of operation, any cash dividends should be paid only from net operating income, and should not be paid until an appropriate ALLL has been established and overall capital is adequate. Organizers should not assume that the institution will make any dividend payments during this time frame.

See the [SOP](#) for additional details regarding capital.

Pre-Filing Meetings

The FDIC strongly encourages organizers to meet with FDIC staff and other applicable regulatory agencies before submitting a deposit insurance application, which will aid organizers in developing a complete application and facilitate the review process.

Pre-filing meetings are beneficial for both prospective applicants and the supervisory agencies. The meetings promote open communication regarding the specifics of the application, regulatory expectations, and the application review process. Additionally, pre-filing communication with the FDIC can minimize the amount of time required for the application review process by providing potential applicants with a clear understanding of the requirements and providing the FDIC with the opportunity to identify early in the process any issues that need to be addressed by the applicant.

As a general rule, pre-filing meetings are attended by the FDIC, the chartering authority, and, as appropriate, the FRB as PFR or holding company supervisor. FDIC representatives generally include staff from the regional office and field office for the location in which the institution would be headquartered. Staff from the FDIC's Washington Office may also attend. During the meeting, the participating agencies will discuss regulatory expectations and provide an overview

²⁵ As defined in the appropriate capital regulation of the institution's PFR.

²⁶ As appropriate, and depending on the institution's risk profile, the FDIC may establish additional capital requirements based on common equity, tier 1 risk-based, and/or total risk-based capital. Additionally, in September 2019, the FDIC approved a Final Rule that allows qualifying institutions to use an optional community bank leverage ratio (CBLR) framework for calculating and reporting regulatory capital ratios. Qualifying institutions include those with 1) less than \$10 billion in average total consolidated assets (ATCA), 2) off balance sheet exposures of 25 percent or less of ATCA, and 3) trading assets plus trading liabilities of 5 percent or less of ATCA, provided the institution does not apply the advanced approaches capital framework.

of the application process, including general timelines for processing. Staff may also address special information needs and other matters specific to the application so that the applicant can include appropriate information in the submission.

FDIC staff is available to discuss proposals, even at the earliest stages of development, and answer any questions that organizers may have regarding regulatory requirements or the application process. To schedule a meeting with FDIC staff, organizers should contact the appropriate FDIC regional office.

Draft Proposals

The FDIC has established a voluntary process for the receipt and review of draft deposit insurance proposals. While the process may be particularly helpful for business models that present unusual or complex aspects, or for groups seeking technical assistance, any organizing group may choose to submit a draft proposal to obtain feedback beyond that typically available through the existing pre-filing process. Refer to [FIL-82-2018](#) for additional information, including an implementing document that describes the [FDIC's review process for draft deposit insurance proposals](#).

SECTION II: THE APPLICATION PROCESS

After completing the initial organizational steps and gaining insights from the pre-filing meeting, organizers should be in a position to prepare and submit applications to the appropriate regulatory agencies. [Section 5 of the FDI Act](#) requires any proposed depository institution seeking federal deposit insurance to file an application with the FDIC.

The [Application Form](#) may be used to apply for deposit insurance from the FDIC, as well as a charter from either the OCC or the applicable state authority.²⁷

If the proposed organizational structure will include a holding company, an application (or multiple applications) will also need to be filed with the FRB.

Overview of the Review and Evaluation Process

Although the FDIC's processing time will vary depending on the unique characteristics of a proposal, the FDIC strives to act on FDI applications within four months after being accepted as substantially complete. An application is considered substantially complete when the FDIC has the necessary information to fully consider each of the applicable statutory factors and any other regulatory requirements. In general, an application will be deemed substantially complete if an applicant has provided the information required in the [Application Form](#), and the submitted information does not raise significant follow-on questions. Significant follow-on questions may arise when, for example, inconsistencies exist between sections of the application, the business plan is lacking in certain respects, concerns are identified with respect to the proposed corporate structure or relationships, potential concerns are raised in the review of required [IBFR](#) filings, or

²⁷ Use of the [Application Form](#) is optional; however, the material submitted to the FDIC must contain all information required in the form, unless the FDIC otherwise indicates. Organizers should sign the applicable certification page(s) even if the form itself is not being used.

other aspects of the proposal require further details in order for the FDIC to assess the risks presented and any mitigating factors.

Organizers should expect regular communication with the FDIC throughout the application process, with communication generally occurring at the intervals described below.

- Within three business days of receipt of an application for deposit insurance, the FDIC will provide a written response to the applicant acknowledging receipt and requesting publication of the filing in a local newspaper, if publication has not already occurred. FDIC staff will then coordinate internally and with other relevant agencies to conduct an initial review of the application and facilitate a common understanding of the proposal. The focus of the initial review is on the completeness, accuracy, and consistency of the filing.
- In most cases, within 30 days of receipt of the application, the FDIC will provide a letter to the applicant noting either that the application is substantially complete and accepted for processing, or that additional information is needed.²⁸ If additional information is needed, the letter will include specific questions and requests, and will include a date by which the information should be submitted. Applicants are normally provided up to 30 days to respond to such requests.
- If the application is substantially complete, a field investigation will be coordinated among the relevant agencies, including the chartering authority and, as applicable, the local Federal Reserve Bank. In completing the field investigation, the FDIC will communicate any identified issues or concerns to the applicant or advise the applicant that no issues or concerns exist. This communication may occur by letter or through a presentation to the proponents. The field investigation process should be completed within 60 days of the date the application was deemed substantially complete and accepted for processing.
- Following the field investigation process, the FDIC will complete the review process, notify the applicant in writing of any proposed non-standard conditions, seek the applicant's written concurrence to the non-standard conditions, and finalize the recommendation for action. This process should be completed within 30 days of the FDIC's prior communication.

If an applicant has concerns regarding the FDIC's review of its application, including concerns with respect to processing timeframes or other pre-decisional matters, the applicant may request a review by the Division Director similar to the informal review process discussed in [FIL-51-2016, Reminder on FDIC Examination Findings](#). The informal review process is available solely for pre-decisional processing matters. Applicants may not use this process to request a review of the FDIC's analysis or preliminary findings with regard to any statutory factor or the application, as a whole; determinations involving conditions to be imposed in connection with approving the application; or situations where the FDIC has offered the applicant an opportunity to withdraw the filing.

²⁸ A letter to the applicant for a non-bank or non-community bank proposal may take up to 45 days to issue depending on the matters presented.

Application Requirements

[Part 303 of the FDIC Rules and Regulations](#) describes the FDIC’s application requirements in detail.²⁹ The [Application Form](#), which should be filed with the appropriate FDIC regional office,³⁰ includes information that the chartering authority and the FDIC will need to evaluate the proposal. It provides general instructions, specific information fields and forms (e.g., organizer certification forms and director oath forms), and supplemental guidelines for business plans including template financial schedules. Pursuant to [Sections 303.7 and 303.23 of the FDIC Rules and Regulations](#), applicants must also publish a notice of the institution’s proposed formation in a newspaper of general circulation in the community in which the main office of the institution will be located.

Application Content

The core portion of the [Application Form](#) includes the following eight sections and general information requirements:

Overview – Business description, any legal or permissibility issues, copies of related applications,³¹ offering materials, and corporate documents.

Management – List of the organizers, proposed directors, senior executive officers, and 10-percent-or-more shareholders, and an [IBFR](#) and electronic fingerprints for each of those individuals; signed oath of director forms; and details regarding director and management qualifications, responsibilities, compensation, conflicts of interest, and interlocks.

Capital – Details regarding each class of stock, the adequacy of the proposed capital structure, all known stock subscribers, and any fees to be paid in connection with the sale of stock.

Convenience and Needs of the Community – Details regarding market characteristics and the CRA plan, which should include demographic and economic information on the assessment area, as well as the strategy for meeting the credit needs of the assessment area, including low- and moderate-income communities.

Premises and Fixed Assets – A description of the physical premises, details on whether the premises will be purchased or leased, a description of the physical security program and property insurance, a discussion of any significant environmental or historical sites/structures impact, and any plan to establish branches within the first three years.

²⁹ The procedures governing the processing of a deposit insurance application are contained in [Part 303, Subpart B of the FDIC Rules and Regulations](#) (12 CFR part 303).

³⁰ FDIC regional office staff will advise the organizers on the number of hard copies of the application that should be provided (in addition to the original signed copy) and will communicate procedures for secure electronic submission.

³¹ Related applications may include holding company filings, as well as institution-specific filings. Institution-specific filings may include, for example, applications to establish branches or offer fiduciary services upon opening, each of which would be subject to separate application and publication requirements.

Information Systems – A description of any products and services that will be delivered electronically, an outline of the proposed information systems, budgeting for IT, and a description of the information security program.

Business Plan and Financial Projections – A comprehensive, written plan that results from in-depth planning of the organizers and management. Appropriate supporting financial schedules, as well as key assumptions, sensitivity analyses, and market/feasibility studies should also be provided.

Other Information – A list of any activities and functions that will be outsourced to third parties, a description of the vendor management program, details on all planned organizational expenses, key operating policies, and the institution’s BSA/AML program.

The materials collected through the [Application Form](#) provide the information the regulatory agencies need to evaluate a charter or insurance application. Therefore, it is important that the materials be complete and responsive to all questions in the [Application Form](#). Individuals completing the application and any related forms should carefully follow the instructions provided and any applicable statutes, regulations, policies, and guidance.

Each agency has specific purposes and timing requirements for information requested in the [Application Form](#). Depending on the institution’s anticipated risk profile, certain aspects (*e.g.*, fully developed policies for all main business functions) may not be necessary at the time the application is filed. If not provided at the time of filing, policies should be provided as soon as possible thereafter to enable a complete review during the field investigation.

Public vs. Confidential Information

Certain portions of the application will be available for public review and comment. The FDIC may receive requests for copies of a deposit insurance application from individuals, organizations, the media, or other interested parties. Pursuant to [Section 303.8 of the FDIC Rules and Regulations](#), any person may inspect or request a copy of the non-confidential portions of the application until 180 days following the final disposition of the filing. Following the 180-day period, non-confidential portions of an application file will be made available upon request in accordance with the Freedom of Information Act (FOIA).³²

In the event the FDIC receives a request for a copy of a deposit insurance application, staff will review the full submission to determine the portions that may be made public according to [Section 303.8 of the FDIC Rules and Regulations](#). Because applications are generally submitted with the public and confidential portions identified by the applicant, the FDIC will consider the applicant’s suggested categorizations when making a disclosure determination. However, if there is a conflict between the applicant’s suggested categorization and the FDIC’s determination, our staff will contact the applicant to discuss this issue prior to disclosure.

³² The FOIA, a federal statute, provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The FOIA thus established a statutory right of public access to Executive Branch information in the federal government. [Section 309.5 of the FDIC Rules and Regulations](#) implements FOIA and provides procedures for requesting records. Refer to the [FDIC FOIA Service Center](#) for additional information regarding FOIA and public information.

MORE TO KNOW: Examples of Public vs. Confidential Information

Public Information

- General information in the business plan;
- Lists of organizers, directors, and senior executive officers;
- The oath of director forms (with the signatures and any other personally identifiable information, such as personal addresses redacted);
- Lists of board committees and members;
- Descriptions of each proposed senior executive officer's duties and responsibilities;
- The institution's articles of association, articles of incorporation, corporate charter, and proposed bylaws (if publicly available from the incorporating state);
- Information about the proposal's effect on the quality of the human environment or the impact on historic locations;
- The CRA Plan;
- Descriptions of general issues pertaining to applicable laws or regulations;
- Materials related to public stock offerings and public debt issuances;
- Non-confidential supplementary information filed during the application review process; and
- Comments received from interested parties.

Confidential Information

- Personal information protected by privacy statutes;
- Commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; and
- Information that could adversely affect the financial condition of any depository institution.

The FDIC may also receive public comments regarding a pending deposit insurance application. Pursuant to [Section 303.9 of the FDIC Rules and Regulations](#), if a comment is received, the FDIC will provide a copy of the comment letter to the applicant who will have an opportunity to make a formal response. Under [Section 303.8 of the FDIC Rules and Regulations](#), the comment letter and any response from the organizers, if provided, will become part of the public record of the application to the extent they are not afforded confidential treatment.

Evaluating the Statutory Factors

The FDIC considers the statutory factors enumerated in [Section 6 of the FDI Act](#) when evaluating any deposit insurance application.³³ The statutory factors consist of the following:

- Financial History and Condition,
- Adequacy of the Capital Structure,
- Future Earnings Prospects,
- General Character and Fitness of Management,
- Risk to the Deposit Insurance Fund,
- Convenience and Needs of the Community to be Served, and
- Consistency of Corporate Powers with the FDI Act.

³³ Per [Section 5 of the FDI Act](#), the FDIC Board of Directors shall consider the factors described in Section 6 in determining whether to approve the application for deposit insurance.

Refer to the [SOP](#) for additional information regarding how the FDIC interprets the statutory factors. The primary considerations for each statutory factor are summarized as follows:

Financial History and Condition – The proponents’ ability to provide financial support to the new institution; the reasonableness of the aggregate direct and indirect investment in fixed assets, including lease obligations; and whether insider transactions are made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders and do not involve more than normal risk.

Adequacy of the Capital Structure – Generally, whether the institution has initial capital sufficient to provide a tier 1 capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operation; the adequacy of the proposed ALLL; and the acceptability of the capital structure and any stock financing arrangements by proposed insiders.

Future Earnings Prospects – Whether the institution can achieve and sustain adequate profitability within a reasonable period (normally three years) as projected in realistic and supportable estimates.

General Character and Fitness of Management – For each proposed director and officer, the individual’s experience, proposed duties, personal and professional financial responsibility, reputation for honesty and integrity, and familiarity with the proposed institution’s community; whether the institution’s stock benefit plans, including stock options, stock warrants, and other similar stock-based compensation plans are acceptable; and the sufficiency of fidelity insurance, policies, and audit coverage.

Risk to the Deposit Insurance Fund – The FDIC will rely on any available information including, but not limited to, the business plan and financial projections.

Convenience and Needs of the Community to be Served – The deposit and credit needs of the community to be served, and the applicant’s willingness and ability to serve those needs; and the proposed institution’s CRA documentation, including any applicable public file information, prepared in accordance with the requirements of the institution’s PFR.

Consistency of Corporate Powers with the FDI Act – Whether the institution plans to engage as principal in any impermissible activity.

In general, deposit insurance will be granted if each of the statutory factors plus the considerations required by the [National Historic Preservation Act](#) (NHPA) and the [National Environmental Policy Act of 1969](#) (NEPA) are favorably resolved. Additional guidance regarding these laws may be found in the respective Statements of Policy on [NHPA](#) and [NEPA](#).

In some cases, the FDIC is unable to favorably resolve each of the statutory factors and the request for federal deposit insurance is not granted. We notify the organizers of such a determination as soon as possible, explain the rationale for our conclusion, and present potential options that the organizers might consider to address the unfavorable statutory factor(s) if such options exist. The organizers may choose to modify the application to address the underlying concerns or, at the FDIC’s discretion, applicants may be offered the opportunity to withdraw the filing.

Note: The FDIC's criteria for evaluating applications submitted by operating financial services entities seeking to convert to an FDIC-insured institution (including credit unions, mortgage or finance companies, limited purpose trust companies, and other entities) are generally the same as those for other proposed *de novo* institutions. In circumstances involving an existing non-insured entity applying for deposit insurance, the FDIC will review the institution's financial and operating history, current condition, the nature and extent of any proposed affiliate relationships, and all relevant considerations with respect to the statutory factors to ensure the institution would not pose undue risk to the DIF.

FDIC Staff Involvement and Field Investigations

Deposit insurance applications are evaluated at both the FDIC regional office and field office levels. At the regional office, a case manager will be designated as the primary point of contact for the organizers. The case manager, who also may have participated in the pre-filing meeting or other preliminary discussions, will conduct the initial review of the application, refer the application to the field office for investigation, review the investigation results, interact with other FDIC staff, and coordinate with other regulatory agencies as appropriate.

Once the application is accepted as substantially complete, the case manager will forward the application to the field office/territory that has supervisory responsibility for the area where the institution is to be headquartered. The field office supervisor will assign an examiner to conduct a field investigation, which serves as the FDIC's on-site review of the *de novo* proposal with the organizers. The chartering authority may also participate in the field investigation.

During the investigation, the examiner will meet with the organizers and proposed directors to ascertain their understanding of their responsibilities as directors; understanding of the financial projections and capital needs; abilities to execute the business plan; and commitment to the proposed institution. The examiner will focus particular attention on the feasibility and reasonableness of the business plan (including the financial projections), the experience and competency of the management team, and the adequacy of the proposed capital. These aspects are critical because they will have a significant bearing on the institution's prospective risk profile and performance.

The examiner may also meet with other bankers in the community as well as local community groups to evaluate the competitive environment of the marketplace and deposit and credit needs of the community. Finally, the examiner will summarize her or his findings from the investigation and will submit the findings to the case manager.

The case manager will review the results of the field investigation, ensure that any issues or concerns conveyed to the organizers are resolved, prepare final recommendations regarding the disposition of the application for the designated FDIC official(s), and ultimately will be assigned responsibility for the ongoing supervision and monitoring of the institution once it opens for business.

Depending on the application characteristics and the findings with regard to the statutory factors, the application may be acted on at the regional level, at the divisional level (at the FDIC's Washington Office), or by the FDIC Board of Directors.³⁴

Regardless of the nature or circumstances of the proposal, field and regional staff will communicate with organizers throughout the application process and keep them apprised of our status in considering the application.

Approval Conditions

The FDIC imposes certain conditions on all institutions that are granted deposit insurance. These conditions include minimum initial and ongoing capital for the three-year *de novo* period, fidelity bond insurance coverage, and financial statement audit requirements, among other conditions.

The FDIC may also impose non-standard conditions on a case-by-case basis. Typically, non-standard conditions are used when the FDIC determines that additional controls are appropriate or necessary to mitigate risks unique to the proposal. Non-standard conditions may also be needed to ensure that actions or activities in process at the time of approval are completed before deposit insurance becomes effective. It is the FDIC's practice to seek the applicant's written agreement to any non-standard conditions before the FDIC grants deposit insurance.

The most common non-standard conditions address business plan changes, employment agreements and stock options plans, bank policies, and additional directors or officers.³⁵ Non-standard conditions may also address corporate relationships, management authority and independence, and other areas, as appropriate. Most non-standard conditions do not exceed the three-year *de novo* period. However, certain conditions may be imposed for any length of time deemed necessary to mitigate risk.

Depending on the nature and complexity of the proposal, the FDIC may impose non-standard conditions that require the institution and/or other applicable parties (such as certain affiliates or investors) to enter into a written agreement. Written agreements, which are intended to address specific risks or supervisory matters, may include parent company agreements, capital and liquidity maintenance agreements, operating agreements, and passivity agreements.

All approval conditions are enumerated in the FDIC's Order for Federal Deposit Insurance, which is issued with a formal Statement indicating the basis for approval. Each of these documents will be made publicly available on the FDIC's website. [Appendix 2](#) lists (in

³⁴ Generally, applications involving proposed traditional community banks will be acted on at the regional level. Applications presenting more complexity may require action by the FDIC's Washington Office, with authority to act on certain applications being reserved to the FDIC's Board of Directors. The FDIC's delegations of authority for deposit insurance applications and other filings, which are summarized in a matrix and detailed in a Board Resolution, are accessible through the FDIC's [Laws & Regulations](#) webpage.

³⁵ If the FDIC acts on an application where the full executive officer team has not yet been identified, non-standard conditions may be imposed that require FDIC non-objection to any proposed executive officer candidate(s). The conditions may also require the submission of background information, proposed employment agreements and compensation arrangements, and any other relevant items.

abbreviated form) the conditions that are frequently imposed in an Order granting deposit insurance. The FDIC may impose fewer conditions, additional conditions, or variations of these conditions, depending on the facts and circumstances of each particular proposal.

SECTION III: PRE-OPENING ACTIVITIES

Once conditional approval is received, organizers need to ensure that certain final steps, described below, are completed prior to the opening of the institution and deposit insurance becoming effective.

Satisfying Pre-Opening Conditions

The FDIC's approval documents, as well as those from the chartering authority, may include certain conditions that must be satisfied prior to the institution's opening. These conditions may require that the organizers submit material to the FDIC demonstrating compliance. Fulfillment of all pre-opening conditions will be validated by FDIC staff before an insurance certificate is issued.

Completing the Capital Raise

As a pre-opening condition, organizers need to demonstrate that sufficient funds are in escrow to meet the initial capital requirement of the deposit insurance Order, which is expressed in U.S. dollars. In some instances, the institution may have received commitments from investors in the form of executed subscription agreements, but not yet obtained all of the committed capital funds. The organizers should coordinate as necessary with counsel and financial advisors to ensure the capital closing is completed accurately and according to the terms and conditions stated in the application materials.

Other Pre-Opening Considerations

Various other operational matters may need to be addressed or finalized to ensure that the institution will begin operations in a seamless manner. The following actions, among others, are integral to the pre-opening process:

- Finalize policies and procedures for all key business areas (*e.g.*, loans, investments, liquidity, interest rate risk, BSA/AML, compliance, IT, code of ethics, *etc.*);
- Develop documents for delivering loan, deposit, and other banking products or services;
- Hire and train staff;
- Formalize all service/vendor relationships;
- Ensure all physical office space is ready for occupancy;
- Ensure IT systems will operate as planned;
- Develop strategies to remain aware of physical and cybersecurity threats;³⁶ and
- Institute appropriate security procedures and meet with local law enforcement.

³⁶ The Financial Services Information Sharing and Analysis Center (FS-ISAC) is an industry forum for collaborating on critical security threats facing the financial services sector. More information is available on the FS-ISAC website, <https://www.fsisac.com>.

Once all FDIC and chartering authority approval conditions are satisfied and an opening date is selected, the case manager will notify the FDIC's Executive Secretary, who will prepare the institution's insurance certificate and forward it to the institution along with membership materials to be displayed at teller windows.

CONCLUSION

The FDIC is committed to working with, and providing support to, any group with an interest in starting a *de novo* institution. New institutions with sound business plans, experienced leadership at the board and management levels, and appropriate capital support can play a vital role in serving the deposit and credit needs of their communities.

It is our hope that this Handbook provides organizers a better understanding of the deposit insurance application process and assists in meeting their objectives in successfully forming a *de novo* institution. The FDIC looks forward to discussing new deposit insurance proposals with organizers and their representatives.

RESOURCES

Agency Contact Information and Websites

Resource	Website
Bureau of Consumer Financial Protection	http://www.consumerfinance.gov
Conference of State Bank Supervisors (Directory of State Banking Authorities)	https://www.csbs.org/state-bank-agency-contact-quick-access
Federal Deposit Insurance Corporation (FDIC)	https://www.fdic.gov
FDIC Public Website Dedicated to Applications for Deposit Insurance	https://www.fdic.gov/regulations/applications/depositinsurance/
FDIC Organization Directory and Office Contacts	http://www.fdic.gov/about/contact/directory/
Federal Reserve Board of Governors	http://www.federalreserve.gov
National Credit Union Administration	https://www.ncua.gov/Pages/default.aspx
Office of the Comptroller of the Currency	http://www.occ.gov

Application Form and Related Documents³⁷

Resource	Website
Interagency Charter and Federal Deposit Insurance Application Form and Instructions	https://www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf
Interagency Biographical and Financial Report	https://www.fdic.gov/formsdocuments/6200-06.pdf

³⁷ Application and IBFR forms are also available in Word format at [FDIC: Forms](#)

Laws and Regulations

Resource	Website
Section 5 of the FDI Act	https://www.fdic.gov/regulations/laws/rules/1000-600.html
Section 6 of the FDI Act	https://www.fdic.gov/regulations/laws/rules/1000-700.html
Part 303 of the FDIC Rules and Regulations	https://www.fdic.gov/regulations/laws/rules/2000-200.html
Part 309 of the FDIC Rules and Regulations	https://www.fdic.gov/regulations/laws/rules/2000-3800.html
Part 345 of the FDIC Rules and Regulations	https://www.fdic.gov/regulations/laws/rules/2000-6500.html
Part 363 of the FDIC Rules and Regulations	https://www.fdic.gov/regulations/laws/rules/2000-8500.html
Part 364 of the FDIC Rules and Regulations	https://www.fdic.gov/regulations/laws/rules/2000-8600.html
National Historic Preservation Act of 1996 (NHPA)	https://www.fdic.gov/regulations/laws/rules/8000-5100.html
National Environmental Policy Act of 1969 (NEPA)	https://www.fdic.gov/regulations/laws/rules/8000-5000.html

Supervisory Guidance

Resource	Website
FDIC Statement of Policy on Applications for Deposit Insurance (SOP)	https://www.fdic.gov/regulations/laws/rules/5000-3000.html
FIL 51-2016 (Reminder on FDIC Examination Findings)	https://www.fdic.gov/news/news/financial/2016/fil16051.html
FDIC Statement of Policy on NHPA	https://www.fdic.gov/regulations/laws/rules/5000-1400.html
FDIC Statement of Policy on NEPA	https://www.fdic.gov/regulations/laws/rules/5000-1500.html
FDIC Statement of Policy Concerning the Responsibilities of Bank Directors and Officers	https://www.fdic.gov/regulations/laws/rules/5000-3300.html
FDIC Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities	https://www.fdic.gov/regulations/laws/rules/5000-500.html
Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations	https://www.fdic.gov/regulations/laws/rules/5000-2400.html
Interagency Guidance on Sound Incentive Compensation Policies	https://www.fdic.gov/regulations/laws/rules/5000-5350.html

Other Resources

Resource	Website
FDIC Applications Procedures Manual	https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/index.html
FDIC Deposit Insurance Applications Procedures Manual	https://www.fdic.gov/regulations/applications/depositinsurance/procmanual.pdf
FDIC Deposit Insurance Applications Procedures Manual Supplement: Applications from Non-Bank and Non-Community Bank Applicants	https://www.fdic.gov/regulations/applications/depositinsurance/procmanual-supplement.pdf
FDIC Delegations of Authority: Board Resolution	https://www.fdic.gov/regulations/laws/matrix/
FDIC Directors' Resource Center	https://www.fdic.gov/regulations/resources/director/
FDIC's Pocket Guide for Directors	https://www.fdic.gov/regulations/resources/director/pocket/index.html
FDIC FOIA Service Center	https://www.fdic.gov/about/freedom/
FDIC Risk Management Manual of Examination Policies	https://www.fdic.gov/regulations/safety/manual/
FDIC Supervisory Insights, Special Corporate Governance Addition	https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/si-se2016.pdf
FDIC Supervisory Insights, Summer 2016	https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum16/SI_Summer16.pdf
FDIC Compliance Examination Manual	https://www.fdic.gov/regulations/compliance/manual/index.html
FDIC Trust Examination Manual	https://www.fdic.gov/regulations/examinations/trustmanual/
FFIEC BSA/AML Examination Manual	https://bsaaml.ffiec.gov/manual
FFIEC IT Examination Handbook Infobase	https://ithandbook.ffiec.gov/
Financial Services Information Sharing and Analysis Center Website	https://www.fsisac.com/

Appendix 1: FDIC Regional Office Contact Information

Atlanta Regional Office

10 10th Street NW
Suite 800
Atlanta, GA 30309-3849
Toll-free: (800) 765-3342
Local: (678) 916-2200

Chicago Regional Office

300 South Riverside Plaza
Suite 1700
Chicago, IL 60606-3447
Toll-free: (800) 944-5343
Local: (312) 382-6000

Dallas Regional Office

1601 Bryan Street
Dallas, TX 75201
Toll-free: (800) 568-9161
Local: (214) 754-0098

Kansas City Regional Office

1100 Walnut St
Suite 2100
Kansas City, MO 64106-2180
Toll-free: (800) 209-7459
Local: (816) 234-8000

New York Regional Office

350 Fifth Avenue
Suite 1200
New York, NY 10118-0110
Toll-free: (800) 334-9593
Local: (917) 320-2500

San Francisco Regional Office

25 Jessie Street at Ecker Square
Suite 2300
San Francisco, CA, 94105-2780
Toll-free: (800) 756-3558
Local: (415) 546-0160

Additional information is available at <https://www.fdic.gov/about/contact/directory>.

Appendix 2: Frequently Imposed Conditions

Sample Conditions Included in an FDIC Deposit Insurance Order

1. The applicant will provide a specific amount of initial paid-in capital.
2. The tier 1 capital-to-assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's PFR) will be maintained at not less than 8 percent throughout the first three years of operation and an adequate allowance for loan and lease losses will be provided.
3. Any changes in proposed management or proposed ownership to the extent of 10 percent or more of stock, including new acquisitions of or subscriptions to 10 percent or more of stock, shall be approved by the FDIC prior to the institution opening for business.
4. The applicant will adopt an accrual accounting system for maintaining the books of the institution.
5. Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct such business, and its establishment and operation have been fully approved by the appropriate state and/or federal supervisory authority.
6. Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction.
7. Where applicable, a registered or proposed holding company has obtained approval of the Board of Governors of the FRS to acquire voting stock control of the proposed depository institution prior to its opening for business.
8. Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate Regional Director for review and comment.
9. Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved.
10. The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the appropriate Regional Director.
11. The applicant will have adequate fidelity coverage.
12. The institution will obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective and submit certain audit-related documents to the appropriate FDIC office within specified time frames.
13. The institution shall operate within the parameters of the business plan submitted to the FDIC. During the first three years of operations, the institution shall provide prior notice to the appropriate Regional Director or its PFR, if not the FDIC, for any proposed major deviation or material change from the submitted business plan.
14. The institution will develop and implement a CRA plan appropriate for its business strategy, if not previously submitted.

- 15.** During the first three years of operation, the institution shall notify the appropriate Regional Director of any plans to establish a loan production office at least 60 days prior to opening the facility.
- 16.** In cases primarily involving special purpose de novo institutions, where the applicant's business plan indicates there will only be an intercompany or similar deposit, the institution shall acquire, prior to the effective date of deposit insurance, and continue to maintain the requisite deposits to be "engaged in the business of receiving deposits other than trust funds," as defined in [Section 303.14 of the FDIC Rules and Regulations](#).
- 17.** If the transaction does not take effect within the specified time period, or unless a request for an extension of time has been approved, the consent granted shall expire at the end of the time period.
- 18.** Until the FDIC's conditional commitment becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment if warranted.

Appendix 3: Examples of Prudential Conditions

1. Prior to the effective date of deposit insurance, the institution will have appointed and will thereafter maintain a board of directors that is acceptable to the FDIC. The majority of the board must consist of independent directors, and each director must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe, sound, and independent manner. An independent director is a director that is (a) not a principal, member, officer, or employee of the institution, and (b) not a principal, member, director, officer, or employee of any affiliate or principal shareholder.
2. Prior to the effective date of deposit insurance, the institution will have appointed and will thereafter retain a team of senior executive officers that is acceptable to the FDIC. Each senior executive officer, as defined in [12 C.F.R. 303.101](#), must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner, independently of the activities of [applicant's top tier parent] and its affiliated entities.
3. Absent the prior written non-objection of the appropriate FDIC Regional Director, each senior executive officer, as defined in [12 C.F.R. 303.101](#), must have his or her permanent place of work physically located at the institution's main office located in [city, state], such that the individuals will be capable of providing ongoing and direct oversight of the institution's activities.
4. The institution will develop and continue to maintain a current written business plan, adopted at least annually by the institution's board of directors. The business plan must be appropriate to the nature and complexity of the institution's activities, and must be separate from the business plans of [applicant's top tier parent] and its affiliated entities. Further, the institution's board of directors will ensure that the senior executive officers are delegated reasonable authority to implement the institution's business plan independently of [applicant's top tier parent] and its affiliated entities, and that the institution's management, staff, and other resources are adequate to carry out the business plan in a safe and sound manner, independent of the activities of [applicant's top tier parent] and its affiliated entities.
5. The institution will conduct business pursuant to operating policies that are appropriate to its business plan, independent from those of [applicant's top tier parent] and its affiliated entities, and approved by the institution's board of directors. The board of directors will also adopt risk management practices and internal control programs reasonably designed to ensure compliance with such policies. Further, the board of directors will ensure that the senior executive officers are delegated reasonable authority to implement the policies independently of [applicant's top tier parent] and its affiliated entities. At a minimum, the operating policies and procedures will include the institution's [lending, investment, liquidity, asset-liability management, trust, risk management and internal controls, information technology] activities.
6. The institution will adhere to U.S. GAAP and maintain separate accounting and other business records (including customer account records and data) from [applicant's top tier parent] and its affiliated entities. The institution's records and data will be maintained under the control and direction of authorized officials of the institution and available for review by the FDIC at the institution's main office. Further, the institution's records and data will be sufficiently detailed and maintained in a manner that provides the institution's board of directors and senior executive officers with the objective and transparent information necessary to administer the institution's affairs.

7. If management, staff, or other personnel or resources are employed by both the institution and [applicant's top tier parent] or any of its affiliated entities, the institution's board of directors will ensure that such arrangements are governed by policies and written contracts that provide the institution's board of directors and senior executive officers with the authority and control necessary to administer the institution's affairs. Further, the written contracts shall explicitly provide the institution with direct supervisory authority over such personnel, regardless of whether the effect of the relationship on the institution is direct or indirect, or financial or non-financial.

Appendix 4: Important Considerations Regarding Compensation and Related Plans

Compensation

- An institution should maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or could lead to material financial loss. See [Appendix A to Part 364 of the FDIC Rules and Regulations, Interagency Guidelines Establishing Standards for Safety and Soundness](#) (Appendix A - Part 364) for more information on compensation that constitutes an unsafe and unsound practice.
- The [Interagency Statement of Policy - Guidance on Sound Incentive Compensation Policies](#) (Interagency SOP – Incentive Compensation) is intended to assist banking organizations in designing and implementing incentive compensation arrangements and related policies and procedures that effectively consider potential risks and risk outcomes.

Stock Benefit Plans or Arrangements (Plans)

- Plans should encourage the continued involvement of the participants and serve as an incentive for the successful operation of the institution.
- Plans should not encourage speculative or high risk activities, or serve as an obstacle to or otherwise impede the sale of additional stock to the general public.
- The [SOP](#) discusses the following Plan characteristics:
 - The duration of rights granted should be limited (exercise period should not exceed ten years).
 - Rights granted should encourage the recipient to remain involved in the proposed institution.
 - Rights granted should not be transferable by the participant.
 - The exercise price of stock rights should not be less than the fair market value of the stock at the time that the rights are granted.
 - Rights under the Plan should be exercised or expire within a reasonable time after termination as an active employee, officer, or director.
 - The Plan should contain a provision allowing the PFR to direct the institution to require plan participants to exercise or forfeit their stock rights if the institution's capital falls below the minimum requirements, as determined by its state authority or PFR.
 - Plans to compensate incorporators should not provide for more than one option or warrant for each share subscribed in the initial stock offering.
 - Stock appreciation rights and similar plans should not provide for cash payments to the recipient based directly on the market value of the institution's stock during the *de novo* period.
- While each proposed Plan will be evaluated on a case-by-case basis, the accompanying table summarizes a framework for stock benefits that the FDIC considers to be consistent with [Appendix A - Part 364](#).

Severance Packages

- While compensation packages that include severance pay may be necessary to attract qualified executives, such obligations should not adversely impact the institution.

Employment Agreements

- Generally, the FDIC has not objected to employment agreement durations of three years or fewer, or employment agreements with automatic renewal features that are subject to a satisfactory annual performance appraisal.

Stock Benefits Framework – Based on Role in an Institution’s Organization or Operation

Role	Benefits
Incorporator – no other role	<ul style="list-style-type: none"> • Incorporators not continuing as directors or officers should not receive stock benefits based only on “incorporator” status.
Incorporator – that is also a proposed director or senior executive officer	<ul style="list-style-type: none"> • Maximum of one option or warrant for each share subscribed in the initial offering; subject to vesting requirements. • On a case-by-case basis, additional stock benefits may be granted to an incorporator who will also be a senior executive officer, based on the individual’s demonstrated financial commitment, time, and expertise. • In certain cases, additional stock benefits may be allowed for other roles, such as when the individual is also a provider of organizational funds or professional services, as described below.
Provider of organizational funds (seed money)	<ul style="list-style-type: none"> • Maximum of one option or warrant for each share received in repayment of the seed money invested. Stock benefits should only be granted if seed money is repaid in the form of stock; amounts repaid in cash should not receive stock benefits.
Provider of professional or other services	<ul style="list-style-type: none"> • Maximum of one option or warrant for each share received in lieu of cash payment for the market value of professional or other services rendered. Stock benefits may only be granted if fees for services are being paid in the form of stock; amounts paid in cash should not receive stock benefits.
Asset (non-cash) contributor	<ul style="list-style-type: none"> • Capital is expected to take the form of cash; the valuation of any assets proposed to be contributed should be supported by one or more independent appraisal(s). • Maximum of one option or warrant for each share received in exchange for the assets contributed. • Stock benefits should be granted only if payment for the assets to be contributed is in the form of stock; amounts paid in cash should not receive stock benefits.
Loan guarantor	<ul style="list-style-type: none"> • Stock benefits granted to each individual guaranteeing a loan should be offered pro rata based on the amount drawn. • The market value of the stock benefit should not exceed the lower of the amount drawn on the loan or the amount of the guarantee.
Investor in initial capital raise	<ul style="list-style-type: none"> • Any stock benefits granted to investors in the initial capital raise should be offered proportionately to all investors, and should not exceed one option or warrant per each share subscribed in the initial offering.

Post-Opening Stock Benefit Plans

Role	Benefits
Director, officer, or employee	<ul style="list-style-type: none"> • Stock benefits that are part of a comprehensive plan to reward future performance will be reviewed as part of each individual’s total compensation.



FDIC 

PART I – PRE-SOLICITATION / SOLICITATION			
ITEM #		IN	N/A
1	Approved Requisition (File a printed copy of the approved requisition from PRISM).		X
2	Requirements Package (includes statement of work, government estimate, personal services acknowledgement, and requirements checklist, if applicable)	X	
3	Market Research	X	
4	Acquisition Plan and Source Selection Plan (If > \$500,000) – addresses overall acquisition strategy including justification for price structure and period of performance	X	
5	Peer Review (If >\$500,000)	X	
6	Wage Determination		X
7	Small Business Set-Aside Determination (May be addressed in Acquisition Plan)		X
8	Other		X
9	Synopsis in Federal Business Opportunities	X	
10	Request for Proposal (RFP) Request for Quotation (RFQ) (File the complete RFP or RFQ, including all attachments.)	X	
11	RFP / RFQ Amendments (File with the most current Amendment on top)	X	
12	OGC Reviews (Includes RFP / RFQ and any Applicable Amendment Reviews)	X	
13	Industry Day Documentation		X
14	Questions & Answers (See Amendment One)		X
15	Pre-Solicitation and Solicitation Correspondence (Internal and External)		X
16	Notice of Solicitation Cancellation		X
17	Other		

PART II – EVALUATION

ITEM #		IN	N/A
18	Initial Proposals / Quotations (File by Offeror/ Quoter name or refer to other location if too large for the contract file)	X	
19	Non-Responsive Proposals Documentation (If any proposals were deemed non-responsive, include documentation to justify the Contracting Officer's reason for deeming the proposal non-responsive with concurrence from the Manager, Contracting Operations.)	X	
20	TEP Instructions	X	
21	TEP Kick-Off		X
22	TEP Confidentiality / Conflict of Interest Forms (<i>Send Copies to OGC</i>)	X	
23	TEP Consensus Report (Factor I)	X	
24	Advisory Notices	X	
25	Oral Presentation & Phase II Documentation (File by Offeror/ Quoter Name)	X	
26	Other		X
27	TEP Consensus Memo (Factor II)	X	
28	Competitive Range Determination Memo	X	
29	Competitive Range Inclusion Letters	X	
30	Competitive Range Exclusion Letters	X	
31	Competitive Range Offeror Materials	X	
32	Final Proposal Revisions (FPR) Request, including list of discussion issues and/or weaknesses – (File by Offeror/Quoter Name)	X	
33	Final Proposals (File by Offeror/ Quoter name or refer to other location if too large for the contract file)	X	
34	Addendum to TEP Memorandum or revised TEP Memo based on FPR	X	
35	FPR Price Proposal Evaluation Documentation (Include spreadsheet checks/price analysis)		X
36	Submitted Conflict of Interest Information	X	
37	Other _____		X
38	Other _____		X

PART III – SELECTION

ITEM #		IN	N/A
39	Contractor Representations and Certifications (Either annotate Online Representations and Certifications were reviewed in SAM or include hardcopies.)	X	
40	The Federal Awardee Performance and Integrity Information System (FAPIS) includes <ul style="list-style-type: none"> • Past Performance Information Resource System (PPIRS) Review • System for Award Management (SAM) 	X	
41	Peer Review Award & Selection	X	
42	OGC Review of Award & Selection	X	
43	Signed Non-Disclosure Agreements	X	
44	Pre-Award Survey		X
45	Award Selection Report and Responsibility Determination	X	
46	Unsuccessful Offeror/ Quoter Letters	X	
47	Debriefing Documentation (File by Offeror/ Quoter Name)	X	
48	Protest Documentation (File by Offeror/ Quoter Name)		X
49	Pre-award Correspondence		X
50	FBO Award Notice	X	

PART IV – AWARD AND MODIFICATIONS

ITEM #		IN	N/A
51	Award Letter		X
52	Executed Contract	X	
53	Other		X
54	Modifications (File by Number with most recent on top) (Ensure supporting documentation is included)		X
55	Modification OGC Reviews if Applicable		X
56	Other		X
57	Post-Award Kick-Off Meeting documentation	X	
58	Contracting Officer Representative (COR) Appointment/Acceptance Letter	X	
59	Technical Monitor (TM) Appointment/Acceptance Letter		X
60	Other		X

PART V – ADMINISTRATION

ITEM #		IN	N/A
61	Determination to Exercise the Options (May be filed with applicable modification) (TO BE FILED WITH INDIVIDUAL MODIFICATIONS)		X
62	Letter to Exercise Option Period (May be filed with applicable modification) (TO BE FILED WITH INDIVIDUAL MODIFICATIONS)		x
63	Task / Delivery Orders and Backup Documentation		X
64	Claims Documentation		X
65	Interim Contractor Performance Evaluations		X
66	Contractor Performance Correspondence		X
67	Subcontracting Plan	X	
68	Correspondence		
69	OIG Audit Documentation		
70	Other		
71	Other		

PART VI – CLOSEOUT

ITEM #		IN	N/A
72	Contractor Performance Evaluation Form – Final		
73	Closeout Checklist		
74	Final Payment / Final Acceptance Documentation		
75	Other Closeout Documentation		
76	Other		
77	Other		

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER: FHF-20-0176
 2. CONTRACT NO.: 95314320C0001
 3. AWARD/EFFECTIVE DATE: 02/03/2020
 4. ORDER NUMBER
 5. SOLICITATION NUMBER
 6. SOLICITATION ISSUE DATE
 PAGE OF: 1 8

7. FOR SOLICITATION INFORMATION CALL: KEVIN KLEKNER
 a. NAME: KEVIN KLEKNER
 b. TELEPHONE NUMBER (No collect calls)
 8. OFFER DUE DATE/LOCAL TIME

9. ISSUED BY: Federal Housing Finance Agency
 Constitution Center
 400 7th Street, SW
 Washington DC 20219
 CODE: FHF
 10. THIS ACQUISITION IS: UNRESTRICTED OR SET ASIDE: % FOR:
 SMALL BUSINESS
 HUBZONE SMALL BUSINESS
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS
 WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM
 EDWOSB
 8(A)
 NAICS:
 SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED: SEE SCHEDULE
 12. DISCOUNT TERMS: NET 30 PROMPT PAY
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)
 13b. RATING
 14. METHOD OF SOLICITATION: RFQ IFB RFP

16. DELIVER TO: FHFA
 FHFA
 CONSTITUTION CENTER
 400 7TH STREET, SW
 WASHINGTON DC 20219
 CODE: FHFA
 16. ADMINISTERED BY: Federal Housing Finance Agency
 Constitution Center
 400 7th Street, SW
 Washington DC 20219
 CODE: FHF

17a. CONTRACTOR/OFFEROR: HOULIHAN LOKEY CAPITAL INC.
 10250 CONSTELLATION BLVD
 5TH FLOOR
 LOS ANGELES CA 90067-6200
 CODE: 178296117
 FACILITY CODE:
 18a. PAYMENT WILL BE MADE BY: FHF/FHF
 CODE: FHF/FHF
 SEE INVOICING CLAUSE

TELEPHONE NO.
 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER
 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Points of Contact: Kevin M. Klekner Contracting Officer Phone: (202) 649-3784 kevin.klekner@fhfa.gov This is a hybrid type contract with firm-fixed price and time and materials Contract Line Items (CLINs) in accordance with (1) the Federal Acquisition Regulation (FAR) and FHFA specialty (Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA: See schedule
 26. TOTAL AWARD AMOUNT (For Govt. Use Only): \$5,526,666.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ARE ARE NOT ATTACHED.
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.
 29. AWARD OF CONTRACT: OFFER DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. NAME AND TITLE OF OFFEROR: (b)(6)
 30b. NAME AND TITLE OF SIGNER (Type or print): David R. Althoff, Director
 30c. DATE SIGNED: 2/3/2020
 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER): [Signature]
 31b. NAME OF CONTRACTING OFFICER (Type or print): KEVIN KLEKNER
 31c. DATE SIGNED: 2/3/2020

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21 QUANTITY	22 UNIT	23 UNIT PRICE	24. AMOUNT
	<p>clauses contained in the base contract; (2)the requirements in the Statement of Work (Attachment A); and (3) the pricing schedule contained in Attachment B. The Small Business Subcontracting Plan dated January 24, 2020 and Conflicts of Interest Review dated January 27, 2020 are incorporated by reference.</p> <p>Note:</p> <p>(1) CLINS 0001 - 0012 are firm-fixed price. The quantities specified under CLINS 0013 - 0024 are estimates. The Government reserves the right to increase the quantities as needed. HOWEVER, THE CONTRACTOR SHALL NOT EXCEED THE MONETARY LIMITATION ON THE LINE ITEM WITHOUT THE PRIOR APPROVAL OF THE CONTRACTING OFFICER. PAYMENT WILL NOT BE MADE FOR ANY WORK WHICH EXCEEDS THE ITEM'S MONETARY LIMITATION WITHOUT THE PRIOR APPROVAL OF THE CONTRACTING OFFICER.</p> <p>(2) The Contractor shall provide all personnel, equipment, materials, supplies, and services with the exception of the furnished government property, and otherwise do all things necessary for, or incidental to, providing the services and items listed in Attachment A, Statement of Work.</p> <p>(3) The Contractor is not authorized to make any</p> <p>Continued ...</p>				

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED:

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE 32c. DATE 32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE 32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	--	------------------

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (Print)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
42b. RECEIVED AT (Location)	
42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS

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NAME OF OFFEROR OR CONTRACTOR
HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	changes to the terms and conditions of this contract without the written approval of the Contracting Officer. Invoice Approver/COR: JOHNSON, MARIE Period of Performance: 02/03/2020 to 08/02/2025				
0001	Phase I, Development of Roadmap Months 1-12 (FANNIE MAE SPECIAL ASSESSMENT) Incrementally Funded Amount: (b)(4) Accounting Info: FHF5532DEXXXXXX-2020-61000001-252004-FHF2001000000-XXXXXXXXXX-FHF213000000-XXXXXXXX-FHF300000-XXXX-XXXXXXXXXXXXXXXXXXXX-XXXXXXXXXXXX-XXXXXXXXXXXX-XXXXXXXXXXXX Funded: \$2,625,000.00 Period of Performance: 02/03/2020 to 02/02/2021				(b)(4)
0002	Phase I, Development of Roadmap Months 1-12 (FREDDIE MAC SPECIAL ASSESSMENT) Incrementally Funded Amount: (b)(4) Accounting Info: FHF5532DEXXXXXX-2020-61000001-252004-FHF2001000000-XXXXXXXXXX-FHF214000000-XXXXXXXX-FHF300000-XXXX-XXXXXXXXXXXXXXXXXXXX-XXXXXXXXXXXX-XXXXXXXXXXXX-XXXXXXXXXXXX Funded: (b)(4) Period of Performance: 02/03/2020 to 02/02/2021				(b)(4)
0003	Phase I, Development of Roadmap Months 13-18 (Option Period) (FANNIE MAE SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 02/02/2021 Period of Performance: 02/03/2021 to 08/02/2021				(b)(4)
0004	Phase I, Development of Roadmap Months 13-18 (Option Period) (FREDDIE MAC SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 02/02/2021 Period of Performance: 02/03/2021 to 08/02/2021				(b)(4)
0005	Option Period One (Phase II Implementation of Roadmap) (12 Months) Continued ...				(b)(4)

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NAME OF OFFEROR OR CONTRACTOR

HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	(FANNIE MAE SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2021 Period of Performance: 08/03/2021 to 08/02/2022				
0006	Option Period One (Phase II Implementation of Roadmap) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2021 Period of Performance: 08/03/2021 to 08/02/2022				(b)(4)
0007	Option Period Two (Phase II Implementation of Roadmap) (12 Months) (FANNIE MAE SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2022 Period of Performance: 08/03/2022 to 08/03/2023				(b)(4)
0008	Option Period Two (Phase II Implementation of Roadmap) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2022 Period of Performance: 08/03/2022 to 08/03/2023				(b)(4)
0009	Option Period Three (Phase II Implementation of Roadmap) (12 Months) (FANNIE MAE SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2023 Period of Performance: 08/03/2023 to 08/02/2024				(b)(4)
0010	Option Period Three (Phase II Implementation of Roadmap) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2023 Period of Performance: 08/03/2023 to 08/02/2024				(b)(4)
0011	Option Period Four (Phase II Implementation of Continued ...				(b)(4)

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NAME OF OFFEROR OR CONTRACTOR

HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
0012	Roadmap) {12 Months} (FANNIE MAE SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2024 Period of Performance: 08/03/2024 to 08/02/2025				(b)(4)
0013	Option Period Four (Phase II Implementation of Roadmap) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) Amount: (b)(4) (Option Line Item) 08/02/2024 Period of Performance: 08/03/2024 to 08/02/2025				(b)(4)
0014	TRAVEL Phase I, Development of Roadmap Months 1-12. (FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Incrementally Funded Amount: (b)(4) Accounting Info: FHF5532DEXXXXX-2020-61000001-252004-FHF2001000000 -XXXXXXXXXX-FHF213000000-XXXXXXXX-FHF300000-XXXX-XX XXXXXXXXXXX-XXXXXXXXXXXX-XXXXXXXX-XXXXXXXXXX Funded: (b)(4) Period of Performance: 02/03/2020 to 02/02/2021				(b)(4)
	Continued ...				

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NAME OF OFFEROR OR CONTRACTOR

HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
0015	TRAVEL Phase I, Development of Roadmap Months 13-18. (FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 02/02/2021 Period of Performance: 02/03/2021 to 08/02/2021				0.00
0016	TRAVEL Phase I, Development of Roadmap Months 13-18. (FREDDIE MAC SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 02/02/2021 Period of Performance: 02/03/2021 to 08/02/2021				0.00
0017	TRAVEL Option Period One (Phase II) (12 Months) (FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2021 Period of Performance: 08/03/2021 to 08/02/2022				0.00
0018	TRAVEL Option Period One (Phase II) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2021 Period of Performance: 08/03/2021 to 08/02/2022				0.00
0019	TRAVEL Option Period Two (Phase II) (12 Months) Continued ...				0.00

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NAME OF OFFEROR OR CONTRACTOR
HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	(FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2022 Period of Performance: 08/03/2022 to 08/03/2023				
0020	TRAVEL Option Period Two (Phase II) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2022 Period of Performance: 08/03/2022 to 08/03/2023				0.00
0021	TRAVEL Option Period Three (Phase II) (12 Months) (FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2023 Period of Performance: 08/03/2023 to 08/02/2024				0.00
0022	TRAVEL Option Period Three (Phase II) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT) See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2023 Period of Performance: 08/03/2023 to 08/02/2024				0.00
0023	TRAVEL Option Period Four (Phase II) (12 Months) (FANNIE MAE SPECIAL ASSESSMENT) See Section V of the Statement of Work for Continued ...				0.00

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NAME OF OFFEROR OR CONTRACTOR

HOULIHAN LOKEY CAPITAL INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
0024	<p>Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2024</p> <p>Period of Performance: 08/03/2024 to 08/02/2025</p> <p>TRAVEL Option Period Four (Phase II) (12 Months) (FREDDIE MAC SPECIAL ASSESSMENT)</p> <p>See Section V of the Statement of Work for Additional Information Award Type: Time-and-materials Amount: \$0.00 (Option Line Item) 08/02/2024</p> <p>Period of Performance: 08/03/2024 to 08/02/2025</p> <p>The total amount of award: \$45,415,000.00. The obligation for this award is shown in box 26.</p>				0.00

**SECTION B
CONTINUATION BLOCK**

CLIN	DESCRIPTION	TOTAL AMOUNT
0001	Phase I, Development of Roadmap Months 1-12 (Fannie Mae Special Assessment)	(b)(4)
0002	Phase I, Development of Roadmap Months 1-12 (Freddie Mac Special Assessment)	
0003	Phase I, Development of Roadmap Months 13-18 (Option Period) (Fannie Mae Special Assessment)	
0004	Phase I, Development of Roadmap Months 13-18 (Option Period) (Freddie Mac Special Assessment)	
0005	Option Period One (Phase II) (12 Months) (Fannie Mae Special Assessment)	
0006	Option Period One (Phase II) (12 Months) (Freddie Mac Special Assessment)	
0007	Option Period Two (Phase II) (12 Months) (Fannie Mae Special Assessment)	
0008	Option Period Two (Phase II) (12 Months) (Fannie Mae Special Assessment)	
0009	Option Period Three (Phase II) (12 Months) (Fannie Mae Special Assessment)	
0010	Option Period Three (Phase II) (12 Months) (Freddie Mac Special Assessment)	
0011	Option Period Four (Phase II) (12 Months) (Fannie Mae Special Assessment)	
0012	Option Period Four (Phase II) (12 Months) (Freddie Mac Special Assessment)	
0013	TRAVEL Phase I, Development of Roadmap Months 1-12 (Not To Exceed) (Fannie Mae Special Assessment)	
0014	TRAVEL Phase I, Development of Roadmap Months 1-12 (Not To Exceed) (Freddie Mac Special Assessment)	
0015	TRAVEL Phase I, Development of Roadmap Months 13-18 (Option Period) (NTE) (Fannie Mae Special Assessment)	To be determined at Option Exercise
0016	TRAVEL Phase I, Development of Roadmap Months 13-18 (Option Period) (NTE) (Freddie Mac Special Assessment)	To be determined at Option Exercise
0017	TRAVEL Option Period One (Phase II) (12 Months) (NTE) (Fannie Mae Special Assessment)	To be determined at Option Exercise
0018	TRAVEL Option Period One (Phase II) (12 Months) (NTE) (Freddie Mac Special Assessment)	To be determined at Option Exercise
0019	TRAVEL Option Period Two (Phase II) (12 Months) (NTE) (Fannie Mae Special Assessment)	To be determined at Option Exercise
0020	TRAVEL Option Period Two (Phase II) (12 Months) (NTE) (Freddie Mac Special Assessment)	To be determined at Option Exercise
0021	TRAVEL Option Period Three (Phase II) (12 Months) (NTE) (Fannie Mae Special Assessment)	To be determined at Option Exercise

0022	TRAVEL Option Period Three (Phase II) (12 Months) (NTE) (Freddie Mac Special Assessment)	To be determined at Option Exercise
0023	TRAVEL Option Period Four (Phase II) (12 Months) (NTE) (Fannie Mae Special Assessment)	To be determined at Option Exercise
0024	TRAVEL Option Period Four (Phase II) (12 Months) (NTE) (Freddie Mac Special Assessment)	To be determined at Option Exercise
	TOTAL	\$ 45,415,000.00

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SECTION C CONTRACT CLAUSES

C.1 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for-

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information.

The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

C.2 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2018)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* **Reserved, see FHFA Specialty Clause C.7**

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer— System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

- (A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected line item or subline item, if applicable; and
- (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

- (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
- (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
- (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Reserved

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

THE BELOW CLAUSES ARE APPLICABLE TO CLINS 0013-0024 ONLY

(a) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)

(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to--

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) Definitions.

(1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) Payments.

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by

individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provided rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the--

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs*. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other direct Costs*. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]

(2) *Indirect Costs (Material handling, Subcontract Administration, etc.)*. The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'."]

(2) *Total cost*. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments

and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

- (i) Records that verify that the employees whose time has been included in any invoice met the qualifications for the labor categories specified in the contract.
- (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
 - (A) The original timecards (paper-based or electronic);
 - (B) The Contractor's timekeeping procedures;
 - (C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6)

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at

the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.60702).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C 3903) and prompt payment regulations at 5 CFR part 1315.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(10) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned,

payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

C.3 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (AUG 2019)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware,

Software, and Services Developed or Provided by Kaspersky Lab and

Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 89(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)

(5) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77, 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved]

(6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (31 U.S.C. 6101 note).

(9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

(10) [Reserved]

(11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

(ii) Alternate I (Nov 2011) of 52.219-3.

(12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

(ii) Alternate I (Jan 2011) of 52.219-4.

(13) [Reserved]

(14) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).

(ii) Alternate I (Nov 2011).

(iii) Alternate II (Nov 2011).

(15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-7.

(iii) Alternate II (Mar 2004) of 52.219-7.

(16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

(17) (i) 52.219-9, Small Business Subcontracting Plan (Aug 2018) (15 U.S.C. 637 (d)(4)).

(ii) Alternate I (Nov 2016) of 52.219-9.

(iii) Alternate II (Nov 2016) of 52.219-9.

(iv) Alternate III (Nov 2016) of 52.219-9.

(v) Alternate IV (Aug 2018) of 52.219-9.

(18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).

(19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C. 637(a)(14)).

(20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

(21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).

(22) 52.219-28, Post Award Small Business Program Representation (Jul 2013) (15 U.S.C. 632(a)(2)).

(23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

(24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

(25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2018) (E.O. 13126).

(27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(28) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(ii) Alternate I (Feb 1999) of 52.222-26.

(29) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

(ii) Alternate I (July 2014) of 52.222-35.

(30) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(ii) Alternate I (July 2014) of 52.222-36.

(31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

(33) (i) 52.222-50, Combating Trafficking in Persons (JAN 2019)

(22 U.S.C. chapter 78 and E.O. 13627).

(ii) Alternate I (Mar 2015) of 52.222-50, (22 U.S.C. chapter 78 and E.O. 13627).

(34) 52.222-54, Employment Eligibility Verification (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O.13693).

(37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

(38) (i) 52.223-13, Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514

(ii) Alternate I (Oct 2015) of 52.223-13.

(39) (i) 52.223-14, Acquisition of EPEAT® -Registered Television (Jun 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of 52.223-14.

(40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

(41) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

- ___ (ii) Alternate I (Jun 2014) of 52.223-16.
- __X_ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011) (E.O. 13513).
- ___ (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- ___ (44) 52.223-21, Foams (Jun 2016) (E.O. 13696).
- ___ (45) (i) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
- ___ (ii) Alternate I (Jan 2017) of 52.224-3.
- ___ (46) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).
- ___ (47) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- ___ (ii) Alternate I (May 2014) of 52.225-3.
- ___ (iii) Alternate II (May 2014) of 52.225-3.
- ___ (iv) Alternate III (May 2014) of 52.225-3.
- ___ (48) 52.225-5, Trade Agreements (Aug 2018) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- __X_ (49) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (50) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- ___ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

___ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505), 10 U.S.C. 2307(f)).

___ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (55) 52.232-33, Payment by Electronic Funds Transfer--System for Award Management (Oct 2018) (31 U.S.C. 3332).

___ (56) 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management (Jul 2013) (31 U.S.C. 3332).

___ (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).

___ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

X (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).

___ (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

___ (ii) Alternate I (Apr 2003) of 52.247-64.

___ (iii) Alternate II (Feb 2006) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

___ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)

___ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

___ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C.206 and 41 U.S.C. chapter 67).

___ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-- Requirements (May 2014) (41 U.S.C. chapter 67).

___ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67).

___ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).

___ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

___ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Jan 2019) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware,

Software, and Services Developed or Provided by Kaspersky Lab and

Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications

and Video Surveillance Services or Equipment. (AUG 2019) (Section

889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2019) (38 U.S.C. 4212).

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

- (xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (Aug 2018), (41 U.S.C. chapter 67).
- (xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)
- (xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).
- (xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- (xix) 52.222-62, Paid sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii)52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

C.4 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor prior to contract expiration.

C.5 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 1 day before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 66 months.

C.6 NON-APPROPRIATED FUNDED AGENCY - FHFA (MAR 2011)

(a) Under the Housing and Economic Recovery Act of 2008, FHFA was established as an independent agency in the Executive Branch of the Federal Government.

(b) Notwithstanding any other provision or clause contained herein, whether express or incorporated by reference, FHFA is a non-appropriated funded agency. As such, FHFA is not subject to the Federal Acquisition Regulation (FAR). FHFA voluntarily follows the FAR with some limited exceptions in its acquisition of supplies and services. Any FAR provisions and/or clauses contained herein, whether express or incorporated by reference, are being utilized due to their commonality in the Federal acquisition environment.

(c) The Contractor understands that FHFA is not subject to the Contract Disputes Act of 1978 and that FHFA has its own disputes process as set forth in the clause contained herein and entitled "Disputes".

C.7 DISPUTES (APR 2013)

(a) All disputes arising under or relating to this contract shall be resolved under this clause. The Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-1709) is not applicable to the Federal Housing Finance Agency.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(c) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six (6) years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Federal Housing Finance Agency (FHFA), hereafter "Agency," against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (c)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Agency is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(d) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be considered final unless the contractor submits a written request for appeal of the decision to FHFA's Senior Procurement Executive (SPE), within 60 days from receipt of the Contracting Officer's decision. The SPE must, within 30 days, decide the claim or notify the Contractor of the date by which the decision will be made.

The decision of the SPE is final and conclusive unless a court of competent jurisdiction finds the decision fraudulent, arbitrary or capricious, so grossly erroneous as to imply bad faith, or not supported by substantial evidence. The contractor has 180 days from the date of the SPE's decision to appeal to a court of competent jurisdiction.

(f) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Agency is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(g) The Agency shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the perfected claim. Defective certifications are defined as failing to comply with any portion of (c) (2) or (c) (3) of this clause. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, or appeal, arising under or relating to the contract, and comply with any decision of the Contracting Officer.

C.8 PUBLIC RELEASE OF CONTRACT AWARD AND PUBLICITY INFORMATION (AUG 2012)

(a) The Contractor, its affiliates, agents or subcontractors, and their respective employees, shall not issue press releases or provide other information to the public or media regarding any FHFA contract award.

(b) The Contractor, its affiliates, agents or subcontractors, and their respective employees, shall not make statements to the media or issue press releases regarding their performance under this Contract.

(c) The Contractor may not issue or sponsor any advertising or publicity that states or implies that FHFA endorses, recommends or prefers the Contractor's services or products.

(d) The Contractor agrees to include this clause in all its subcontracts under this contract.

C.9 NONDISCLOSURE OF CONTROLLED UNCLASSIFIED INFORMATION, INCLUDING FHFA NON-PUBLIC INFORMATION

(a) In the course of performance of this contract, Contractor (used hereinafter in this clause to mean Contractor and Contractor's directors, officers, employees, subcontractors, agents, or consultants) may receive and/or produce Controlled Unclassified Information (CUI), as defined in 32 C.F.R. Part 2002 (hereinafter referred to as "FHFA CUI"). For the purposes of this NDA, FHFA Non- Public Information is information in any medium, whether electronic, hard copy, or unwritten, that FHFA has not made public, that is created by, obtained by, or communicated to an FHFA employee or the Authorized Entity, in connection with FHFA's requirement for Capital Market and Financial Advisory Services, regardless of who is in possession of the information. One type of FHFA CUI is FHFA Non-Public Information, which is information in any medium, whether electronic, hard copy, or unwritten, that FHFA has not made public, that is created by, obtained by, or communicated to an FHFA employee or FHFA contractor personnel, in connection with the performance of official duties, regardless of who is in possession of the information. FHFA CUI includes, but is not limited to, information of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities), the Office of Finance of the Federal Home Loan Bank System (Office of Finance), or FHFA. FHFA CUI includes information in any form, including documents, electronic mail, computer files, conversations, audio or video recordings, and internal information technology infrastructure components, including Internet Protocols.

(b) All FHFA CUI received and/or produced pursuant to this NDA must be handled in accordance with (1) Executive Order 13556, *Controlled Unclassified Information*, 75 FR 68675 (Nov. 4, 2010); (2) 32 C.F.R. Part 2002; (3) the CUI Registry (available at: <https://www.archives.gov/cui>); (4) FHFA Policy 222 Controlled Unclassified Information; and (5) FHFA Controlled Unclassified Information Procedures (4 and 5 will be provided subsequent to award).. The Authorized Entity acknowledges that misuse of CUI may be subject to penalties established in applicable Federal laws, regulations, or Government-wide policies. The Authorized Entity agrees to report noncompliance with CUI handling requirements to FHFA. Relevant CUI protections include, but are not limited to, ensuring that:

- a. FHFA CUI in the Authorized Entity's possession is kept under its direct control or protected with at least one physical barrier (for example, a locked file cabinet, locked office door, or a locked file room) when left unattended;
- b. Unauthorized individuals cannot see FHFA CUI in the Authorized Entity's possession and cannot overhear conversations if CUI is being discussed;
- c. Hard copy and electronic media containing FHFA CUI is destroyed in a manner that makes the information/data unreadable, indecipherable, and unrecoverable, if the Authorized Entity is directed by the FHFA Contracting Officer to destroy FHFA CUI in its possession; and
- d. Any information system of the Authorized Entity which processes or stores FHFA CUI meets the standards set forth in NIST SP 800-171, Revision 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.

(c) Contractor has read FHFA Policy No. 301, Use and Protection of Personally Identifiable Information Policy, which is incorporated by reference into the contract, and shall abide by the policy described therein and follow the guidelines given for using and protecting personally identifiable information, which is also a category of CUI. FHFA Policy No. 301 is available on

the FHFA website: <http://www.fhfa.gov/AboutUs/Policies/Documents/PII%20Policy%20-%20Signed.pdf>. If the Contractor is required to take annual or role-based privacy awareness training, the Contractor shall read and abide by FHFA's Personally Identifiable Information Breach Response Plan, including ensuring that the Plan is protected in accordance with this clause.

(d) The Contractor agrees to abide by the requirements in the Corporate and Individual FHFA Nondisclosure Agreements (NDAs) attached herein, including the handling and protection of CUI and breach notification procedures, that Contractor shall sign and agree to the provisions in the Corporate FHFA NDA, and that each of its personnel and subcontractor personnel working under this contract shall sign and agree to the provisions in the FHFA Individual NDA. The Contractor further agrees that the Contractor shall submit a copy of each signed NDA to the FHFA Contracting Officer (CO) and designated Contracting Officer's Representative (COR) prior to performance of any work by Contractor's personnel or subcontractor personnel under this contract. This includes all substitutions or additions of Contractor personnel over the contract's performance. The Contractor shall maintain all the original, signed NDAs. Within five business days of a written request from the CO, the Contractor shall provide the signed, original NDAs.

(e) The Contractor agrees that any breach of this clause which is attributable to the Contractor constitutes a material breach of contract and may be sufficient grounds for a termination for default.

INDIVIDUAL NON-DISCLOSURE AGREEMENT

1. I, _____, an individual official, employee, consultant, or subcontractor of **Houlihan Lokey Capital** (the Authorized Entity), intending to be legally bound, hereby agree and consent to the terms in this Non-Disclosure Agreement (NDA) in consideration of my being granted conditional access to certain Controlled Unclassified Information (CUI), specifically, FHFA Non-Public Information. One type of FHFA CUI is FHFA Non-Public Information, which is information in any medium, whether electronic, hard copy, or unwritten, that FHFA has not made public, that is created by, obtained by, or communicated to an FHFA employee or FHFA contractor personnel, in connection with the performance of official duties, regardless of who is in possession of the information. FHFA CUI includes, but is not limited to, information of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Home Loan Banks (collectively, the regulated entities), the Office of Finance of the Federal Home Loan Bank System, or FHFA. FHFA CUI includes information in any form, including documents, electronic mail, computer files, conversations, audio or video recordings, and internal information technology infrastructure components, including Internet Protocols.

2. I agree not to disclose without the prior written approval of the FHFA Contracting Officer any discussion or information related to CUI listed in paragraph 1. above, obtained by, produced by, or disclosed to me in connection with this requirement to anyone other than authorized FHFA employees or persons of the Authorized Entity who have executed this NDA.

3. All FHFA CUI received and/or produced pursuant to this NDA must be handled in accordance with (1) Executive Order 13556, *Controlled Unclassified Information*, 75 FR 68675 (Nov. 4, 2010); (2) 32 C.F.R. Part 2002; (3) the CUI Registry (available at: <https://www.archives.gov/cui>); (4) FHFA Policy 222 Controlled Unclassified Information; and (5) FHFA Controlled Unclassified Information Procedures (4 and 5 will be provided subsequent to award). I acknowledge that misuse of CUI may be subject to penalties established in applicable Federal laws, regulations, or Government-wide policies. I agree to report noncompliance with CUI handling requirements to FHFA. Relevant CUI protections include, but are not limited to, ensuring that:

- a. FHFA CUI in my possession is kept under its direct control or protected with at least one physical barrier (for example, a locked file cabinet, locked office door, or a locked file room) when left unattended;
- b. Unauthorized individuals cannot see FHFA CUI in my possession and cannot overhear conversations if CUI is being discussed;
- c. Hard copy and electronic media containing FHFA CUI is destroyed in a manner that makes the information/data unreadable, indecipherable, and unrecoverable, if the Authorized Entity is directed by the FHFA Contracting Officer to destroy FHFA CUI in its possession; and
- d. Any information system of the Authorized Entity which processes or stores FHFA CUI meets the standards set forth in NIST SP 800-171, Revision 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.

4. I shall take all reasonable measures to avoid unintentional or inadvertent disclosure by me of FHFA CUI, and within five calendar days of a request from the Contracting Officer, shall return to FHFA or destroy any FHFA CUI, or copies thereof. Should a question arise as to whether particular information is FHFA CUI or whether an FHFA employee is authorized to discuss such CUI, I shall immediately contact the FHFA Contracting Officer and seek a determination related to the matter. If the FHFA Contracting Officer notifies me that the information is FHFA CUI, I shall treat it in accordance with this NDA and shall only discuss such CUI with authorized FHFA personnel or persons of the Authorized Entity who have executed this NDA.

5. I agree that if I become aware of a suspected or actual breach of FHFA CUI, I will immediately notify the FHFA Help Desk at HelpDesk@FHFA.gov or (202)-649-3990. I shall immediately thereafter notify the FHFA Contracting Officer of any suspected or actual breach of CUI. When reporting a suspected or actual breach, I will provide as much information as possible, such as the nature of the breach (e.g., lost files, stolen IT equipment, or hacked electronic devices); the information that was involved in the breach; the date, time, and location of the breach; the number of affected individuals; and any other pertinent information. For the purposes of this clause, a breach is defined as the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses FHFA CUI, or (2) an authorized user accesses or potentially accesses FHFA CUI for an unauthorized purpose. After reporting a suspected or actual breach, I shall have a continuing obligation to participate in and assist FHFA in investigating, mitigating, and responding to such a breach.

6. I agree that I shall not use or permit the use of FHFA CUI obtained by me as a result of this requirement by FHFA for private gain for myself or any other person or entity by direct action on my part or by counsel, recommendation, or suggestions to another person or entity.

7. In accordance with 12 C.F.R. Part 1215, unless by judicial order directed otherwise (after providing the FHFA Contracting Officer with notice as specified below), I understand that I am prohibited from testifying in court or otherwise with respect to information obtained by, produced by, or disclosed to me in connection with this requirement, and I am prohibited from furnishing documents of FHFA, the regulated entities, or the Office of Finance, or copies thereof, in compliance with a subpoena, order, or otherwise without prior written notice to the FHFA Contracting Officer. I shall promptly notify the FHFA Contracting Officer of any request, subpoena, court order, or other legal process requiring my attendance as a witness or the production of documents.

8. I understand that I may be subject to criminal penalties under 18 U.S.C. 641 and 1905, and other applicable laws for the misuse or unauthorized disclosure of FHFA CUI. Any prohibition on providing testimony or disclosing information pursuant to paragraph 7. shall not be effective to the extent such testimony or disclosure of information is required by law. Only "Authorized Persons" (as defined in the corporate NDA entered into by the Authorized Entity in connection herewith) or other persons of the Authorized Entity (or of its affiliates) who are required to have

access to the Authorized Entity's information for oversight purposes, for example, investigators, auditors, or regulators, are authorized to have access to any discussion or information obtained, produced or disclosed in connection herewith without executing this NDA solely to the extent that, in light of the Authorized Entity's internal policies, such persons are obligated to maintain the confidentiality of such information in a manner consistent with the terms hereof by virtue of execution of a corporate NDA and provided that any person of the Authorized Entity that is directly supporting this requirement will be required to execute this NDA. Any requirement pursuant to paragraph 5. to notify the FHFA Help Desk or FHFA Contracting Officer of breaches of FHFA CUI or CUI of which I am aware shall be limited to breaches that actually occurred or breaches which, after reasonable internal inquiry, I suspect occurred.

BY SIGNING BELOW, I AGREE TO THE TERMS OF THIS NDA.

Printed Name

Signature

Date

CORPORATE NON-DISCLOSURE AGREEMENT

1. **Houlihan Lokey Capital** (the Authorized Entity) intending to be legally bound, hereby agrees and consents to the terms in this Non-Disclosure Agreement (NDA) in consideration of the Authorized Entity being granted conditional access to certain Controlled Unclassified Information (CUI) requiring protection, specifically, FHFA Non-Public Information. For the purposes of this NDA, FHFA Non- Public Information is information in any medium, whether electronic, hard copy, or unwritten, that FHFA has not made public, that is created by, obtained by, or communicated to an FHFA employee or the Authorized Entity, in connection with FHFA's requirement for Capital Market and Financial Advisory Services, regardless of who is in possession of the information. One type of FHFA CUI is FHFA Non-Public Information, which is information in any medium, whether electronic, hard copy, or unwritten, that FHFA has not made public, that is created by, obtained by, or communicated to an FHFA employee or FHFA contractor personnel, in connection with the performance of official duties, regardless of who is in possession of the information. FHFA CUI includes, but is not limited to, information of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Home Loan Banks (collectively, the regulated entities), the Office of Finance of the Federal Home Loan Bank System, or FHFA. FHFA CUI includes information in any form, including documents, electronic mail, computer files, conversations, audio or video recordings, and internal information technology infrastructure components, including Internet Protocols.

2. The Authorized Entity agrees not to disclose without the prior written approval of the FHFA Contracting Officer any discussion or information related to FHFA CUI described in paragraph 1. above, obtained by, produced by, or disclosed to the Authorized Entity in connection with this requirement to anyone other than authorized FHFA employees or persons of the Authorized Entity who have executed this NDA or other Authorized Persons.

3 All FHFA CUI received and/or produced pursuant to this NDA must be handled in accordance with (1) Executive Order 13556, *Controlled Unclassified Information*, 75 FR 68675 (Nov. 4, 2010); (2) 32 C.F.R. Part 2002; (3) the CUI Registry (available at: <https://www.archives.gov/cui>); (4) FHFA Policy 222 Controlled Unclassified Information; and (5) FHFA Controlled Unclassified Information Procedures (4 and 5 will be provided subsequent to award). The Authorized Entity acknowledges that misuse of CUI may be subject to penalties established in applicable Federal laws, regulations, or Government-wide policies. The Authorized Entity agrees to report noncompliance with CUI handling requirements to FHFA. Relevant CUI protections include, but are not limited to, ensuring that:

- a. FHFA CUI in the Authorized Entity's possession is kept under its direct control or protected with at least one physical barrier (for example, a locked file cabinet, locked office door, or a locked file room) when left unattended;
- b. Unauthorized individuals cannot see FHFA CUI in the Authorized Entity's possession and cannot overhear conversations if CUI is being discussed;
- c. Hard copy and electronic media containing FHFA CUI is destroyed in a manner that makes the information/data unreadable, indecipherable, and unrecoverable, if the

Authorized Entity is directed by the FHFA Contracting Officer to destroy FHFA CUI in its possession; and

d. Any information system of the Authorized Entity which processes or stores FHFA CUI meets the standards set forth in NIST SP 800-171, Revision 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.

4. Within five calendar days of a request from the Contracting Officer, the Authorized Entity shall return to FHFA or destroy any FHFA CUI, or copies thereof. Should a question arise as to whether particular information is FHFA CUI or whether an FHFA employee is authorized to discuss such CUI, the Authorized Entity shall immediately contact the FHFA Contracting Officer and seek a determination related to the matter. If the FHFA Contracting Officer notifies the Authorized Entity that the information is FHFA CUI, the Authorized Entity shall treat it in accordance with this NDA and shall only discuss such CUI with authorized FHFA personnel or persons within its organization who have executed this NDA or other Authorized Persons.

5. The Authorized Entity agrees that if it becomes aware of a suspected or actual breach of FHFA CUI, the Authorized Entity will immediately notify the FHFA Help Desk at HelpDesk@FHFA.gov or (202) 649-3990. The Authorized Entity shall immediately thereafter notify the FHFA Contracting Officer of any suspected or actual breach of CUI. When reporting a suspected or actual breach, the Authorized Entity will provide as much information as possible, such as the nature of the breach (e.g., lost files, stolen IT equipment, or hacked electronic devices); the information that was involved in the breach; the date, time, and location of the breach; the number of affected individuals; and any other pertinent information. For the purposes of this clause, a breach is defined as the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses FHFA CUI, or (2) an authorized user accesses or potentially accesses FHFA CUI for an unauthorized purpose. After reporting a suspected or actual breach, the Authorized Entity shall have a continuing obligation to participate in and assist FHFA in investigating, mitigating, and responding to such a breach.

6. The Authorized Entity shall not use or permit the use of FHFA CUI obtained by the Authorized Entity as a result of this requirement by FHFA for private gain for itself or any other person or entity by direct action on its part or by counsel, recommendation, or suggestions to another person or entity.

7. In accordance with 12 C.F.R. Part 1215, unless by judicial order directed otherwise (after providing the FHFA Contracting Officer with notice as specified below), the Authorized Entity understands that the Authorized Entity is prohibited from testifying in court or otherwise with respect to information obtained by, produced by, or disclosed to the Authorized Entity in connection with this requirement, and the Authorized Entity is prohibited from furnishing documents of FHFA, the regulated entities, or the Office of Finance, or copies thereof, in compliance with a subpoena, order, or otherwise without prior written notice to the FHFA Contracting Officer. The Authorized Entity shall promptly notify the FHFA Contracting Officer

of any request, subpoena, court order, or other legal process requiring the Authorized Entity's attendance as a witness or the production of documents.

8. The Authorized Entity understands that it may be subject to criminal penalties under 18 U.S.C. 641 and 1905, and other applicable laws for the misuse or unauthorized disclosure of FHFA CUI. Any prohibition on providing testimony or disclosing information pursuant to paragraph 7. shall not be effective to the extent such testimony or disclosure of information is required by law. Only Authorized Persons or other persons of the Authorized Entity (or of its affiliates) who are required to have access to the Authorized Entity's information for oversight purposes, for example, investigators, auditors, or regulators, are authorized to have access to any discussion or information obtained, produced, or disclosed in connection herewith without executing this NDA solely to the extent that, in light of the Authorized Entity's internal policies, such persons are obligated to maintain the confidentiality of such information in a manner consistent with the terms hereof by virtue of execution of a corporate NDA and provided that any person of the Authorized Entity that is directly supporting this requirement will be required to execute this NDA. Any requirement pursuant to paragraph 5. to notify the FHFA Help Desk or FHFA Contracting Officer of breaches of FHFA CUI or CUI of which the Authorized Entity is aware shall be limited to breaches that actually occurred or breaches which, after reasonable internal inquiry, the Authorized Entity suspects occurred. References herein to "this NDA" as it pertains to individuals refers to "individual NDAs" with terms substantially similar as those set forth in this corporate NDA.

BY SIGNING BELOW, THE AUTHORIZED ENTITY AGREES TO THE TERMS OF THIS NDA.

Printed Name

Signature

Date

C.10 INVOICING VIA INTERNET PAYMENT PLATFORM (NOV 2017)

All invoices shall be submitted via the Invoice Processing Platform (IPP). The IPP is a secure web-based electronic invoicing and payment information service.

IPP Submission

The IPP website address is <https://www.ipp.gov>. Contractor assistance with enrollment can be obtained by contacting the IPP Production Help Desk via email at ippgroup@bos.frb.gov or phone at (866) 973-3131.

For payment and invoice questions, contact the Accounting Services Division at (304) 480-8000 option 7 or via email at AccountsPayable@fiscal.treasury.gov.

If the Contractor can NOT submit their invoices via IPP, the Contractor may request the Contracting Officer grant a waiver to permit an Alternate Submission Method. The Contracting Officer will provide the Contractor a waiver request form. If the Contracting Officer grants a waiver, the Contractor will be required to submit a copy of the signed waiver with each invoice and follow one of the Alternate Submission Methods identified below.

Alternate Submission Methods

If you are not able to send your invoices via the IPP AND the Contracting Officer has approved an IPP submission waiver, please send the invoice either by electronic mail or hardcopy mail. Hardcopy mail is the least preferred method of submission.

Electronic Mail Submission

Invoices should be submitted electronically to AccountsPayable@fiscal.treasury.gov. Protected Microsoft Excel files are the preferred format; however, Adobe Acrobat Portable Document Format (PDF) and Microsoft Word are also acceptable.

Hardcopy Mail Submission

For US Mail:

OAS ASD APB
A3 - G
BUREAU OF THE PUBLIC DEBT
PO BOX 1328
PARKERSBURG WV 26106-1328

UPS, Federal Express, or other Courier Delivery:

OAS ASD ASB2
A3 - G
BPD WAREHOUSE & OP CENTER DOCK 1
257 BOSLEY INDUSTRIAL PARK DR

PARKERSBURG WV 26101

Invoice Contents

Ensure that the invoice complies with all other payments and invoicing instructions and terms within the Contract. Also, at a minimum, the following information must clearly be included:

- (a) Contractor's name
- (b) Invoice unique identifying number and invoice date
- (c) Period of Performance (Covered by invoice for service contracts)
- (d) Contract or Order number (FHF-FY-X-XXXX)
- (e) Contract Line Item Numbers (CLINs) as stated in the contract must be clearly identified and associated with the invoice for goods and services
- (f) Description, cost or price, and quantity of property and/or services actually delivered or rendered
- (g) Other substantiating documentation or information as considered necessary by the COR or Contracting Officer to support the invoice, including the following items:
 - Price; hourly rates; other costs, less applicable discounts
 - Contractor timesheets including dates and times of performance of Contractor employees
 - Name of the authorized employee(s) performing services
- (h) Name, title, phone number, and complete mailing address of Contractor official to whom payment questions can be addressed by the Government.

Contractors shall not submit invoices for supplies or services more than once a month.

C.11 FHFA NETWORK ACCESS (JUN 2019)

The Contractor (used hereinafter in this clause to mean the Contractor and its directors, officers, employees, subcontractors, agents, or consultants) agrees that any Contractor who has access to FHFA's network shall comply with FHFA's Information System Rules of Behavior (ROB), and will be required to sign the ROB User Acknowledgement prior to being granted access to FHFA's network. Once network access is granted, the Contractor shall complete mandatory training to include, but not limited to:

1. Information Security Awareness Training,
2. Privacy Act Training,
3. Information Classification and Records Management training.

Training shall be completed within 10 business days of being granted access to FHFA's network, and annually thereafter. Failure to complete mandatory training within this time frame may result in suspension of the Contractor's network access. Additionally, if the Contractor is notified by FHFA that their position(s) requires additional specialized training, the Contractor shall complete such additional training within 90 days of their start date, and annually thereafter, as directed by FHFA.

The Contractor shall include this clause in all its subcontracts, and require its subcontractors to do the same for any subcontracts in which the subcontractor will have access to FHFA network.

C.12 HOLD HARMLESS AND INDEMNIFICATION AGREEMENT (APR 2011)

The Contractor shall save, hold harmless, and indemnify the Government against any and all liability, claims, and costs of whatsoever kind and nature for bodily injury to or death of any person or persons and for loss or damage to any tangible personal property occurring or arising out of the occupancy, use, service, operations, or performance of work under the terms of this contract, resulting in whole or in part from the intentional and/or negligent acts or omissions of the Contractor, and Subcontractor, or any employee, agent, or representative of Contractor or Subcontractor.

C.13 ORDER OF PRECEDENCE- FHFA CONTRACTS (OCT 2011)

In addition to any Order of Precedence Clause included within the Contract, including but not limited to FAR 52.212-4(s) (Contract Terms and Conditions—Commercial Items), FAR 52.214-29 (Order of Precedence—Sealed Bidding), FAR 52.215-8 (Order of Precedence—Uniform Contract Format), FAR 52.241-2 (Order of Precedence—Utilities), any conflict between a unique FHFA clause and a FAR clause will be resolved by giving precedence to the FHFA's clause regardless of its position within an already stated order of precedence. Otherwise, the existing FAR Order of Precedence clause in the contract will govern any conflict or ambiguity.

C.14 CONTRACT NOT AFFECTED BY ORAL AGREEMENTS

No oral agreement of any person shall modify or otherwise affect the Statement of Work or other terms and conditions, as herein stated. All modifications shall be in writing by the Contracting Officer.

C.15 NOTICE TO THE GOVERNMENT OF DELAYS

(a) In the event the Contractor encounters difficulty in meeting performance requirements, or he/she has knowledge that any actual or potential situations is delaying or threatens to delay the timely performance of this contract, he/she shall immediately notify the Contracting Officer and COR, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and shall not be construed as a waiver by the Government of all schedules or data or of rights or remedies provided by law or under this contract. Failure to give timely notice, however, may preclude later consideration of any request for an extension of the contract period.

(b) This notice shall state circumstances and estimated extent of delay. Each such notice submitted to the Government shall be evaluated on its own merit and the Contractor shall be notified, in writing, by the Contracting Officer of the Government's decision.

C.16 GOVERNMENT/CONTRACTOR RELATIONSHIPS

The Government and Contractor understand and agree that the services to be provided under this contract by the Contractor to the Government are non-personal services. The parties recognize that no employer-employee relationship exists or will exist under this contract. The Contractor contracts with the Government to furnish the specified services fully described herein and is accountable to the Government ONLY for furnishing such services, materials or work ordered. For the purpose of this contract, the Contractor's employees shall not be subject to the supervision of a Federal office or employee while engaged in the performance of its duties.

C.17 FHFA CONTRACT OVERSIGHT PERSONNEL (APR 2013)

Contracting Officer Representative (COR). The COR is the person designated in writing by the Contracting Officer to represent FHFA for the purpose of monitoring technical performance and accepting goods or services. The COR is not authorized to issue any instructions or directions which effect any substantive change in this contract, including, but not limited to, an increase or decrease in the price of this contract, or a change in the delivery date(s) or Period of Performance. Specific areas of delegated authority are more particularly defined in the COR Appointment letter issued by the Contracting Officer. If the Contractor does not receive a copy of the COR appointment letter at contract execution, the Contractor shall immediately request it from the Contracting Officer. If there is change of COR, the Contracting Officer will issue an updated appointment letter.

C.18 INFORMATION COMMUNICATION TECHNOLOGY (ICT) ACCESSIBILITY (MAY 2019)

- (a) Pursuant to Section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. 794d](#)), as amended, all Information Communication Technology (ICT) developed, acquired, maintained, or used under this contract/order/BPA must comply with the Revised 508 Standards set forth in 36 CFR Part 1194, unless FHFA determines, in its sole discretion, that an exception to 508 compliance is applicable. Information about Section 508 is available at <http://www.section508.gov/>. The complete text of the Revised 508 Standards can be accessed at <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule>.
- (b) The Section 508 accessibility standards applicable to this contract/order/BPA are identified in the Statement of Work/Specifications/Performance Work Statement. The Contractor is obligated to provide and maintain the level of 508 compliance established at the time of award (i.e., full compliance, or if accepted by FHFA, the level of compliance established in the Contractor's Accessibility Conformance Report (ACR) at the time of award). If, after award, the Government determines that the ICT provided by the Contractor does not or no longer meets the required accessibility standards, the Contractor shall provide an updated ACR within 10 calendar days of receiving a notice of nonconformance from the Contracting Officer. Any remediation of the ICT to the level of conformance specified in this contract/order/BPA will be the responsibility of the Contractor and at its own expense.

(c) In the event of a modification(s) to this contract/order/BPA, which adds new or modifies existing ICT, the Contracting Officer may require that the Contractor submit a completed or updated ACR (found at <https://www.itic.org/policy/accessibility/vpat>) within **10** calendar days or as directed.

C.19 KEY PERSONNEL (OCT 2012)

(a) The following key personnel are essential to the proper performance of Contractor's duties under this contract:

Name	Title
(b)(6)	Executive Chairman and Senior Managing Director
	Managing Director
	Managing Director
	Managing Director
	Managing Director
	Managing Director
	Managing Director

(b) Contractor must make the above named key personnel available for performance under this contract as long as such persons are employed by Contractor or its related entities. All key personnel changes must be authorized in writing by the FHFA Contracting Officer prior to the new key personnel beginning work. The Contractor must give a minimum of a 14-day advance written notice to the FHFA Contracting Officer and Contracting Officer's Representative of any proposed substitutions of key personnel. The notice must describe the reason for the proposed change; give the name of the proposed substitute individual with a description of his or her educational and professional background; and justification why the substitute is of equal or superior qualification as defined by the contract's labor category or if no labor category is included, then in comparison to the current approved key personnel's qualifications. The determination of acceptability of proposed substitute key personnel is at the sole discretion of the FHFA.

C.20 MINORITY AND WOMEN INCLUSION (OCT 2017)

Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contractor shall insert the substance of this clause in all subcontracts under this Contract whose dollar value exceeds \$150,000. Within ten business days of a written request from the Contracting Officer, or such longer time as the Contracting Officer determines, and without any additional consideration required from the Agency, the Contractor shall provide documentation, satisfactory to the Agency, of the actions it (and as applicable, its subcontractors) has undertaken

to demonstrate its good faith effort to comply with the aforementioned provisions. For purposes of this contract, “good faith effort” may include actions by the contractor intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

The documentation requested by the Contracting Officer to demonstrate “good faith effort” may include, but is not limited to, one or more of the following:

1. The total number of Contractor’s employees, and the number of minority and women employees, by race, ethnicity, and gender (e.g., an EEO-1);
2. A list of subcontract awards under the Contract that includes: dollar amount, date of award, and subcontractor’s race, ethnicity, and/or gender ownership status;
3. Information similar to that required in item 1, above, with respect to each subcontractor; and/or
4. The Contractor’s plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts.

Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (Dodd-Frank Act), a failure to demonstrate to the Director of the Agency’s Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor’s workforce (and as applicable, the workforce of its subcontractors), may result in termination of the Contract for default, referral to the Office of Federal Contract Compliance Programs, or other appropriate action. For purposes of this clause, the terms “minority,” “minority-owned business” and “women-owned business” shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act.

C.21 ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2012)

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors (or quoters as applicable) with the potential to attain an unfair competitive advantage. **The nature of the conflict of interest may be related to the services in the Statement of Work.**

(b) If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror (or quoter as applicable) during the technical/ source selection, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror (or quoter as applicable) and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror (or quoter as applicable), the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror (or quoter as applicable) may be found ineligible for award.

(c) During the technical/ source selection, the offeror (or quoter as applicable) will state to the best of its knowledge one of the following in its proposal or quotation:

(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

(2) It has included information in its proposal or quotation, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation. If an offeror (or quoter as applicable) with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror (or quoter as applicable) shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the approved mitigation plan will control in the event of a conflict with this provision.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror (or quoter as applicable). The Contracting Officer will use all information submitted by the offeror (or quoter as applicable), and any other relevant information known to FHFA, to determine whether an award to the offeror (or quoter as applicable) may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change or Mitigation Plan Changes. After contract award, the Contractor shall inform the Contracting Officer within thirty (30) calendar days of any corporate mergers, acquisitions, divestures, or any other condition that would change the currently approved mitigation plan. Also, the Contractor shall submit to the Contracting Officer a mitigation plan as outlined in paragraph (d) within 30 calendar days after a Contractor becomes aware of a new actual or potential conflict of interest.

(g) Flow-down. The contractor shall insert the substance of this clause in each subcontract.

C.22 HOMELAND SECURITY PRESIDENTIAL DIRECTIVE-12 [HSPD-12] (SEP 2012)

(a) Performance under this contract may require Contractor employees to have physical and logical access to a Federally controlled facility. HSPD-12 requires that in those instances, agencies create a policy to ensure that those employees have a fully adjudicated identity check prior to unescorted access.

(b) In order to comply with HSPD-12, the FHFA requires the following steps be taken to ensure the safety of the physical space and the integrity of the information technology systems.

(c) Prior to the start of the contract, the Contractor shall provide a list of names of those employees covered by HSPD-12 to the Contracting Officer's Representative (COR) and make those employees available at the place and time specified by the COR in order to initiate screening and background investigations. The appropriate forms will be provided by the COR or the FHFA Human Resources Office.

(d) Contractor employees are required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed to reach a suitability determination. Refusal or failure to furnish or authorize the furnishing of information may constitute grounds for denial or revocation of credentials. Government personnel may contact the Contractor personnel being screened or investigated in person, by telephone or in writing, and the Contractor agrees to make them available for such contact.

(e) A National Agency Check (NAC) will be conducted prior to beginning of contract performance. This check verifies the identity of the individual applying for clearance. Upon successful completion of the NAC process, an identity card will be issued and unescorted access will be granted. Contractor employees are required to wear and display their identity cards while on duty and when representing the agency, unless wearing the card prevents them from accomplishing the tasks associated with this contract.

(f) Simultaneously, a NAC with Inquiries (NACI) or other background check as required, based on the performance duties, will be initiated to determine the individual's suitability for the position. If the NACI (or other background investigation) adjudication is favorable, nothing more needs to be done. If the adjudication is unfavorable, the credentials will be revoked. In the event of a disagreement between the Contractor and the Government concerning the suitability of an individual to perform work under this contract, FHFA shall have the right of final determination.

(g) This requirement must be incorporated into any subcontracts that require subcontractor personnel to have routine and regular unsupervised access to a Federally controlled facility for more than 180 calendar days or unsupervised access to a Federally controlled Level 3 or 4 information system.

(h) If a Contractor employee has already been credentialed by another agency through the Office of Personnel Management (OPM), and that credential has not yet expired, further investigation may not be necessary. The Contractor shall provide the COR with documentation that supports the individual's status.

(i) During performance of this contract, the Contractor will keep the COR apprised of changes in personnel to ensure that performance is not delayed by compliance with credentialing process. Identity cards that have been lost, damaged, or stolen must be reported to the COR. Replacement will be at the Contractor's expense and may not be charged as either a direct or indirect cost to the contract. If reissuance of expired credentials is needed, it will be coordinated through the COR.

(j) At the end of contract performance, or when a Contractor employee is no longer working under this contract, the Contractor will ensure that all identification cards are returned to the COR. Failure to return identity cards may hold up final invoice payment.

C.23 GOVERNMENT-FURNISHED PROPERTY AND INFORMATION

The Contractor will be provided with access to FHFA office working spaces, laptop computers that the Contractor may use during work at both FHFA headquarters and the Contractor’s Facility and access to FHFA’s Local Area Network. The Contractor shall return all furnished property to the COR at the completion of the contract. FHFA will provide Contractor personnel with appropriate access to and orientation in the operation of FHFA proprietary systems, as well as all related manuals and guidelines, as necessary and appropriate and access to standards, policies and procedures governing documents and presentations.

C.24 LIMITATION OF GOVERNMENT’S OBLIGATION

(a) CLINs 0001, 0002, 0013 and 0014 are incrementally funded for the first seven months of contract performance. For these items, the sum of \$5,526,666.00 of the total price is presently available for payment and allotted to this contract.

Line Item	Price	Currently Allotted Funding	Funds Required for Complete Funding
0001	(b)(4)		
0002			
0013			
0014			

(b) For contract line items identified under CLINs 0001, 0002, 0013 and 0014, the Contractor agrees to perform up to the point at which the total amount payable by the Government does not exceed the total amount currently allotted to these items as provided in paragraph (a) above. The Contractor is not authorized to continue work on those items beyond that point until notified by the Government that additional funds are available. Otherwise, the Government will not be obligated to reimburse the Contractor in excess of the amount allotted to the contract for those items regardless of anything to the contrary in the clause entitled “Termination for Convenience of the Government.”

(c) If, solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a), the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled “Disputes.”

SECTION D
CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

ATTACHMENT	DESCRIPTION	NUMBER OF PAGES
A	Statement of Work	6
B	Pricing Worksheet	Excel Spreadsheet

STATEMENT OF WORK FOR ADVISORY SERVICES FOR FHFA

I. Introduction

Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008 (HERA), established the Federal Housing Finance Agency (FHFA) as an independent agency of the United States Government, effective July 30, 2008.

Under the Federal Housing Enterprises Financial Safety and Soundness Act, as amended by HERA, FHFA is charged with the responsibility to ensure the capital adequacy and financial safety and soundness of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the 11 Federal Home Loan Banks (12 U.S.C. 4513). Fannie Mae and Freddie Mac (the Enterprises, or the GSEs), combined, own or guarantee more than \$5 trillion of residential mortgages in the United States (U.S.), and play a key role in housing finance and the U.S. economy.

FHFA is statutorily empowered to place any regulated entity into conservatorship or receivership in certain circumstances. In September 2008, FHFA was appointed as the conservator of Fannie Mae and Freddie Mac. As Conservator of Fannie Mae and Freddie Mac, FHFA stands in the place of each company's shareholders, boards, and management and may take such actions as are necessary to put the regulated entities in a sound and solvent condition, and as are appropriate to carry on the business of the regulated entity and conserve and preserve its assets and property (See 12 U.S.C. 4617). In conservatorship, the companies continue to operate under their existing charters, with public missions to support the secondary mortgage market.

On September 5, 2019 the U.S. Department of the Treasury issued a Housing Finance Reform Plan (Plan). The Plan was developed pursuant to a Presidential Memorandum issued on March 27, 2019 directing the Secretary of the Treasury to develop a plan for administrative and legislative reforms of the housing finance system. Among other reforms, the Plan states "In parallel with recapitalizing the GSEs, FHFA should begin the process of ending the GSEs' conservatorships." In addition, the Plan identifies a series of options to be considered to recapitalize the GSEs, stating "Each of these options poses a host of complex financial and legal considerations that will merit careful consideration as Treasury and FHFA continue their effort, already underway, to identify and assess these and other strategic options."

In support of the Plan, FHFA has a need to develop a Roadmap to responsibly end the conservatorships (Roadmap), and that Roadmap must consider a variety of options with regard to business and capital structures, market impacts and timing, and available capital raising alternatives, among other things. The Roadmap will require on-going implementation support and monitoring to assure its eventual success.

Background information on FHFA may be found on FHFA's website: www.fhfa.gov. The website includes information on the authorizing statutes, agency activities and programs, procedures, regulations, supervisory guidance, and background information. Additional information about Fannie Mae and Freddie Mac is also available in the Enterprises' 10K and 10Q filings with the

Securities and Exchange Commission. Interested parties are encouraged to review this information.

II. Objective

FHFA requires the services of a Contractor to provide financial institutions, capital markets and restructuring expertise, analysis, and advisory services regarding the preparation of the Roadmap (Phase I) and, if necessary, the implementation and on-going monitoring of the Roadmap (Phase II).

III. Scope of Work

The Contractor shall provide analytical, advisory, consulting, drafting, and other related services to FHFA for the purpose of providing expert advice on developing the Roadmap and, if necessary, the execution and on-going monitoring of the Roadmap's implementation.

These services may include but are not limited to a comprehensive assessment and detailed analysis of the needs of FHFA and the Enterprises for the purpose of providing analyses and recommendations regarding the Roadmap in the following areas:

- Options and recommendations for business and financial restructuring transactions and alternatives.
- Financial projections and sensitivities, including review and assessment of modeling of the Enterprises' financial projections and estimates.
- Capital raising options, timing, and feasibility.
- Regulatory framework, including but not limited to a framework for capital restoration plans.
- Potential revisions to the Treasury Senior Preferred Stock Purchase Agreements (PSPAs).
- Enterprise activities and changes necessary to develop and effectuate the Roadmap.
- Costs, structures, pricing, and terms and conditions of transactions proposed as part of implementing the Roadmap, and suggested modifications.
- Strategic communications, in conjunction with public relations counsel.
- Other financial advisory services as may be mutually agreed.

IV. Services

Advisory services and other assistance shall be required to support FHFA in its role as regulator and conservator in developing and, if necessary, implementing the Roadmap. Types of tasks the Contractor may be required to perform may include but are not limited to the following:

Phase I: Development of the Roadmap

1. Develop a work plan, timeline, and responsibilities schedule including coordination of various parties (other advisors, legal counsel, GSEs, etc.), as appropriate, to finalize the Roadmap.
2. Provide assistance and advise FHFA in assessing the full range of options for structuring an end to the conservatorships.

3. Advise FHFA with regard to potential revisions to the PSPAs.
4. Evaluate the GSEs' business plans, financial models and management projections, including sensitivity analyses on key assumptions and stress scenarios, to inform the development and implementation of the Roadmap. Where necessary, develop independent financial models and projections to support the Roadmap.
5. Identify capital raising options and advise on their cost, feasibility, and timing.
6. Assist FHFA in the identification of all critical financial, regulatory, market or other issues that might be material to the development and implementation of the Roadmap, including the potential impact to the secondary mortgage market and conditions required to exit the conservatorships.
7. Provide FHFA with a Strategic Assessment Report (aggregating the analysis and alternatives reviewed in the items above) to assist in FHFA's deliberative process and the final determination of the Roadmap.
8. Provide other financial advisory services during Phase I as may be mutually agreed.

Phase II: Implementation of the Roadmap

1. Advise FHFA on all key aspects of implementation of the Roadmap, including compliance with the conditions and milestones necessary to exit the conservatorships.
2. Advise FHFA on decisions and assist in the oversight concerning the structuring, pricing, timing and marketing of any transaction(s) executed in connection with the Roadmap, including the potential selection and coordination of underwriters.
3. On request of FHFA, advise regarding the reasonableness of any transaction executed in connection with the Roadmap taking into account the mission of the FHFA and the interests of taxpayers.

The Contractor shall have advanced knowledge and familiarity with: the mortgage finance system; capital, governance and business models; asset classes; and the GSEs' roles in financial markets. The Contractor must possess the expert knowledge of and demonstrated success in the areas of financial restructuring and capital raising for large, complex financial institutions. In addition, the Contractor or its personnel working on this matter must possess experience performing relevant work for the federal government. Except for advising FHFA as provided herein, the Contractor shall be precluded from obtaining work related to the execution of the Roadmap.

V. Delivery of Services and Place of Performance

Services shall be rendered in numerous locations, including meetings and strategy sessions, to be convened when required by FHFA. FHFA shall define delivery schedules in individual work requests.

The Contractor shall provide a wide range of deliverables as required by the FHFA Contracting Officer Representative (COR) or Contracting Officer and as designated in individual work requests. These deliverables may be written or oral. Deliverables may include but are not limited to:

1. Complex analyses and white papers.
2. Recommendations, status reports and performance reports.

3. Financial and other electronic data and models.
4. Analysis reports and memoranda.
5. Internal reviews and program assessments.
6. Scheduled and ad hoc briefings.
7. Scheduled and ad hoc conference calls.
8. Detailed work programs and action steps required to successfully complete tasks.

Specific deliverables shall be defined in each work requirement as required for that specific project. FHFA shall have unlimited rights to all deliverables as defined in FAR 52.227-14. The Contractor shall not mark any portion of a deliverable as having “limited rights,” “limited rights data,” or “restricted rights” as defined in FAR 52.227-14 without the written approval of the COR or Contracting Officer, prior to Contractor(s) performance.

Performance shall take place in numerous places including D.C., Virginia, and other locations as may be required, as well as at the Agency’s facilities, the Contractors’ facilities, the regulated entities facilities, or other locations as may be requested by the FHFA.

The Contractor shall be available on demand on an as needed basis to provide immediate advice to FHFA senior management on matters related to the above-defined scope. The Contractor will be expected to be responsive under very short time frames (24 hrs. or less). The Contractor may be required to travel to perform work on a short notice to FHFA headquarters or any FHFA, or Enterprise offices nationwide to perform work.

VI. Reporting and Communications

The Contractor shall be obligated to keep the FHFA informed of progress, status and completion over the course of the work. The Contractor shall provide a monthly status report using the below format. Reporting and communications shall be rendered in numerous locations as deemed appropriate, including without limitation, FHFA offices or facilities, the Contractor’s offices or facilities, and other locations as necessary. Strategy sessions and meetings are to be convened on an as needed basis in locations where appropriate.

Monthly progress reports shall be submitted to the CO and COR within five (5) business days of the end of the preceding month being reported on and shall include the following:

- a. Requests for and/or status in changes in key and non-key personnel.
- b. Summary of progress during the reporting period.
- c. Unanticipated technical or management problems of significance and suggestions for how to address them.
- d. Issues/risks anticipated in future reporting periods.
- e. Travel Funding CLIN balance
- f. Summary of important meetings and briefings during the reporting period and those planned for the following period.

All reports and correspondence shall be submitted to the COR, with copies simultaneously provided to the CO. The final format of the report will be mutually agreed to by the Contractor and COR and may change when necessary and as requested by the COR.

VII. Information and Communication Technology Requirement (ICT) Accessibility Requirements

All contract deliverables shall be compliant with Section 508 of the Rehabilitation Act of 1973 and meet applicable Section 508 Standards. Section 508 of the Rehabilitation Act, as amended by the Workforce Investment Act of 1998 (P.L. 105-220) requires that when Federal agencies develop, procure, maintain, or use information and communication technology (ICT), it shall be accessible to people with disabilities. Federal employees and members of the public who have disabilities must have access to, and use of, information and data that is comparable to people without disabilities. See also Attachment B, FHFA Specialty Clause 6.223 Information Communication Technology (ICT) Accessibility.

- 1) Products, platforms and services delivered as part of this work statement that are ICT, or contain ICT, must conform to the Revised 508 Standards, which are located at 36 C.F.R. § 1194.1 & Apps. A, C & D, and available at <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>
- 2) E102 / 702.10 – Web Content Accessibility Guidelines (WCAG) success criteria level A & AA are incorporated as a requirement. The referenced WCAG criteria is available at <http://www.w3.org/TR/WCAG20/>

E202 – No General Exceptions Authorized by FHFA
Items that contains ICT: Financial Advisory Services

Applicable Functional Performance Criteria: All functional performance criteria apply when using an alternative design or technology that achieves substantially equivalent or greater accessibility and usability by individuals with disabilities, than would be provided by conformance to one or more of the requirements in Chapters 4-6 of the Revised 508 Standards, or when Chapters 4-6 do not address one or more functions of ICT.

Applicable requirements for software and Web products:

- E207 – WCAG Level A & AA Success Criteria
- E302 – Functional Performance Criteria

Electronic Documents and/or Support Services:

- E205 – WCAG Level A & AA Success Criteria
- E302 – Functional Performance Criteria
- E602 – Support Documentation
- E603 – Support Services

VIII Travel Requirements

When authorized as part of the work scope on this Contract and within the contract ceiling and as approved by the CO travel expenses may be reimbursed as allowed by the Federal Travel Regulations (FTR) in effect at the time of travel. Travel reimbursement will be made up to the established not-to-exceed amount for Other Direct Cost. Contractor shall not bill for the costs of local transportation or meals and refreshments consumed while performing work for the Government locally.

To be reimbursable, the travel expenses must be:

- a. Allowable under the FTR and the provisions of this Contract and associated technical directives,
- b. Approved prior to travel expenditure by the COR, and
- c. Allocable and necessary for performance of this Contract.

Travel requests must be submitted in sufficient time for the COR to give prior approval, and must identify:

- a. The name of the traveler,
- b. Destination(s) including itinerary,
- c. Purpose of the travel, and
- d. Cost breakdown.

To be reimbursed, invoices including travel expenses must provide a detailed breakdown of the actual expenditures invoiced. Contractor shall submit legible copies of all receipts for all travel expenses with the monthly invoice.

Roadmap Dev (Mths 1-12)(Fannie)
Price Schedule

Monthly Price	Extended Total
<i>Roadmap Development Month 1</i>	(b)(4)
<i>Roadmap Development Month 2</i>	
<i>Roadmap Development Month 3</i>	
<i>Roadmap Development Month 4</i>	
<i>Roadmap Development Month 5</i>	
<i>Roadmap Development Month 6</i>	
<i>Roadmap Development Month 7</i>	
<i>Roadmap Development Month 8</i>	
<i>Roadmap Development Month 9</i>	
<i>Roadmap Development Month 10</i>	
<i>Roadmap Development Month 11</i>	
<i>Roadmap Development Month 12</i>	
Total Price: Roadmap Development (Months 1-12)	

Roadmap Dev(Mths 1-12)(Freddie)
Price Schedule

Monthly Price	Extended Total
<i>Roadmap Development Month 1</i>	
<i>Roadmap Development Month 2</i>	
<i>Roadmap Development Month 3</i>	
<i>Roadmap Development Month 4</i>	
<i>Roadmap Development Month 5</i>	
<i>Roadmap Development Month 6</i>	
<i>Roadmap Development Month 7</i>	(b)(4)
<i>Roadmap Development Month 8</i>	
<i>Roadmap Development Month 9</i>	
<i>Roadmap Development Month 10</i>	
<i>Roadmap Development Month 11</i>	
<i>Roadmap Development Month 12</i>	
Total Price: Roadmap Development (Months 1-12)	

Monthly Price	Extended Total
<i>Roadmap Development Month 13</i>	(b)(4)
<i>Roadmap Development Month 14</i>	
<i>Roadmap Development Month 15</i>	
<i>Roadmap Development Month 16</i>	
<i>Roadmap Development Month 17</i>	
<i>Roadmap Development Month 18</i>	
Total Price: Roadmap Development (Months 13-18)	

Monthly Price	Extended Total
<i>Roadmap Development Month 13</i>	(b)(4)
<i>Roadmap Development Month 14</i>	
<i>Roadmap Development Month 15</i>	
<i>Roadmap Development Month 16</i>	
<i>Roadmap Development Month 17</i>	
<i>Roadmap Development Month 18</i>	
Total Price: Roadmap Development (Months 13-18)	

Implementation Year 1 (Fannie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 1 Implementation Month 1</i>	(b)(4)
<i>Option Period 1 Implementation Month 2</i>	
<i>Option Period 1 Implementation Month 3</i>	
<i>Option Period 1 Implementation Month 4</i>	
<i>Option Period 1 Implementation Month 5</i>	
<i>Option Period 1 Implementation Month 6</i>	
<i>Option Period 1 Implementation Month 7</i>	
<i>Option Period 1 Implementation Month 8</i>	
<i>Option Period 1 Implementation Month 9</i>	
<i>Option Period 1 Implementation Month 10</i>	
<i>Option Period 1 Implementation Month 11</i>	
<i>Option Period 1 Implementation Month 12</i>	
Total Price: OP1 Implementation	

Implementation Year 1 (Freddie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 1 Implementation Month 1</i>	(b)(4)
<i>Option Period 1 Implementation Month 2</i>	
<i>Option Period 1 Implementation Month 3</i>	
<i>Option Period 1 Implementation Month 4</i>	
<i>Option Period 1 Implementation Month 5</i>	
<i>Option Period 1 Implementation Month 6</i>	
<i>Option Period 1 Implementation Month 7</i>	
<i>Option Period 1 Implementation Month 8</i>	
<i>Option Period 1 Implementation Month 9</i>	
<i>Option Period 1 Implementation Month 10</i>	
<i>Option Period 1 Implementation Month 11</i>	
<i>Option Period 1 Implementation Month 12</i>	
Total Price: OP1 Implementation	

Implementation Year 2 (Fannie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 2 Implementation Month 1</i>	(b)(4)
<i>Option Period 2 Implementation Month 2</i>	
<i>Option Period 2 Implementation Month 3</i>	
<i>Option Period 2 Implementation Month 4</i>	
<i>Option Period 2 Implementation Month 5</i>	
<i>Option Period 2 Implementation Month 6</i>	
<i>Option Period 2 Implementation Month 7</i>	
<i>Option Period 2 Implementation Month 8</i>	
<i>Option Period 2 Implementation Month 9</i>	
<i>Option Period 2 Implementation Month 10</i>	
<i>Option Period 2 Implementation Month 11</i>	
<i>Option Period 2 Implementation Month 12</i>	
Total Price: OP2 Implementation	

Implementation Year 2 (Freddie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 2 Implementation Month 1</i>	(b)(4)
<i>Option Period 2 Implementation Month 2</i>	
<i>Option Period 2 Implementation Month 3</i>	
<i>Option Period 2 Implementation Month 4</i>	
<i>Option Period 2 Implementation Month 5</i>	
<i>Option Period 2 Implementation Month 6</i>	
<i>Option Period 2 Implementation Month 7</i>	
<i>Option Period 2 Implementation Month 8</i>	
<i>Option Period 2 Implementation Month 9</i>	
<i>Option Period 2 Implementation Month 10</i>	
<i>Option Period 2 Implementation Month 11</i>	
<i>Option Period 2 Implementation Month 12</i>	
Total Price: OP2 Implementation	

Implementation Year 3 (Fannie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 3 Implementation Month 1</i>	(b)(4)
<i>Option Period 3 Implementation Month 2</i>	
<i>Option Period 3 Implementation Month 3</i>	
<i>Option Period 3 Implementation Month 4</i>	
<i>Option Period 3 Implementation Month 5</i>	
<i>Option Period 3 Implementation Month 6</i>	
<i>Option Period 3 Implementation Month 7</i>	
<i>Option Period 3 Implementation Month 8</i>	
<i>Option Period 3 Implementation Month 9</i>	
<i>Option Period 3 Implementation Month 10</i>	
<i>Option Period 3 Implementation Month 11</i>	
<i>Option Period 3 Implementation Month 12</i>	
Total Price: OP3 Implementation	

Implementation Year 3 (Freddie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 3 Implementation Month 1</i>	(b)(4)
<i>Option Period 3 Implementation Month 2</i>	
<i>Option Period 3 Implementation Month 3</i>	
<i>Option Period 3 Implementation Month 4</i>	
<i>Option Period 3 Implementation Month 5</i>	
<i>Option Period 3 Implementation Month 6</i>	
<i>Option Period 3 Implementation Month 7</i>	
<i>Option Period 3 Implementation Month 8</i>	
<i>Option Period 3 Implementation Month 9</i>	
<i>Option Period 3 Implementation Month 10</i>	
<i>Option Period 3 Implementation Month 11</i>	
<i>Option Period 3 Implementation Month 12</i>	
Total Price: OP3 Implementation	

Implementation Year 4 (Fannie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 4 Implementation Month 1</i>	(b)(4)
<i>Option Period 4 Implementation Month 2</i>	
<i>Option Period 4 Implementation Month 3</i>	
<i>Option Period 4 Implementation Month 4</i>	
<i>Option Period 4 Implementation Month 5</i>	
<i>Option Period 4 Implementation Month 6</i>	
<i>Option Period 4 Implementation Month 7</i>	
<i>Option Period 4 Implementation Month 8</i>	
<i>Option Period 4 Implementation Month 9</i>	
<i>Option Period 4 Implementation Month 10</i>	
<i>Option Period 4 Implementation Month 11</i>	
<i>Option Period 4 Implementation Month 12</i>	
Total Price: OP4 Implementation	

Implementation Year 4 (Freddie)
Price Schedule

Monthly Price	Extended Total
<i>Option Period 4 Implementation Month 1</i>	(b)(4)
<i>Option Period 4 Implementation Month 2</i>	
<i>Option Period 4 Implementation Month 3</i>	
<i>Option Period 4 Implementation Month 4</i>	
<i>Option Period 4 Implementation Month 5</i>	
<i>Option Period 4 Implementation Month 6</i>	
<i>Option Period 4 Implementation Month 7</i>	
<i>Option Period 4 Implementation Month 8</i>	
<i>Option Period 4 Implementation Month 9</i>	
<i>Option Period 4 Implementation Month 10</i>	
<i>Option Period 4 Implementation Month 11</i>	
<i>Option Period 4 Implementation Month 12</i>	
Total Price: OP4 Implementation	

Total Contract Price
Price Schedule

Total Prices

Roadmap Development (Months 1-12) (Fannie Mae)
Roadmap Development (Months 1-12) (Freddie Mac)
Roadmap Development (Months 13-18) (Fannie Mae)
Roadmap Development (Months 13-18) (Freddie Mac)
Implementation Year One (Fannie Mae)
Implementation Year One (Freddie Mac)
Implementation Year Two (Fannie Mae)
Implementation Year Two (Freddie Mac)
Implementation Year Three (Fannie Mae)
Implementation Year Three (Freddie Mac)
Implementation Year Four (Fannie Mae)
Implementation Year Four (Freddie Mac)
Grand Total

