

# DEPOSIT INSURANCE APPLICATIONS

## *Procedures Manual*

**Division of Risk Management Supervision**

~~June 2017~~ October 2018

*The information contained in this Manual summarizes relevant guidance regarding FDI applications. Users of the Manual should review all applicable statutes, rules, regulations, and policies for formal application requirements, including those issued by the chartering authority, the primary federal regulator (PFR), and the FDIC if it is not the PFR.*

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## Introduction

This Procedures Manual (Manual) provides direction for professional staff during each stage of the federal deposit insurance (FDI) application process, from pre-filing activities through final action. It also addresses important post-opening considerations once a *de novo*<sup>1</sup> institution begins operations. A case manager from the regional office (RO) in which the application is filed will generally be the primary point of contact for the Federal Deposit Insurance Corporation (FDIC) during the FDI application process. The case manager will coordinate communication within the FDIC and among the relevant supervisory agencies. Collectively, the case manager and applicable field office (FO), RO, and Washington Office (WO) staff<sup>2</sup> will work together to ensure that each application is processed in accordance with established time frames, FDIC policies, and other applicable regulatory and supervisory requirements.

Because a *de novo* institution has no established record as an insured depository institution, its success will largely depend on the qualifications of the management team and board of directors, the adequacy of capital, and the soundness of the business plan. The Manual discusses these aspects in depth, along with the statutory framework for evaluating an FDI application as set forth in the [Federal Deposit Insurance Act](#) (FDI Act).

The content of the Manual is divided into six sections as shown below. The Manual also includes a list of resources with corresponding links, appendices that provide other helpful tools and information, and a [list of acronyms and abbreviations](#) used throughout the Manual.

Section I.	<a href="#">General FDI Application Matters</a>
Section II.	<a href="#">Pre-Filing Activities</a>
Section III.	<a href="#">Application Receipt, Review, and Acceptance</a>
Section IV.	<a href="#">Application Processing</a>
Section V.	<a href="#">Pre-Opening Activities</a>
Section-VI.	<a href="#">Post-Opening Considerations</a>

The FDIC ~~expects that~~[strives to act on](#) FDI applications ~~will generally be acted on~~ within four ~~to six~~ months of receiving a substantially complete application. However, processing times may vary depending on the specific characteristics of a proposal. Ultimately, the timeliness of the application process relies on the quality and completeness of the application submission; the responsiveness of the organizers<sup>23</sup> in addressing information needs; and the effectiveness of the communication among the FDIC, the other agencies, and the organizers. To further the goal of timely processing, the Manual places significant emphasis on the quality and effectiveness of the case manager's initial review of the application materials.

*The information contained in this Manual summarizes relevant guidance regarding **deposit insurance applications**. Users of the Manual should review all applicable statutes, rules,*

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<sup>1</sup> A newly organized insured depository institution is commonly referred to as a “*de novo*” institution.

<sup>2</sup> [The procedures included in this Manual apply to equivalent staff in the FDIC's Large Bank Supervision Branch and Complex Financial Institutions Group, when applicable.](#)

<sup>23</sup> The term “organizer” generally refers to any person or entity that is significantly involved in the organization of a proposed depository institution.

## Section I: General FDI Application Matters

### A. Charter Types and Related Matters

Proposed institutions can range from traditional, locally oriented, community banks<sup>34</sup> to more complex institutions that focus on less traditional activities, market segments, or delivery channels; provide products and services across wider geographic territories; or operate within an organizational structure that may involve significant affiliate or other third-party relationships.

In order for an institution to obtain deposit insurance from the FDIC, it must obtain either a bank or savings association<sup>5</sup> charter<sup>4</sup> from the applicable chartering authority<sup>56</sup> to conduct its proposed business activities. Chartering authorities include the various state banking agencies in the case of institutions with a state charter, and the Office of the Comptroller of the Currency (OCC) in the case of institutions with a national or federal charter. Organizers will generally choose to pursue a charter that relates to the proposed institution's business model. The FDIC does not have a preference regarding a *de novo* institution's charter selection.

Proposed depository institutions may include the following charter types:

- National bank;
- State bank, either nonmember or member of the Federal Reserve System (FRS);
- Federal savings bank or association;
- State savings association; or
- Other (any other depository institution engaged in the business of receiving deposits other than trust funds).<sup>67</sup>

In addition to traditional bank and savings association charters, the OCC and some states offer limited or special purpose charters. These charter types include insured 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

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<sup>34</sup> In general, community banks focus on providing traditional banking services, including loans and core deposits, to individuals and businesses in their local communities. [References to “banks” or “institutions” in this Manual include savings associations, unless otherwise noted.](#)

<sup>5</sup> [The term “savings association” is defined in Sec 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.](#)

<sup>4</sup> [The term “savings association” is defined in Sec 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.](#)

<sup>56</sup> Institutions that apply for FDI must meet the FDIC's statutory, regulatory, and other application requirements as well as satisfy the chartering agency's requirements pursuant to state or federal law.

<sup>67</sup> The phrase “engaged in the business of receiving deposits other than trust funds” is defined in [Section 303.14 of the FDIC Rules and Regulations](#) as an insured institution that maintains one or more non-trust deposit accounts in the minimum aggregate amount of \$500,000.

institutions that are primarily focused on community development<sup>78</sup> or cash management activities, or that may operate as “bankers’ banks.”<sup>8</sup> ~~Chartering authorities have also granted activities, or that may operate as “bankers’ banks.”<sup>9</sup> Chartering authorities have also granted “shelf charters,”<sup>910</sup> whose operations commence with the acquisition of one or more failed banks, and certain states offer insured industrial loan company (ILC)<sup>4011</sup> charters.~~

Certain institutions, regardless of charter type, may be designated as a minority depository institution (MDI). Section 308 of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA) defines an MDI as any depository institution where 51 percent or more of the stock is owned by one or more “socially and economically disadvantaged individuals.”<sup>12</sup> ~~The See also the *FDIC Policy Statement Regarding Minority Depository Institutions* additionally defines an MDI as any federally insured depository institution where 51 percent or more of the voting stock is owned by minority<sup>14</sup> individuals that are U.S. citizens or permanent legal U.S. residents. Institutions will also be considered MDIs if a majority of the board of directors is minority and the community that the institution serves is predominantly minority. for additional information.~~<sup>13</sup>

The FDIC has long recognized the importance of MDIs in promoting the economic viability of minority and underserved communities, and has named an MDI coordinator in each RO. The case manager should coordinate the review of any FDI application involving a proposed MDI with the RO MDI coordinator.

## B. Types of FDI Applications

Section 5 of the FDI Act requires any proposed depository institution that seeks FDI to file an application with the FDIC. Proposed institutions apply for FDI by filing an *Interagency Charter and Federal Deposit Insurance Application* (Application Form) with the appropriate FDIC RO. (The same form may be filed with the chartering agency for purposes of seeking a financial

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<sup>78</sup> Institutions may pursue certification by the U.S. Department of the Treasury (U.S. Treasury) as a community development financial institution (CDFI). CDFIs are specialized financial institutions that provide financial products and services to populations and businesses located in underserved markets. CDFIs may include banks and holding companies, credit unions, and other types of entities (such as loan funds and venture capital funds). Refer to the [U.S. Treasury’s CDFI Fund website](#) for additional details.

<sup>8</sup> ~~A “bankers’ bank” is a financial institution that provides financial services to other banks.~~

<sup>9</sup> ~~A “bankers’ bank” is a financial institution that provides financial services to other banks.~~

<sup>910</sup> “Shelf charters” [can](#) 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. ~~The~~ [In order to bid, the organizers must obtain a charter from the chartering authority. Operations under a shelf charter will not commence unless the organizers are identified as the winning bidder for a failing institution and acquire the failed institution. See the \*FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions\* \(SOP-QFBA\) ~~may be applicable in such cases~~ for additional information.](#)

<sup>4011</sup> For purposes of the Manual, an ILC refers to either an industrial loan company or an industrial bank.

<sup>12</sup> ~~Minority, as defined by Section 308 of FIRREA, means any Black American, Asian American, Hispanic American, or Native American.~~

<sup>14</sup> ~~Minority, as defined by Section 308 of FIRREA, means any Black American, Asian American, Hispanic American, or Native American.~~

<sup>13</sup> ~~The *FDIC Policy Statement Regarding Minority Depository Institutions* additionally defines an MDI as any federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals that are U.S. citizens or permanent legal U.S. residents. An institution will also be considered an MDI if a majority of the board of directors is minority and the community that the institution serves is predominantly minority.~~

institution charter.) The appropriate FDIC RO is normally based on the state in which the proposed institution will be headquartered. Refer to [Section III of the Manual](#) for further details regarding the FDIC’s application requirements.

Regardless of a proposed institution’s charter type, FDI applications generally fall within one of the categories identified in the table below.

<b>FDI Application Types</b>	
1. Newly insured depository institution with no existing operations.	Historically, this is the most common type of FDI application that the FDIC has received.
2. Existing and operating institution that is not insured by the FDIC.	Examples include credit unions, limited purpose trust companies, and other types of noninsured entities.
3. Interim institutions, which are typically created to facilitate other transactions, such as mergers or organizational structure changes.	<p>An FDI application is required for any:</p> <ul style="list-style-type: none"> <li>a. Purchase and assumption transaction involving a state or federal interim institution and an insured institution.</li> <li>b. Merger transaction between a state-chartered interim institution and an insured institution when the FDIC is not the federal banking agency (FBA) acting on the application.</li> </ul> <p>Note: Mutual-to-stock conversions or the creation of a mutual holding company may include a merger transaction(s) with an interim institution(s) to facilitate the corporate reorganization. In such a case, refer to (a) and (b) above as well as applicable state law to determine whether an FDI application is required.</p>
4. Conversion of an existing federal savings association (FSA) into more than one insured institution.	An FDI application is required under the specific circumstances described in Section 5(i)(5)(A) of the Home Owners’ Loan Act ( <a href="#">HOLA</a> ) by which an FSA with branches in operation in one or more states before November 12, 1999, converts into more than one state or national bank(s); <a href="#">a separate application is required for each bank resulting from the conversion</a> . Otherwise, there is no requirement to file an FDI application upon conversion of an FSA into a state or national bank.
5. Withdrawal from membership in the FRS	To continue its insured status upon withdrawal from membership in the FRS, a state-chartered bank must submit a letter FDI application, <a href="#">as described in Sections 303.21 and 303.25 of the FDIC Rules and Regulations</a> .

The RO should consult with the WO’s Risk Management and Applications Section (RMAS) if a determination is needed as to whether an FDI application is required. In such instances, the case manager should email a brief summary of the proposal or the contemplated transaction(s) to the appropriate RMAS section chief. The RO or the RMAS section chief should consult with the Legal Division (Legal), as appropriate, in making the determination.

### C. Examples of Situations that Do Not Require an FDI Application

An FDI application is not required for certain types of proposals. The table below describes common situations that do not require an FDI application.

Examples of When an FDI Application is Not Required	
1. Continuation of insurance.	<a href="#">Section 4 of the FDI Act</a> provides for continued FDI for insured institutions following charter conversions and certain merger transactions: a. Admission of an insured institution to membership in the FRS. b. Conversion of an insured state bank into a national bank. c. Conversion of an insured federal depository institution into a state depository institution (see exception in item 4 in the table above for the conversion of an FSA). d. Conversion of an insured state or federal depository institution into a federal depository institution (see exception in item 4 in the table above for the conversion of an FSA). e. Merger or consolidation of insured depository institutions, or of a noninsured depository institution with an insured depository institution.
2. Formation of federally chartered interim institution.	Such institutions are insured upon the issuance of the institution's charter by the OCC per <a href="#">Section 5(a)(2) of the FDI Act</a> , if they will not open for business. An FDI application also will not be required in connection with a merger transaction of a federally chartered interim institution and an insured institution. An FDI application, however, will be required for a purchase and assumption transaction involving a federal interim institution.

### D. Analytical Considerations

All FDI applications are required to be reviewed under the framework of statutory factors enumerated in [Section 6 of the FDI Act](#). The statutory factors, as discussed further in [Section III of the Manual](#), are:

- The institution's financial history and condition;
- The adequacy of the institution's capital structure;
- The institution's future earnings prospects;
- The general character and fitness of the management of the institution;
- 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.

Each factor must be fully considered. Unless all of the statutory factors are favorably resolved, the FDI application may not be acted on under delegated authority, which is discussed in [Section](#)



[IV of the Manual](#).<sup>+214</sup> In order to properly consider the statutory factors, all facts and circumstances relevant to the proposed institution must be completely understood. This requires conducting a thorough review of the application materials (including the business plan), maintaining ongoing communication with the organizers and other relevant agencies, and ensuring that the depth of the review is commensurate with the nature and complexity of the application.

Overall, thorough analysis of an application should lead to logical and well-supported conclusions regarding not only the individual statutory factors, but also the proposed institution's long-term viability and prospects for operating in a safe and sound manner. To that end, the case manager's analysis should consider whether all major aspects of the proposal make clear business sense, the underlying assumptions are reasonable, and the key risks have been identified and appropriately addressed.

## E. Disposition of FDI Applications

Based on the analysis conducted, the case manager should recommend action with regard to each FDI application. The recommendation should be for one of the following courses of action, consistent with the delegations of authority:

- **Return** – Applications that are wholly inadequate should be promptly returned to the applicant. The case manager should also recommend returning any application that is not substantially complete, as discussed in [Section III of the Manual](#), following the applicant's response to ~~the FDIC's~~ [any FDIC information requests](#)~~request~~.<sup>+315</sup>
- **Approve** – Generally, if the statutory factors are favorably resolved, the case manager should recommend approval of the application. The approval will be conditioned on the applicant's satisfaction of certain standard conditions. Non-standard conditions may also be imposed to control or mitigate a proposal's unique risks. [Section IV of the Manual](#) discusses conditions.
- **Withdraw** – If the statutory factors cannot be favorably resolved, the case manager should recommend providing the organizers an opportunity to withdraw the application.<sup>+416</sup> The applicant may propose modifying the application to address the underlying concerns; however, significant changes may require the submission of a new application.
- **Deny** – If the statutory factors cannot be favorably resolved, and the applicant does not withdraw the application or propose acceptable modifications, the case manager should recommend denial of the application.

## F. Regulatory Coordination

The case manager is expected to maintain close communication with other applicable agencies during the FDI application process to discuss the application and any related submissions, conduct pre-filing or other meetings with the organizers or their representatives, and facilitate

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<sup>+214</sup> Only the FDIC Board of Directors may act on an FDI application for which one or more statutory factors are not favorably resolved. In addition, only the FDIC Board may deny an FDI application.

<sup>+315</sup> If an FDI application is returned or withdrawn, an applicant may choose to file a new application. The FDIC will review the new FDI application in its entirety and will follow the procedures described in this Manual.

<sup>+416</sup> Withdrawal decisions are made at the discretion of the applicant, must be in writing, and may occur at any time during the application process.



on-site investigations or reviews. In general, it is expected that all meetings with organizers or their representatives will be conducted jointly with the chartering authority to promote information sharing and avoid duplication of efforts.

Similarly, the case manager is expected to coordinate with the Federal Reserve Board (FRB) if an institution will be a state member bank or owned by a holding company. All required holding company filings will be submitted to the FRB. The case manager may also coordinate with the FRB, or encourage organizers to contact the FRB directly, in situations where questions exist regarding the possibility of a group or entity being considered in control of the institution for purposes of the Bank Holding Company Act (BHCA) or the HOLA. As with the charter selection, the FDIC has no preference with regard to the organizers' ownership decisions, which should be consistent with the proposed institution's specific circumstances.

While each federal agency and state authority makes independent decisions regarding applications, coordination throughout the application process helps facilitate information sharing and timely decisions. Further, if the relevant filings are approved and the proposed institution commences operations, interactions with the applicable regulatory agencies will continue after opening through established supervisory processes.<sup>4517</sup>

All institutions have a ~~primary federal regulator (PFR)~~, which serves as the federal agency responsible for supervising the institution. The PFR will be:

- The FDIC, if the institution is a state-chartered institution that is not a member of the FRS;
- The FRB, if the institution is a state-chartered, FRS-member institution; or
- The OCC, if the institution has a national bank or FSA charter.

The anticipated PFR for the proposed institution (based on the type of charter being pursued) will generally lead any on-site activities that may occur during the FDI application process. This does not preclude the FDIC from initiating additional on-site activities, as deemed necessary, to complete its analysis of the application. [Appendix 21](#) summarizes the primary supervisory roles of the applicable agencies.

## G. ~~Tax Election~~ Corporate Form

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)~~ choose different corporate forms depending on its specific circumstances. There are notable differences between corporate forms ~~with respect to, and elections made for tax purposes may affect~~ the number of allowable shareholders, the terms of prospective capital distributions, and the tax treatment of income and losses.

For example, ~~the~~ a C Corporation (C Corp) allows for an unlimited number of shareholders, while an S Corporation (S Corp) is restricted by Internal Revenue Service regulations as to the

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<sup>4517</sup> The FDIC may also interact with appropriate 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](#), as well as the [Bureau of Consumer Financial Protection Bureau](#) which supervises and examines consumer financial service providers under its jurisdiction for compliance with federal consumer financial laws.

number and type 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 [limited liability companies \(LLCs\)](#) are provided in state law and [Section 303.15 of the FDIC Rules and Regulations](#).

The case manager should consult with Legal and/or Risk Management Supervision (RMS) accounting specialists if questions arise regarding the legal, tax, or capital implications associated with a particular corporate form.

## H. Applications with Unique Characteristics

Certain FDI applications present unique characteristics. These applications, which could fall under any charter type, are summarized below. [As compared to traditional community bank proposals, these applications may present added complexities or less frequently encountered elements with regard to the business model, affiliate or third-party relationships, ownership or capital structure, funding sources, balance sheet composition, or other strategic or operational aspects. Applications with unique characteristics are not inherently problematic, but may require more in-depth analysis of certain features of the proposal. The case manager should evaluate any such application on a case-by-case basis to ensure that all risks, as well as any compensating controls, are fully understood and considered in the analysis of the statutory factors.](#)

Because these applications must be acted on at the RMS Division or FDIC Board level, the case manager is expected to notify the appropriate RMAS section chief via email upon receipt of the application or identification of the unique characteristics. ~~Further, because of their unique characteristics~~ [While every reasonable effort should be made to ensure timely processing](#), these types of applications may take longer to process than the typical 120 ~~to 180~~-days [due to their unique characteristics](#).

[Applications by nonbank banks](#) – The term “nonbank bank” refers to an insured institution that is a bank for purposes of the FDI Act, but is not a bank for purposes of the [BHCA](#). Such institutions include ILCs, as well as credit card banks and trust banks ~~organized under~~ [exempted from the BHCA pursuant to](#) the [Competitive Equality Banking Act \(CEBA\)](#).

[Applications considered “niche” proposals](#) – Niche proposals generally involve institutions that plan to have a concentrated business focus or engage heavily in specialized activities.

[Applications involving failed bank acquisitions \(“shelf charter” proposals\)](#) – These applications may be subject to modified processes. Investors that are interested in acquiring the deposits of failing institutions must obtain conditional approval from the applicable chartering authority, verify whether any FRB approvals are necessary, meet the FDIC’s bid criteria, and satisfy all requirements for FDI.

[Applications by publicly owned entities](#) – Public ownership refers to institutions to be owned or controlled by domestic governmental entities (*e.g.*, a state, county, or municipality).

Applications involving foreign ownership – Foreign ownership refers to ownership by a foreign non-banking entity, a foreign bank, or a person who is not a citizen of the U.S.

Applications involving a parallel-owned banking organization (PBO) – A PBO is created when at least one U.S. depository institution and one foreign bank are controlled either directly or indirectly by the same person or entity, or group of persons or entities, without the organization being subject to comprehensive consolidated supervision (CCS).

Refer to [Appendix 12](#) for additional considerations and procedures for processing applications with unique characteristics.

## Section II: Pre-Filing Activities

### A. Overview of Pre-Filing Activities

Case managers are expected to play an active role in pre-filing activities. They typically serve as the first line of communication, and ultimately as the primary contact, between an organizing group and the FDIC. The case manager may field calls from prospective organizers or their representatives with specific questions regarding a contemplated proposal or general questions regarding the FDI application process. In addition, case managers are expected to coordinate pre-filing meetings with the organizing group, other discussions with organizers and other agency counterparts, and internal meetings to discuss key aspects of a potential FDI application.

Pre-filing contacts and meetings are generally conducted for all FDI applications. The goals of these activities are to facilitate a comprehensive application that complies with FDIC and other applicable regulatory requirements, and to minimize unnecessary delays in processing the application. Pre-filing discussions help provide clarity for the organizers regarding regulatory expectations and the application process, including general timelines for processing. In addition, the pre-filing process provides an opportunity for organizers to receive preliminary feedback regarding areas of a proposal that may need to be further developed or that may raise concerns. Pre-filing activities are also beneficial for the supervisory agencies to learn more about the organizing group and the nature of a potential FDI application.

[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. For additional information, staff should refer to the FDIC’s public website dedicated to applications for deposit insurance, which includes the document that implements the FDIC’s draft review process, and any applicable internal guidelines for receiving and processing draft deposit insurance proposals.](#)

The case manager should consider the following questions during the pre-filing process:

- Who are the primary organizers and what are their backgrounds?
- What is the anticipated charter type and ownership structure?
- Have discussions been held with the chartering authority and, if applicable, the FRB?

- What are the sources of capital, the status of capital-raising activities, and the planned equity structure?
- Will there be any principal shareholders?
- Will there be any foreign shareholders?
- Have any members of the senior management team or board of directors been identified? If so, what are their backgrounds relative to the contemplated institution?
- What is the anticipated emphasis or business focus of the institution?
- What is the target market area and anticipated community to be served?
- Will the institution offer (or engage in) any non-traditional products, services, or activities?
- Will there be any affiliate relationships or transactions involving insiders<sup>+6?</sup><sup>18</sup>
- Do the organizers plan to establish any stock benefit plans?

## **B. Procedures for Pre-Filing Meetings**

Pre-Filing Meeting Attendance – As a general rule, pre-filing meetings should be attended by:

- Members of the organizing group (including potential investors, management, or directors);
- Representatives of the organizing group (such as attorneys or consultants);
- Applicable professional staff of the FDIC;
- Representatives of the chartering authority; and, as appropriate,
- The FRB as PFR or holding company supervisor.

If the FDIC is coordinating the meeting, the case manager should invite all applicable agencies to participate. FDIC representatives at a pre-filing meeting should generally include staff from the appropriate RO and FO. Staff from the FDIC's WO may also be invited to attend. In some instances, the WO may coordinate pre-filing meetings, such as in the event of failed bank acquisition proposals or proposals where the location of the institution's headquarters is uncertain. In such cases, the WO will invite RO participation.

Pre-Filing Meeting Materials – The case manager should encourage the organizers to provide materials for the FDIC and other agencies to review in advance of the pre-filing meeting. The materials may include a slide deck (or similar type of presentation), as well as a draft business plan or other draft organizational documents (such as preliminary stock offering materials). This will help familiarize the FDIC with the proposal ahead of the meeting, assist in arranging participation from applicable staff, and generally lead to a more productive meeting.

Pre-Filing Meeting Topics – The materials provided by the organizers will largely drive the content and flow of the pre-filing meeting. Staff should ask the organizers to discuss the backgrounds of the organizing group and any individuals being considered to manage or direct the institution, and key elements of the anticipated business plan including the ownership

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<sup>+6</sup> ~~The FDIC Statement of Policy on Applications for Deposit Insurance SOP-ADI defines an insider as a person who is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of a class of the applicant's outstanding voting stock; or the associates or interests of any such person.~~  
<sup>18</sup> An insider is defined as a person who is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of a class of the applicant's outstanding voting stock; or the associates or interests of any such person. Refer to the FDIC Statement of Policy on Applications for Deposit Insurance (SOP-ADI).

structure, target geographic and customer markets, primary products and services, main strategic objectives, capital and management plans, and other pertinent aspects. In addition, staff should ask the organizers to discuss any contemplated insider transactions and stock benefit plans. These elements may be in their early stages of development.

FDIC staff should provide preliminary feedback, respond to questions, and discuss the FDIC's expectations with regard to submitting a formal application, including a comprehensive business plan.

The case manager and other FDIC attendees should be prepared to discuss regulatory requirements and guidance, and any unusual aspects of the proposal, including potential conditions that could be imposed (*e.g.*, with regard to proposals involving nonbank banks, foreign ownership, or other applicable areas). Any matters that might potentially present concerns should be articulated.

Additional follow-up discussions, both internally and with the organizers or other agencies, may be necessary to further assess preliminary aspects of the proposal.

### **C. Documentation of Pre-Filing Activities**

The case manager is expected to document the FDIC's participation in each pre-filing discussion or meeting with a memorandum to the file that identifies the participants or attendees, addresses the substance of the discussion, and describes any anticipated next steps or follow-up items. If a meeting with an organizing group is held in the WO, RMAS staff is expected to document the meeting and provide the appropriate RO a copy of the memorandum for its permanent files.

The case manager should provide a copy of the pre-filing memoranda for a proposed institution to the investigating examiner for review and follow-up during the field investigation. Each RO and the WO are to maintain a centralized file of all pre-filing memoranda.

## **Section III: Application Receipt, Review, and Acceptance**

The review and processing of an FDI application is time sensitive. The FDIC strives to act on all FDI applications within 120 ~~to 180~~ days of receiving a substantially complete application. In order to meet this goal, each FDI application must be thoroughly reviewed promptly following receipt and processed in accordance with the timeline summarized in the table below.

Summary of the FDI Application Review and Processing Timeline	
➤ Within three business days of receiving the application	<ul style="list-style-type: none"> <li>Send a letter to the applicant acknowledging receipt and directing publication if it has not yet occurred.</li> <li>Establish a ViSION <sup>+7</sup>AT<sup>19</sup> record.</li> <li>Notify FO management, the Division of Depositor and Consumer Protection (DCP), and applicable RMS and Legal specialists.</li> </ul>
➤ Within 30 <del>to 45</del> days of receipt	<ul style="list-style-type: none"> <li>Review the submitted application for completeness, consistency, and conformance with <del>the SOP-ADI filing procedures.</del></li> <li>Provide a written summary to the WO.</li> <li>Send a letter to the applicant noting that the application is substantially complete and accepted for processing as of the date of receipt, or that additional information is needed.</li> </ul>
➤ Once the application is accepted as substantially complete	<ul style="list-style-type: none"> <li>Formally begin application processing, including the <del>evaluation</del> of the statutory factors and other activities.</li> <li>Coordinate and commence the field investigation.</li> </ul>
➤ Within 60 days of deeming the application substantially complete	<ul style="list-style-type: none"> <li>Complete the field investigation.</li> <li>Communicate any identified concerns to the applicant.</li> </ul>
➤ Within 30 days of completing the field investigation	<ul style="list-style-type: none"> <li>Resolve any identified issues or concerns.</li> <li>Complete application processing.</li> <li>Obtain the applicant's written concurrence to any proposed non-standard conditions.</li> <li>Finalize the recommendation for action.</li> </ul>

These standards and other relevant procedures are discussed further in the following items and in [Section IV of the Manual](#). Any processing delays need to be reflected in the appropriate data fields and commented upon in sufficient detail in ViSION AT, the FDIC's official inventory tracking system for applications. In addition, any related correspondence or documentation should be maintained in RADD, <sup>+820</sup>the FDIC's automated documentation maintenance system.

## A. Receipt of an FDI Application

The assigned case manager must begin reviewing the application promptly following receipt and coordinate internally and with the other relevant agencies to facilitate a common understanding of the proposal. ~~The~~ Within three business days of receiving an FDI application, the case manager should prepare and send a letter to the applicant acknowledging receipt, requesting publication of the filing in a local newspaper if publication has not already occurred (see [Item B](#) below), and addressing historic preservation and environmental policy requirements if not

<sup>+7</sup> ViSION is the acronym for Virtual Supervisory Information On the Net. AT is the Applications Tracking Module within the ViSION system.

<sup>19</sup> ViSION is the acronym for Virtual Supervisory Information On the Net. AT is the Applications Tracking Module within the ViSION system.

<sup>+820</sup> RADD is the acronym for Regional Automated Documentation Distribution and Imaging Systems. All documents regarding a pending FDI application should be maintained in a RADD Subject Matter Folder for the proposed institution.



discussed in the application. The letter should ~~be signed by the appropriate RO official in accordance with delegated authority, and sent to the applicant within three business days of receiving an FDI application,~~ not convey a determination regarding acceptance or request additional information as these matters should be communicated separately, as appropriate.

The case manager must establish a ViSION AT record for an FDI application within three business days of receiving the application. The ViSION AT record should include an adequate description of the proposal and note the date that the acknowledgment letter was sent, and all applicable data fields should be completed. The case manager is expected to update the status comments in ViSION AT throughout the application process to reflect any noteworthy developments, including all significant internal and external contacts.

~~The~~ Within three business days of receiving the application, the case manager should promptly notify DCP, FO management, and the appropriate RMS and Legal specialists that the application was received. ~~This also should occur within three business days of receiving the application.~~ These notifications will help facilitate DCP's review of any applicable consumer compliance or Community Reinvestment Act (CRA) considerations, the specialists' reviews of matters pertaining to their respective areas, and FO management's preparation for the field investigation.

In addition, the case manager should forward a copy of the application to the RO's DCP and Legal designees, who will distribute the materials for initial review by those respective areas.

## **B. Publication**

The case manager must confirm that publication requirements are met. Pursuant to Sections 303.7 and 303.23 of the FDIC Rules and Regulations, applicants must 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.<sup>21</sup> In the case of establishing a *de novo* institution with branches, the applicant must also publish once in a paper serving the community in which each branch is to be located. The applicant is required to provide a copy of the newspaper notice to the appropriate FDIC office as part of its filing or, if a copy is not available at the time of filing, promptly after publication.

The publication should occur as close as practical to the date the application is filed, but no sooner than five days before the filing date. This provides assurance that the public portion of the application file will be available for inspection during the comment period. Comments by interested parties must be received by the regional director on or before the 30<sup>th</sup> day following the date of publication, unless the comment period has been extended. Processing of the application may not be completed prior to expiration of the comment period. Section 303.9 of the FDIC Rules and Regulations provides for comment period extensions in certain situations.

The FDIC is required to review any adverse comment or protest received regarding an FDI application. Upon receiving an adverse comment or protest, the case manager must notify the

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<sup>21</sup> Section 303.23(b) of the FDIC Rules and Regulations provides certain exceptions to the public notice requirements. No publication is required for an interim institution formed solely to facilitate a merger transaction, a new institution established pursuant to the resolution of a depository institution in default, or a continuation of FDI for a state-chartered bank withdrawing from FRS membership.



applicable DCP review examiner. Although RMS will also review the matter, DCP will formally review the comment or protest and respond to the submitter and the applicant. The FDIC may not act on the application until the matter is resolved.

~~No publication is required for an interim institution formed or organized solely to facilitate a merger transaction, a new institution established pursuant to the resolution of a failed institution, or a continuation of FDI for a state-chartered bank withdrawing from FRS membership.~~

### C. Standard or Expedited Processing

The case manager must determine whether the application is subject to standard or expedited processing. ~~Most~~ It is expected that most FDI applications ~~are~~ will be subject to standard processing and ~~are~~ acted on within 120 ~~to 180~~ days of being accepted as substantially complete. However, an FDI application for a proposed institution that will be a subsidiary of an eligible depository institution<sup>1922</sup> or an eligible holding company<sup>2023</sup> will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision.

The FDIC may remove a filing from expedited processing for an otherwise eligible institution for reasons set out at [Section 303.11\(c\)\(2\) of the FDIC Rules and Regulations](#). In summary, these are:

- An adverse comment or CRA protest as defined under [Section 303.2 of the FDIC Rules and Regulations](#) is received that is not deemed frivolous and warrants additional review;
- The regional director determines that the filing presents significant supervisory, compliance, or CRA concerns, or raises significant legal or policy issues; or
- Other good cause exists, as determined by the regional director.

Final action on an expedited application is expected to be taken within 60 days of receipt of a substantially complete application or five days after expiration of the comment period, whichever is later. However, final action may be withheld until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

Final action is expected to be taken within 21 days after receipt of a substantially complete application for a state-chartered interim institution unless the applicant is notified in writing that additional review is warranted. The FDIC approval letter must condition the approval on

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<sup>1922</sup> An “eligible depository institution” is defined in [Section 303.2\(r\) of the FDIC Rules and Regulations](#) as a depository institution that (1) received a composite rating of 1 or 2 as a result of its most recent examination; (2) received a satisfactory or better CRA rating from its PFR at its most recent examination, if the institution is subject to examination under [Part 345 of the FDIC Rules and Regulations](#); (3) received a compliance rating of 1 or 2 from its PFR at its most recent examination; (4) is “well capitalized” as defined in the appropriate capital regulation and guidance of the institution’s PFR; and (5) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its PFR or chartering authority.

<sup>2023</sup> An “eligible holding company” is generally defined in [Section 303.22\(a\) of the FDIC Rules and Regulations](#) as a holding company that has consolidated assets of at least \$150 million or more, a composite rating of at least “2,” and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions.

consummation of the related transaction. However, if the application relates to a mutual-to-stock conversion ~~that requires~~([which would require](#) WO action), the RO should notify the applicant in writing that the application is not eligible for expedited processing.

Final action on any FDI application may be taken by the FDIC prior to final action by other regulatory authorities in cases where the FDIC does not anticipate a material disagreement on the action to be taken. In cases where there is a material disagreement, the matter should be discussed with Legal and the appropriate RMAS section chief to determine the appropriate course of action.

#### **D. Initial Review of the Application for Completeness**

The case manager is expected to perform an initial review of an FDI application within 30 ~~to 45~~ days of receipt by the FDIC to determine the completeness, accuracy, and consistency of the filing. In addition to reviewing the content provided in the [Application Form](#), this review should encompass all application materials with an emphasis on ensuring that the investigating examiner will have the materials necessary to evaluate the proposal against the statutory ~~factor~~ ~~considerations described in the SOP-AD~~[factors](#).

Also within 30 ~~to 45~~ days of receipt, using the template provided in [Appendix 3](#), the case manager must prepare a summary of the proposal. The regional director will forward the summary to the RMS division director as an attachment to the monthly status report. [The RO should also email a copy of the summary to the associate director of the Risk Management Examination Branch \(RMEB\)](#). As discussed in [Section IV of the Manual](#), the summary and subsequent monthly updates will be used to facilitate timely consultations with the WO.

If the application is not accepted within ~~45~~[30](#) days of receipt, the summary should describe the reasons for non-acceptance. Comments explaining the delay need to be as specific as possible.

A comment such as “awaiting additional information from the applicant” would not be sufficiently specific. The following are two examples of acceptable comments:

“On (a specific date), the RO requested information to support projected high loan yields given a loan mix that is predominately 1-4 family residential loans in a historically low interest rate environment.”

“A proposed senior executive officer reports short sales; details are being obtained to assess the individual’s personal financial responsibility.”

The case manager should consider the following questions when reviewing the application.

- Do the application materials provide all of the information required in the [Application Form](#) to enable a full evaluation of each statutory factor for FDI?
- Is the business plan clear, comprehensive, and well-supported?
- Does the application present unique characteristics or other matters that would require further internal review or discussion prior to acceptance?
- Are the *Interagency Biographical Financial Reports (IBFRs)* accurate and complete, and do they indicate that the proposed individuals are qualified to serve in their respective roles with

the proposed institution (e.g., do the individuals have the necessary financial institution and other business experience; do they exhibit personal and professional financial responsibility, honesty, and integrity; and are they familiar with the economy, financial needs, and general character of the community in which the depository institution will operate)?

- Are there any information needs or potential concerns regarding key aspects of the proposal such as management and board composition, compensation arrangements, organizational expenses, operating policies, and historical preservation and environmental policy requirements?
- [Do the application materials include \(or reference\) any necessary related applications, such as to establish a branch office,<sup>24</sup> offer fiduciary services, or resolve a management interlock?](#)

### *FDIC Statement of Policy on Applications for Deposit Insurance*

~~The SOP-ADI provides guidance about the FDIC Board of Directors' expectations for staff's evaluation of the statutory factors.~~<sup>24</sup> Since 1935, governing statutes have required that the FDIC consider specific factors when evaluating an FDI application.<sup>2225</sup> The statutory factors as set forth in [Section 6 of the FDI Act](#) are: 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 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 SOP-ADI provides additional information about the statutory factors.](#)<sup>26</sup>

### *Application Form*

The [Application Form](#) requests the information necessary for the FDIC to evaluate the statutory factors ~~in accordance with the SOP-ADI~~. General guidance for reviewing each section of the Application Form for completeness is provided below. This section of the Manual is the most extensive section as it is important to identify early in the process any concerns that will require significant attention to ensure that they do not delay the timely consideration of the application. ~~Case managers are afforded 30 to 45 days to complete the acceptance review, but should strive for completion at the shorter end of the timeframe.~~

### Management

The quality of management (including directors and officers) is the single most important contributor to the success of any FDIC-insured institution.<sup>2327</sup> The investigating examiner's

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<sup>24</sup> [Applications to establish branches upon opening may be filed separately or combined with the FDI application. Refer to Part 303 of the FDIC Rules and Regulations \(Subpart C\) for the application and publication requirements related to the establishment of domestic branches and offices.](#)

<sup>21</sup> [63 Fed. Reg. 44756, August 20, 1998, effective October 1, 1998; amended at 67 Fed. Reg. 79278, December 27, 2002.](#)

<sup>2225</sup> Per [Section 5 of the FDI Act](#), the FDIC Board of Directors shall consider the factors described in [Section 6 of the FDI Act](#) in determining whether to approve ~~the~~[an](#) application for FDI.

<sup>26</sup> [63 Fed. Reg. 44756, August 20, 1998, effective October 1, 1998; amended at 67 Fed. Reg. 79246, December 27, 2002.](#)

<sup>23</sup> ~~As noted in the SOP-ADI, in~~<sup>27</sup> [In](#) order to favorably resolve the management factor, evidence ~~must~~[should](#) support that the quality of the proposed management would be equivalent to a rating of "2" or better under the [Uniform Financial Institutions Rating System](#) (UFIRS). A rating of "2" under UFIRS is generally indicative of a satisfactory record of performance in light of the institution's particular circumstances.

review of management will center on an evaluation of the individuals' backgrounds in relation to their proposed duties and responsibilities. Accordingly, the case manager should ensure that the information provided by the organizers relevant to the board of directors and executive officers is complete and raises no significant follow-on questions. ~~Note that the proposed officers do not need to be employed by the proposed institution at the time the Application Form is filed.~~

The application must identify the proposed full-time chief executive officer (CEO) and may identify other key executive officers. Key executive officers typically include the chief financial officer, chief lending officer, and chief operating officer, and may include others depending on the proposed business plan and the institution's size, complexity, and risk profile. These individuals do not need to be formally employed by the proposed institution, but should be committed to joining the new organization. In some instances, identifying satisfactory candidates for certain positions can take additional time. In such cases, the case manager should remain in contact with the organizers regarding the status of recruitment efforts. Acceptable candidates should be identified and submitted for consideration as soon as practical to enable review of the individual's comprising the management team during the field investigation.

### *Interagency Biographical and Financial Reports*

The case manager is expected to review the submitted financial and biographical information (as reported on the [IBFR](#)) for each proposed organizer, director, senior executive officer, and 10-percent-or-more shareholder prior to accepting an FDI application for processing. The primary purpose of this review is to ensure that no concerns exist with regard to each individual's disclosed background, experience, affiliations, equity interests, and overall financial position (net worth, debt level, cash flows, etc.).

When reviewing the biographical section, the case manager should:

- Ensure [that](#) all questions are answered.
- Determine whether any of the responses raise additional questions.
- Request an application pursuant to [Section 19 of the FDI Act](#) if an individual has been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering, or has entered into a pretrial diversion in connection with a prosecution of such an offense.
- If the individual answered "yes" to any of the questions in items 5(a) through 5(f) of the [IBFR](#), review the supporting documentation for sufficiency and compare it against any relevant source documentation from FDIC records (e.g., Reports of Examination, enforcement actions, or investigations conducted after an institution's failure by the Division of Resolutions and Receiverships or Legal's Professional Liability Section). RO Legal staff may be of assistance in evaluating court documents or in obtaining court records.
- Consult with RO management and the appropriate RMAS section chief regarding the sufficiency of the responses to any questions answered "yes." Examples of background and experience issues that have made approval of FDI applications problematic include, but are not necessarily limited to:
  - ~~o~~ proposals that consider individuals for key decision making positions 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;

- ~~☞~~ 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 an insured financial institution or the DIF, or exhibit other behaviors that indicate a lack of personal or professional financial responsibility; or
- ~~☞~~ proposals that include individuals who are unable or unwilling to demonstrate the financial capacity to meet their personal financial obligations.
- Resolve any insufficient responses or responses that raise questions about an individual's qualifications prior to accepting the application as substantially complete. The individual should be given the chance to respond in writing to any objections raised. Issues may need to be raised directly with the individual and not the organizing group. Consult with Legal before initiating any discussions.

When reviewing the financial section, the case manager should:

- Ensure the mathematical accuracy of the financial information.
- Determine whether additional information is needed to support the value assigned to any assets. Significant assets in the form of closely held corporations, partnerships, or sole proprietorships should be supported by detailed financial statements on these entities. If the individual's financial standing is largely dependent upon the appreciated value of real estate or closely held companies, request the basis for the valuation of the assets.
- Determine whether any additional information is needed regarding contingent liabilities.
- Evaluate the reasonableness of the cash flow statement relative to the other financial information provided and determine whether any additional information is needed.

As appropriate, the case manager should request additional information for any portions of the [IBFR](#) that are incomplete, inconsistent, or require further details or explanation. If the FDIC identifies derogatory information that was not disclosed on an individual's [IBFR](#), the individual should be provided an opportunity to explain the omission and provide complete information regarding the matter omitted. However, such omissions may raise questions regarding the individual's honesty and integrity. Depending on the nature of the omission and the underlying issues, the individual may be deemed unfit to serve at the *de novo* institution. Certain information obtained through a Suspicious Activity Report or law enforcement records is confidential and may not be discussed with the individual unless the information is otherwise available in public records. The case manager should discuss questions regarding the confidentiality of any information with RO management, Legal, and RMAS.

The case manager is expected to promptly notify RO management if significant questions arise while reviewing the submitted [IBFRs](#). Any significant concerns based on the [IBFR](#) review may be discussed with the applicant to the extent that those concerns do not involve confidential law enforcement information. If the FDIC determines that the individual's personal or professional financial responsibility or experience cannot be favorably resolved (after reviewing all appropriate information), the applicant will be advised that the FDIC will not be able to favorably resolve the management statutory factor unless the individual is replaced. WO RMAS and Legal staff are available to assist in reviewing matters involving proposed individuals.

The case manager should review the qualifications of the ~~chief executive officer (proposed CEO)~~ and ensure that the individual has a record of performance at the executive level with an



institution of comparable size, complexity, risk profile, and business model. Although prior CEO experience is strongly encouraged, it is not required. If the candidate has not previously served as 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. Minor concerns should be flagged for follow-up by the investigating examiner. Significant concerns should be discussed with RO management, with consideration given to delaying the acceptance of the filing as substantially complete until the concerns are resolved.

The case manager should also determine whether confidentiality is requested for any proposed members of management. Any confidentiality requests should be flagged for the investigating examiner. To the extent required or permitted by law, the FDIC will maintain the confidentiality of the affected candidate until employment arrangements are finalized. Legal should be consulted if a question arises regarding confidentiality laws or requirements.

### *Compensation Arrangements ~~and Employment Agreements~~*

~~The case manager is expected to review compensation arrangements for appropriateness and for adherence to applicable regulations and guidance. This includes the standards outlined in Appendix A to Part 364 of the FDIC Rules and Regulations (Appendix A to Part 364) and the Interagency Guidance on Sound Incentive Compensation Policies (Interagency Guidance). The FDIC Library may also be able to obtain compensation studies for certain markets.~~ The case manager is expected to review compensation arrangements for appropriateness. Questions about the appropriateness of compensation need not delay acceptance of a filing as substantially complete, but should be addressed in a timely fashion so that any corrections or clarifications may be incorporated into the field investigation.

~~Appendix A to Part 364 details safety and soundness standards that require institutions to maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or~~ of the FDIC Rules and Regulations, Interagency Guidelines Establishing Standards for Safety and Soundness (Appendix A to Part 364) discusses excessive compensation and compensation that could lead to material financial loss to ~~the~~an institution. Per Appendix A to Part 364, compensation is deemed excessive when amounts paid are “unreasonable or disproportionate” to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

- The combined value of all cash and noncash benefits provided to the individual;
- The compensation history of the individual and other individuals with comparable expertise at the institution;
- The financial condition of the institution;
- Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;
- For post-employment benefits, the projected total cost and benefit to the institution;
- Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and
- Any other factors the agencies determine to be relevant.

~~The Interagency Guidance was issued to ensure that incentive compensation arrangements appropriately consider risk and are consistent with safety and soundness. The Interagency~~

Guidance defines incentive compensation<sup>24</sup> as that portion of an employee's current or potential compensation that is tied to achieving one or more specific metrics such as level of sales, revenue, income, or capital. Such arrangements must align employee rewards with longer-term organizational objectives.

~~The~~ [See the \*Interagency Guidance on Sound Incentive Compensation Policies \(Interagency Guidance\)\*](#) for additional discussion regarding compensation policies as they relate to executive officers, as well as for non-executive personnel who have the ability individually or as a group to expose a banking organization to material amounts of risk. ~~To be consistent with safety and soundness, incentive~~ [The FDIC Library may also be able to obtain](#) compensation arrangements should adhere to the following three principles: [studies for certain markets.](#)

#### *Employment Agreements and Severance Provisions*

- ~~• Provide incentives that appropriately balance risk and reward;~~
- ~~• Be compatible with effective controls and risk management; and~~
- ~~• Be supported by strong corporate governance, including active and effective oversight by the institution's board of directors.~~

~~Review any~~ [The case manager should review the institution's proposed](#) employment agreements provided for any unusual terms or ~~for~~ [to verify that the](#) incentives ~~not~~ [are](#) properly balanced against risk, ~~such as (e.g., the agreements should not incorporate~~ bonuses tied solely to loan growth).

- ~~• Generally, the FDIC has not objected to employment agreement durations of three years or fewer or employment agreements with automatic renewal features so long as renewal is subject to a satisfactory annual performance appraisal.~~
  - ~~• Employment agreement terms should conform to the principles outlined in the Interagency Guidance and Appendix A to Part 364.~~
  - ~~• Employment agreements should not inhibit capital raising efforts or other important initiatives, such as the ability to hire other necessary staff.~~
- ~~• [The duration of employment agreements should not be longer than three years, but the agreements may be automatically renewed if they require annual performance reviews.](#)~~
- Agreements to indemnify officers from civil monetary penalties related to their performance are prohibited [by Part 359 of the FDIC Rules and Regulations.](#)

- ~~• Generally, the FDIC has not objected to severance provisions for the CEO or other key officers that, based on the present value of all payments, do not exceed 2.99 times the individual's "base amount" (as defined under [Section 280G of the Internal Revenue Code](#), as amended, and the regulations thereunder).<sup>2528</sup> Severance provisions providing for payments in excess of the Internal Revenue Code threshold must be fully justified and require review by~~

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<sup>24</sup> ~~Incentive compensation does not include compensation that is awarded solely for continued employment such as base salary. In addition, the term does not include compensation based solely on the employee's level of compensation that does not vary based on one or more performance metrics such as a 401(k) plan under which the organization contributes a set percentage of an employee's salary.~~

<sup>2528</sup> [Section 280G of the Internal Revenue Code](#) generally prohibits a tax deduction for excess parachute payments. An individual's base amount for Section 280G purposes generally means the individual's annualized includible compensation for the five preceding taxable years or the period of employment, if less than five years.



WO management.

- Severance provisions are not acceptable for situations in which the individual is dismissed with cause or departs on his/her own volition given the potential negative impact on the institution.

Questions about the appropriateness of employment agreements [or severance provisions](#) need not delay acceptance of an application as substantially complete, but should be addressed in a timely fashion so that any corrections or clarifications may be incorporated in to the field investigation. If no employment agreements are provided, the case manager should inquire in writing as to whether the organizers intend to enter into any such agreements.

### *Insider Transactions*

If any insider transactions [or financial arrangements](#) are proposed, the case manager should ensure that documentation has been provided to substantiate that:

- Each transaction [or financial arrangement](#) is on substantially the same terms as those prevailing for comparable transactions with non-insiders and does not pose more than a normal degree of risk (appropriate documentation would include one or more independent appraisals if the transaction involves a purchase of assets from an insider, or multiple competitive bids if the transaction involves a lease of assets or contract for services); and
- Each transaction [or financial arrangement](#) has been approved in advance by a majority of the proposed institution's incorporators and has been fully disclosed to all proposed directors and shareholders.

Any concerns regarding insider transactions [or financial arrangements](#) should be resolved before the application is accepted as substantially complete. Disclosure to shareholders need not delay acceptance of the application as substantially complete if the offering materials have not yet been finalized and issued.

### *Stock Benefit Plans*

If stock benefit plans are proposed, the case manager is expected to ~~ensure that the plans conform to the SOP-ADI. If the organizers propose to maintain any nonconforming aspects, the case manager should discuss any potential exceptions to the SOP-ADI~~ [review the plans for reasonableness and to ensure that they support the long-term interests of the institution. Any issues or concerns regarding stock benefit plan elements should be discussed](#) with the appropriate RMAS section chief. ~~Although exceptions are rarely permitted, they may be allowed in certain instances, such as the accelerated vesting of stock options in the case of death or permanent disability. Any concerns regarding the conformance of~~ [Refer to the SOP-ADI and Appendix 4 for additional considerations regarding](#) stock benefit plans ~~need not delay acceptance of an application as substantially complete, but should be addressed in a timely fashion so that any corrections or clarifications may be incorporated into the field investigation.~~

If the proposal involves the formation of a holding company and a stock benefit plan is being proposed at the holding company level, the plan will be reviewed by the FDIC in the same manner as a plan involving stock issued by the proposed institution. The FDIC would not review a stock benefit plan proposed by an operating holding company.

Any concerns regarding stock benefit plans need not delay acceptance of an application as substantially complete, but should be addressed in a timely fashion so that any corrections or clarifications may be incorporated into the field investigation. If no stock benefit plans are proposed in the application, the case manager should inquire in writing as to whether the organizers intend to ~~enter into any~~ develop such ~~agreements~~ plans.

### *Board of Directors*

The case manager should ~~ensure~~ verify that a minimum of five board members has been proposed, a majority of which are independent. If any proposed director resides outside of the proposed institution's operating market, the case manager should request that the individual respond in writing as to how he or she will participate in board meetings and stay abreast of conditions in the local marketplace.

### Capital

The investigating examiner will be required to evaluate the adequacy of the proposed institution's capital structure relative to the institution's business plan and market. The case manager's review should identify and request correction of any areas of ~~technical nonconformance with the SOP-ADI relative~~ concern with regard to the projected level of capital, sources of capital, and types of capital proposed.

### *Projected Capital Levels*

- The case manager is expected to ensure that the *pro forma* financial statements cover three years, include initial capital sufficient to provide a tier 1 capital-to-assets leverage ratio of at least 8 percent throughout the first three years of operation,<sup>29</sup> and reflect an adequate allowance for loan and lease losses (ALLL).<sup>30</sup> In addition, the case manager should ~~ensure~~ verify that:
  - o ~~o~~ No additional capital raises are reflected in the *pro forma* financial statements.
  - o ~~o~~ Capital calculations are accurate and conform to regulatory definitions.
  - o ~~o~~ Any cash dividends reflected in the *pro forma* financial statements are paid only from cumulative net operating income and only if overall capital and the ALLL are adequate. S Corp institutions wishing to pay dividends for shareholder tax liabilities upon profitability (and before becoming cumulatively profitable) should be advised that the FDIC may allow such dividends with the prior approval of the ~~appropriate~~ regional director or the PFR, if not the FDIC. This matter will generally need to be addressed through the use of a ~~nonstandard~~ non-standard condition in the Order granting FDI.
- If amended *pro forma* financial statements are needed, the case manager should request the

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<sup>29</sup> 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.

<sup>30</sup> 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 methodology to replace the incurred loss methodology. Under ASU No. 2016-13, credit loss allowances cover a broader range of assets than allowances for loan and lease losses. The effective date of ASU No. 2016-13 varies for different categories of institutions, but institutions may choose early adoption in the first fiscal year beginning after December 15, 2018.

amendments in writing. Acceptance of the application as substantially complete should be delayed until the amended financial statements are received.

- If the proposal involves acquiring one or more insured operating offices, the applicant may request that the benchmark for evaluating capital be an amount necessary for the resultant *de novo* institution to be classified as well capitalized under the Prompt Corrective Action rule, as defined by its PFR. ~~In such situations, the case manager should consider the applicable items detailed in~~ Refer to the [SOP-ADI for additional considerations](#).

### *Projected Capital Sources*

- If a list of known subscribers is provided, the case manager should review the list to ensure [that](#) all 10-percent-or-more shareholders have completed [IBFRs](#). Any necessary submissions should be requested.
- The case manager should forward the offering circular, solicitation material, and any other related documents to the WO RMS Accounting and Securities Disclosure Section for review and comment. If the offering materials have not yet been provided, [the](#) case manager should request that the organizers submit the materials as soon as possible.
- Submission of either of the aforementioned items need not delay acceptance of the applications as substantially complete.

### *Types of Proposed Capital*

- If the proposal involves capital other than common voting stock or involves multiple classes of common or preferred stock, the case manager should ensure that all features of each type or class of capital have been fully detailed. If any unfavorable features exist, such that the capital structure could adversely impact the institution or future capital raising efforts, the case manager should request in writing that the unfavorable features be corrected. Depending on the nature and significance of any issues to be resolved, submission of the corrected capital structure need not delay acceptance of the application as substantially complete.
- If voting trust arrangements are proposed, the case manager should be aware that they are not prohibited, but are generally discouraged for new institutions because of the potential for insiders to gain control disproportionate to their investment.
- The case manager should ensure that stock of each class is to be sold at the same price and with the same voting rights. Correction of any disparities should be requested in writing. Depending on the nature and significance of the issue to be resolved, submission of corrections need not delay acceptance of the application as substantially complete.
- If any noncash contributions to capital have been proposed, the case manager should review the documentation provided to support the value of the assets to be contributed.
  - ~~○~~ The value of real estate, fixed assets, loans, and leases should be documented by an independent appraisal or market valuation. The investigating examiner will review the assets and the valuations during the field investigation.
  - ~~○~~ The value of existing businesses should be documented by at least two independent appraisals of the company's fair market value. Appraisals should be no more than six months old and based on recognized valuation methods. Appraisals should specifically indicate the values assigned to any contingent liabilities disclosed by the business owner. The business owner should be asked to provide a statement certifying that all contingent

liabilities were disclosed to the appraiser and acknowledging that the FDIC certifications on page 11 of the [Application Form](#) apply to the statement.

- Submissions that are reliant upon noncash contributions to capital to meet the minimum capital requirements should not be accepted for filing as substantially complete until all necessary valuations are received.

### Convenience and Needs

The case manager should ensure that the required information in support of this section has been provided in the application, ~~and forward a copy of the materials along with a copy of the Business Plan to the appropriate DCP review examiner.~~ The case manager ~~should also request that the DCP review examiner provide feedback for the investigating examiner~~ will have forwarded a copy of the application, including the business plan, to DCP shortly after receiving the application. Feedback from DCP should be obtained within 30 days from ~~the date of receipt of the application and should be shared with the investigating examiner.~~ Additionally, the case manager should seek assistance from DCP in evaluating the CRA Plan.

The investigating examiner, with support from the DCP examiner (if also participating in the field investigation), will assess the trade area population demographics and the proposed institution's willingness and ability to meet the deposit and credit needs of the community to be served. The investigating examiner will also assess the competitive dynamics of the market and how the proposed institution will compete for market share.

### Premises and Fixed Assets

The case manager should ensure that sufficient detail regarding premises and fixed assets is provided in the application, and that fixed asset investments are accurately reflected in the *pro forma* financial statements. The investigating examiner will evaluate the reasonableness of the investments in fixed assets, conformance with applicable statutory or regulatory limits (whether state or federal), and fulfillment of the requirements of the National Historic Preservation Act (NHPA) and the National Environmental Protection Act (NEPA).

#### *Investments in Premises and Fixed Assets*

The case manager should ensure that:

- The organizers<sup>2631</sup> have identified a proposed location for the institution. The address of the proposed location must be included in the notice of the institution's proposed formation that is required to be published in a newspaper of general circulation in the community in which the main office of the institution will be located, pursuant to Sections 303.7 and 303.23 of the FDIC Rules and Regulations. If the institution will open in temporary quarters, the notice must also indicate the address of the temporary quarters.
- The proposed or existing investments in fixed assets, both direct and indirect, are detailed within the application materials. Proposed investments in premises should be detailed separately, including the main office, any branch sites, any loan production offices (LPOs), and any other ~~significant fixed asset components~~ offices.

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<sup>2631</sup> The SOP-ADI uses the term "proponents" rather than organizers in discussing certain statutory factors.

- The proposed investments, including any investment in planned future branches, are supported by appraisals, purchase documents, or construction estimates and accurately reflected in the *pro forma* financial statements.
- The organizers do not intend to purchase any fixed assets or enter into any non-cancelable construction contracts, leases, or other binding arrangements prior to approval of the FDI application and other agency filings.

### *Historical Preservation and Environmental Policy Considerations*

Each application must indicate that the applicant has contacted the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) for a determination as to whether, or to what degree, the proposed main office and/or any branch site may affect any district, site, building, structure, or object listed in or eligible for listing in the National Register of Historic Places pursuant to the [NHPA](#). The applicant is also required to specify how the determination was made, such as through consultation with the SHPO, review of the National Register of Historic Places, or other means identified in the [Application Form](#) instructions.

In addition, the applicant is required to discuss any significant effect the proposal will have on the quality of the human environment. This includes any changes in air or water quality, noise levels, energy consumption, population congestion, solid waste disposal, or environmental integrity of private land within the scope of the ~~NEPA~~[NHPA](#).

The case manager is expected to review the submitted information for completeness and to confirm that no historical protection or environmental concerns are evident. The FDIC will make an independent determination, but will place significant weight on the opinions of the SHPO and THPO as to whether a proposed site is historic and, if so, what effect the proposal will have on the property. The applicant should not initiate site work until the FDIC has made its determination.

If the submitted information indicates that the proposal will have an adverse effect on a historic property, district, or object, the case manager should inform Legal, and as appropriate, the WO. The FDIC ~~will then~~, [in conjunction with the PFR \(if not the FDIC\), will](#) communicate with the applicant, the SHPO and/or THPO, ~~and~~[the](#) designated consulting parties, and as necessary, the Advisory Council on Historic Preservation to determine whether modifications to the proposal could avoid, minimize, or mitigate the adverse effect, and whether a Memorandum of Agreement or Memorandum of Understanding is appropriate.

In addition to the environmental items noted in the [Application Form](#), the case manager should consider the proposed institution's plans to comply with local zoning laws, as well as the property's location and the resulting traffic patterns (including the adequacy of roads, parking facilities, and ~~traffic patterns~~[related matters](#)). Any potentially favorable impacts such as a possible decrease in pollution or fuel consumption should also be considered.

For additional information, refer to the [NHPA](#), the [NEPA](#), the [FDIC Statement of Policy Regarding the NHPA](#), and the [FDIC Statement of Policy Regarding the NEPA Procedures Relating to Filings Made with the FDIC](#).

## Information Technology

The case manager should ~~ensure~~[verify](#) that the requested information regarding information technology (IT) has been provided and ~~whether that~~ the information is consistent with the discussion in the Business Plan. The case manager should also consider whether it would be advisable for an IT specialist to participate in the field investigation. The investigating examiner will assess the proposed IT infrastructure, policies, and security.

## Other Information

The investigating examiner will assess the adequacy of proposed policies, the reasonableness of organizational expenses, and the sufficiency of proposed fidelity coverage. The case manager should ensure that the requested information has been provided.

## *Key Operating Policies*

The case manager should ~~ensure~~[verify](#) that key operating policies are provided with the application materials for the investigating examiner to review during the field investigation. At a minimum, the lending, investment, funds management, and interest rate risk policies should be provided.

Submission of these policies need not delay acceptance of the filing as substantially complete, but the organizers should be requested in writing to provide the policies as soon as possible to facilitate timely review during the field investigation.

## *Organizational Expenses*

The case manager should verify that the proposed organizational expenses are fully expensed in the *pro forma* financial statements at the time operations commence. Organizational expenses may include consultant, attorney, and other professional support costs incurred in preparing the application and supporting documentation, including the business plan, feasibility studies, and *pro forma* financial projections. There are also costs associated with facilitating a capital raise, retaining members of the management team, and completing other organizational activities.

If the RO has not recently received many FDI applications, the case manager should contact other regions, on behalf of the investigating examiner, to determine the level of organizational expenses incurred by other institutions for comparison purposes. However, the use of such comparisons must consider the size, nature, complexity, and location of each institution.

Organizers, including officers and directors, and non-insiders may be ~~remunerated~~[paid](#) with stock ~~grants~~ for professional services rendered during the organizational phase. The ~~amount of any grant~~[value of the stock payment](#) should be equal to the value of the services rendered-  
[\(based on the per-share price of the proposed institution's primary stock offering and the comparative cost of an arms-length transaction with an independent third party\). Refer to Appendix 4 for additional considerations if any stock benefits are associated with payments for professional services.](#)



## *Fidelity Insurance*

The case manager should perform a preliminary review of the proposed insurance policies to ensure [that](#) any indemnification provisions are not overly broad. For example, provisions that offer protection beyond the coverage of any director and officer liability insurance or that protect against gross negligence or fraud, bad faith, acts beyond the scope of the individual's relationship to the institution, penalties or fines, or similar circumstances are generally inappropriate.

Additionally, [per Part 359 of the FDIC Rules and Regulations](#), institutions are prohibited from purchasing an insurance policy that would indemnify an institution-affiliated party<sup>2732</sup> (IAP) from civil money penalties. [The case manager should consult with Legal regarding the language included in any proposed indemnification clause.](#) Refer to [FIL-47-2013, Director and Officer Liability Insurance Policies, Exclusions, and Indemnification for Civil Money Penalties](#). ~~The case manager should consult with Legal regarding the language included in any proposed indemnification clause~~ [for additional information.](#)

## Business Plan

All *de novo* institutions must prepare and submit a business plan that is specific to the institution and sufficiently detailed. The case manager is expected to review the proposed business plan for completeness and consistency prior to accepting an FDI application as substantially complete. The business plan must be clear, comprehensive, and well-supported to demonstrate that the institution will operate in a safe and sound manner. The business plan should be tailored to the institution's size, complexity, and risk profile. Therefore, smaller, non-complex community institutions may require a less extensive plan. The business plan should demonstrate that the *de novo* institution has a reasonable probability of success in achieving its stated goals and objectives, while operating prudently. The business plan should also demonstrate that sufficient capital is available to address uncertainties and that the institution has a clear ability to raise capital if needed.

Guidance for developing a business plan is included within the [Application Form](#). In addition, refer to [FIL-24-2016, Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance](#) for a series of questions and answers that address business plan content and other related matters. The case manager should confirm that the business plan content covers 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. In addition, the case manager should consider the following questions while reviewing the business plan:

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<sup>2732</sup> Pursuant to [Section 3\(u\) of the FDI Act](#), the term IAP means (1) any director, officer, employee, or controlling stockholder (other than a holding company) of, or agent for, an insured depository institution; (2) any other person who has filed or is required to file a change-in-control notice with the appropriate FBA; (3) any shareholder (other than a holding company), consultant, joint venture partner, and any other person as determined by the appropriate FBA who participates in the conduct of the affairs of an insured institution; and (4) any independent contractor who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the institution.



- Is the plan tailored to the institution's anticipated size, complexity, and risk profile?
- Are the primary goals and objectives clearly articulated?
- Does the plan realistically forecast market demand, the customer base, competition, and economic conditions (and are the supporting feasibility studies, if any, reasonable)?
- Are all key risks identified and addressed with appropriate risk management controls?
- Are all primary products, services, and activities explained in sufficient detail?
- Does the plan present an appropriate board, management, and staffing structure?
- Is succession planning adequate?
- Does the plan indicate that sufficient capital will be raised and maintained?
- Does the plan indicate that profitable operations will occur by the third year of operation?
- Does the plan project reasonable asset growth?
- Are the underlying assumptions sufficiently detailed and well supported?
- Are the financial projections consistent with the underlying strategies, the economic assumptions, and other risk management tools (such as the proposed operating budget)?
- Does the plan include prudent risk tolerance limits and key ratios or other metrics to facilitate periodic performance monitoring?
- Does the plan describe how management and the board will monitor progress and adherence?
- Does the plan indicate that acceptable IT resources will be provided?
- Does the plan indicate that appropriate due diligence has been performed on any proposed vendors or third-party service providers?
- Are insider transactions, if any, described and on arms-length terms?
- Does the plan indicate [that](#) the institution will [help to](#) meet the deposit and credit needs of the community to be served and applicable CRA requirements?
- Is the plan sustainable over a long-term horizon?

The FDIC does not require a specific format for a business plan, although each of the following areas should be addressed.

Description of the Business – The business plan should discuss the institution's location and any future branching or expansion plans, the institution's organizational structure, any insider transactions, and the legal form of stock ownership. The depth of the business plan should be more expansive in situations in which, for example, the institution proposes to operate within a complex organizational structure, rely significantly on affiliates or third parties for business development or operational support, concentrate on a niche market, offer non-traditional or higher-risk products or services, maintain significant balance sheet concentrations (in asset or liability components), or generate unusually high levels of non-interest income.

Marketing Plan – In addition to describing target markets and the products and services to be offered, the business plan should discuss the [major planning analyses and assumptions for the market analysis, with respect to products and services, the selected markets, relevant economic considerations](#), and [the competitive components used to develop the plans, objectives, and basis for the assumptions environment](#).

Management Plan – The business plan should discuss the number of organizers and directors, board committees and their responsibilities, duties and responsibilities of the senior executive officers and employees, and the institution's plans to address management succession.

If a proposed institution will be owned by a commercial or financial company, or will be significantly involved in transactions or relationships with the parent company or any affiliates, the majority of the institution's board of directors ~~must~~[should](#) be independent from the parent and any affiliates. Further, such proposals must demonstrate that the institution has the wherewithal to operate as a stand-alone organization in the event of failure of the parent company or affiliate.

Records, Systems, and Controls – The business plan should discuss the institution's plans for accounting and internal control systems; the internal audit function; compliance management programs, including Bank Secrecy Act (BSA)/anti-money laundering (AML); 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 [Sections 23A and B of the Federal Reserve Act](#).

The business plan should also address 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 that 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 institution's charter and FDI, and limit personal liability if approval is not obtained. For internal solutions, the strategies should address facilities, capacity, and skill requirements, and be supported by projected technology-related budgets. The regulatory agencies have ~~provided guidance~~[developed resources for institutions](#) on third-party relationships and outsourcing, information security and business continuity planning, and cybersecurity.<sup>2833</sup>

Financial Management Plan – The business plan should discuss the institution's capital and 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. The business plan should also discuss the institution's objectives, strategies, and risk tolerance for interest rate risk, including how the institution will identify and measure interest rate risk. Further, the business plan should address the loan review program, including how the institution will identify and measure credit risk, and its methodology for determining the ALLL.

Narrowly focused proposals, including monoline operations or other proposals considering a limited set of banking activities, should address how the institution will mitigate concentration

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<sup>2833</sup> Refer to FDIC Financial Institution Letter ([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 Planning*; and [FFIEC Cybersecurity Awareness](#).

risk, maintain adequate liquidity, and manage credit-sensitive funding risks. Business plans that contemplate significant asset concentrations such as lending concentrations in commercial real estate (CRE), higher-risk loan categories, or activities that otherwise diverge from conventional banking services must include commensurate risk management practices to mitigate risks. Similarly, plans that indicate a high reliance on potentially volatile or non-core funding (e.g., borrowings, brokered deposits, listing service deposits, etc.), must include appropriate risk management practices and contingency funding plans.

Monitoring and Revising the Plan – The business plan should discuss how the institution’s board of directors will monitor adherence to the business plan and amend the plan to accommodate significant or material changes (e.g., the board’s proposed responses to greater or lesser than expected growth, greater or lesser than expected market penetration, etc.). Narrowly focused proposals should clearly define strategic alternatives for redirecting efforts, which may include self-liquidation, if the business plan proves unsuccessful.

Financial Projections – The business plan should provide opening day *pro forma* financial information and quarterly projections for the first three years of operation, including the projected balance sheet, income statement, and regulatory capital schedules. The *pro forma* financial projections need to indicate that the proposed institution will be profitable within a reasonable period (generally three years) and maintain a tier 1 capital-to-assets leverage ratio (as defined in the appropriate capital regulation and guidance of the applicable PFR) of not less than 8 percent during the first three years of operation.

In addition, the business plan should provide details regarding all key assumptions, discussion of market studies or surveys used to support projected growth, discussion of the level of marketing expenses necessary to achieve the projected loan and deposit volumes, and a sensitivity analysis of the financial projections to reflect the effects of adverse changes in interest rates, changes in the asset/liability mix, and higher than expected operating expenses, marketing costs, and/or growth rates. All financial projections should be well-supported and sufficiently detailed.

The case manager should review projected income and expense levels for consistency with the strategic objectives, primary activities, balance sheet composition, and underlying assumptions detailed in the business plan. All income and expense items should be accurate, sufficiently detailed (without broad “catch-all” categories for major components), and consistent with the institution’s projected asset/liability mix and assumptions regarding interest rates and other relevant factors. The case manager should verify that the financial projections include sufficient details regarding each of the following areas:

- Interest income (anticipated yields on loans, securities, and other earning assets);
- Interest expenses (expected costs of deposits and other interest-bearing liabilities);
- Non-interest income (revenue from service fees and other non-interest income sources);
- Non-interest expenses (expenses related to salaries and employee benefits, premises and fixed assets, and other operational aspects; the projections should include all pre-opening organizational expenses);
- Provisions for loan and lease losses (provision expenses should be sufficient to establish and maintain an adequate ALLL relative to the risk in the loan portfolio);
- Taxes (at the federal, state, and local levels; any projected tax benefits associated with tax

loss carryforwards would not be considered core earnings); and

- Any other significant income or expenses (including those related to any one-time or non-recurring events).
- If projections indicate significant non-interest income levels, the case manager should review the income sources for volatility to determine if the income may be cyclical or dependent on certain economic factors. Depending on the proposed institution's complexity and any anticipated concentrations, the business plan may need to include alternative scenarios that provide meaningful stress tests of earnings and capital projections.

As circumstances warrant, the case manager may need to obtain support from Legal, DCP, or RMS specialty areas to fully evaluate a particular aspect of the business plan. In addition, the case manager may use data tools and other internal resources available through the FDIC's Division of Insurance and Research (DIR) website, as well as the FDIC Library.

Any issues or concerns with regard to the business plan should be discussed with RO management. Further, such matters should be communicated to the applicant as soon as practical and, as appropriate, described in the letter sent to the applicant within 30 ~~to 45~~ days of receiving the application.

## E. Substantially Complete Determination

Following the review of the application, including all submitted materials and exhibits, [and the consideration of any comments from DCP or Legal based on their respective initial reviews](#), the case manager needs to determine whether the application should be deemed substantially complete: [and accepted for processing](#).<sup>34</sup> An FDI application is considered substantially complete when the FDIC has the information necessary to fully consider each of the applicable statutory factors and any other regulatory requirements.<sup>35</sup> In general, if an applicant has provided the information required in the [Application Form](#),<sup>29,36</sup> including an acceptable business plan, and the materials do not raise significant follow-on questions, then the application will be deemed substantially complete as of the date received.

Significant follow-on questions may arise, for example, from inconsistencies between sections of the application, [IBFR](#) filings that disclose concerns (*e.g.*, bankruptcies, short sales, significant business lawsuits, prior experience at a failed or troubled bank, prior enforcement action, *etc.*), proposed relationships that are significant for executing the business plan (*e.g.*, insider, affiliate, or other third-party relationships), and complex or unusual organizational or ownership structures. Most FDI applications should not raise significant follow-on questions because such issues should have been raised and addressed during the pre-filing process. ~~If an application is deemed wholly inadequate, the RO should return the application with a letter explaining the identified deficiencies.~~<sup>30</sup>

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<sup>34</sup> [Unless otherwise limited by the delegations of authority, the RO may deem an FDI application substantially complete. In certain instances, the delegations of authority may require acceptance of an application to occur at the WO level \(\*e.g.\*, with regard to accepting an FDI application for an ILC\).](#)

<sup>35</sup> ["Regulatory requirements" refers to the requirements included in Part 303 of the FDIC Rules and Regulations and any other federal or state regulations, statutes, or laws applicable to the filing.](#)

<sup>29,36</sup> Refer to the [Application Form](#) for a detailed list of information that should be submitted as part of an FDI application. Each agency has specific purposes and timing requirements for the required information.

<sup>30</sup> ~~The FDIC's authority with regard to returning a filing (or deeming it "abandoned") is described in Section [303.11\(e\)](#)~~

~~Unless otherwise limited by the delegations of authority, the RO may deem an application substantially complete.<sup>34</sup>~~

Within 30 days of receiving the application, the RO is expected to issue a letter to the applicant that states whether the application is, or is not, deemed substantially complete.

- ~~When an~~If the application ~~is deemed~~was **substantially complete** when received by the FDIC, the case manager should ~~prepare a letter stating the application is substantially complete and accepted for processing as of the date the application was received. If necessary, the letter deeming an FDI application substantially complete may request clarifying or supplemental information that would further support the application but is not believed to be critical to the completeness determination. Further, the FDIC may request additional information subsequent to accepting an application as substantially complete.~~enter the date of receipt as the acceptance date in ViSION AT. In addition, the case manager should ensure that a letter is issued to inform the applicant that the filing is substantially complete and provide the acceptance date. The letter may also request missing information; however, such requests should be limited to clarifying information, information required by rule that is expected to be provided in the near term and that does not directly impact the consideration of applicable statutory factors (e.g., verification of publication), or technical items or documents necessary to complete a specific component of the filing (e.g., final or executed documents previously submitted in draft form). The letter should provide a short timeframe for submitting any requested materials, typically not more than 30 days. The RO should not delay the processing of a filing while awaiting receipt of the requested information or documentation.
  - ~~When an application is not deemed substantially complete and significant follow-on questions or additional information needs have been identified, the case manager should prepare a letter informing the applicant that the application is not substantially complete. The letter should be developed in coordination with the relevant banking agencies, should include specific questions and requests, provide 30 days to respond, and include a date by which the information should be submitted.~~

~~Any requested extension to the response deadline must be for good cause and submitted in writing. The FDIC's determination regarding the request must also be in writing. Generally, no more than one extension should be granted.~~

- ~~Following receipt of the applicant's response, the case manager must again determine whether the application should be deemed substantially complete.~~If the application is deemed**was not** **substantially complete** when received, the case manager should ~~prepare a letter stating the application is~~consult with the ARD on whether to return<sup>37</sup> the application or issue a letter to request additional information. A request letter should only be issued for an application that is not substantially complete ~~and accepted for processing as of the date when the additional information required by the FDIC was received. If the application is not~~

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~~of the FDIC Rules and Regulations.~~

<sup>34</sup> ~~In certain instances, the delegations of authority may require acceptance of an application to occur at the WO level (e.g., with regard to accepting an FDI application for an ILC).~~

<sup>37</sup> The FDIC's authority with regard to returning a filing (or deeming it "abandoned") is described in Section 303.11(e) of the FDIC Rules and Regulations.



~~deemed substantially complete, the RO may issue a second request for information~~ relates to a limited number of specific matters, would enable a complete analysis of the matters and the related statutory factors, and can reasonably be expected to be submitted within a short period of time. The request letter should be developed in coordination with the relevant banking agencies.

~~In general, if the application is not substantially complete after a second information request and applicant response, the RO should~~ If a decision is made to return the application within 30 days of receiving the second response. In such cases, the RO, the case manager should provide ~~call the applicant to advise that the materials will be returned with a letter that states the application is being returned and the application record is being closed. The~~ describing the deficiencies. The return letter should clearly describe the information that is lacking or deficient, and state that the applicant may choose to file a new application after it addresses the noted deficiencies.

~~The case manager is expected to update ViSION AT to reflect the acceptance or return date. If an application is accepted after responses to information requests are received, the acceptance date should be the receipt date of the information submission required for the FDIC to deem the application substantially complete. If an application is returned, the~~ case manager should update ViSION AT to include the action taken (Returned), the action date, and appropriate explanatory comments. The case manager should also prepare a summary memorandum that briefly explains the circumstances surrounding the closure of the application file. The memorandum should be maintained in RADD and included in the RO's centralized file for returned applications.<sup>38</sup>

If a decision is made to issue a request letter, the letter should be sent to the applicant no later than 30 days from receipt of the application. The letter should indicate that the application is incomplete and has not been accepted for processing; clearly state the date by which the applicant's response must be received (within 30 days from the date of the letter); and indicate that if the FDIC determines that the application remains incomplete after review of the applicant's response, the FDIC will return the application and consider the file closed.

If circumstances warrant, the ARD may determine to provide the applicant an extension of time to respond to the letter. The extension should only be provided if the applicant submits written justification to support the need for the extension (e.g., the complexity of the requested information may require substantial compilation, processing, research, or analysis). If an extension of time is granted, the FDIC should notify the applicant in writing of the new response deadline, which should generally not exceed 30 days beyond the originally provided response date.

The application should generally be considered substantially complete if the response fully addresses each matter included in the request letter. In such circumstances, an acceptance letter should be sent to the applicant, and the application should be reflected as accepted in ViSION AT as of the date the last response was received by the FDIC. As noted above, an application is substantially complete when sufficient information has been provided to fully consider the applicable statutory factors.

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<sup>38</sup> Each RO must maintain a separate centralized file for all returned and withdrawn applications. The centralized file, which may be established in the RO's Subject Matter Folder in RADD, should include the memorandum that summarizes the circumstances surrounding the closure of the application file.

If the filing remains incomplete following receipt of any responses, the FDIC will, in most cases and absent extenuating circumstances, return the filing and consider the file closed. Extenuating circumstances are those beyond the applicant's control and could include, for instance, business disruptions due to inclement weather or emergency situations, or other similar challenges.

Multiple requests by the FDIC for additional, clarifying, or supporting information should be avoided. Such circumstances often reflect poorly on the proponents' knowledge of the organization and operation of a financial institution.

## Section IV: Application Processing

Once the application is accepted as substantially complete, the case manager should carry out the following key activities. Certain activities, as indicated, are discussed in further detail in subsequent items within this section. Additional pre-opening activities that occur for approved FDI applications are discussed in [Section V of the Manual](#).

1. Field Investigation – Contact the field supervisor and DCP to discuss the field investigation, including plans to address any key information or issues identified during the pre-acceptance review. The discussion should also address any needs for DCP-~~or~~, RMS, or other specialty area assistance. The field investigation should commence as soon as practical following acceptance and should be completed within 60 days of deeming an application substantially complete. Refer to [Item A](#) below for further discussion regarding the field investigation.
2. Additional Notifications – Notify the appropriate RMAS section chief of the date that the application was accepted for processing. The other relevant agencies should be notified through being copied on the acceptance letter sent to the applicant.
3. Background Investigations – ~~Coordinate~~ Ensure that all relevant information needed to complete the background investigations ~~with the other regulatory agencies. If the FDIC is to conduct the investigation, send the name check form and identification record requests to the WO to facilitate the background investigations. The WO will forward the information is~~ entered in the Background Investigation Database System (BIDS) and that all necessary requests are submitted via BIDS. The WO will submit the background investigation requests to the applicable federal agencies. Refer to [Item B](#) below for further discussion regarding background investigations. Determine if the results of the background investigation identify concerns regarding any proposed individuals or adverse items that should have been disclosed in the [IBFR](#).
4. Credit Reports and Public Records – ~~Coordinate credit report and public record searches with the other regulatory agencies. If the FDIC is to conduct these searches, obtain~~ Obtain credit reports and, as appropriate, request searches of available public record databases (e.g., Lexis/Nexis, Dunn & Bradstreet, etc.) through the FDIC Library via ~~the Background Investigation Database System (BIDS)~~. The case manager will be notified when the results are available. This information will be used to verify or further investigate information reported on the [IBFR](#). The case manager should provide the credit reports to the investigating examiner. General internet searches may also provide useful information regarding the proposed individuals and their affiliations.



5. Communication with the Investigating Examiner – [Contact the investigating examiner to discuss the scope of the investigation and related matters](#). Maintain regular communication with the investigating examiner during the field investigation to remain abreast of status, timing, resource needs, significant developments or changes to the proposal (if any), and any issues or concerns requiring RO or WO attention.
6. Communication with the Other Agencies – Maintain regular communication with the other agency counterparts on matters including ~~background investigations~~, field investigation work, information requests (if any are outstanding), joint meetings or discussions, significant developments or changes to the proposal (if any), issues or concerns, and timing and anticipated results of agency decisions.
7. Communication with the Organizers – Maintain regular communication with the organizers and, as appropriate, their representatives, to convey status and any necessary follow-up requests, respond to questions, and discuss any issues or concerns. Any significant concerns should be discussed with RO management prior to being raised with the organizers and ~~should~~may be communicated in a letter to the organizers by the conclusion of the field investigation ~~(within 60 days of the substantially complete determination date)~~. ~~The organizers must also be informed via letter within this time frame if there are no additional requests or identified concerns.~~ If a letter is sent, it should be signed by the appropriate RO official in accordance with the delegations of authority and should provide the organizers up to 30 days following the investigation to address those matters.
8. Monthly FDI Application Summary – Using the template provided in [Appendix 3](#), prepare a monthly FDI application summary. The monthly summary provides ongoing updates to the WO during the processing stage. The case manager must provide an updated summary to RO management each month that an FDI application is in process. Following RO management review, the regional director will forward the summary to the RMS division director as an attachment to the monthly status report. [A copy of the summary should also be sent via email to RMEB associate director](#). The summaries will be used to report to FDIC management on the timeliness of application processing.
9. Report of Investigation (ROI) – Review the investigating examiner’s ROI, which documents the results and findings of the field investigation, for accuracy, adherence to the ROI instructions, and consistency with FDIC policy. Determine if the field investigation identified any significant matters that could result in the FDIC not being able to favorably resolve one or more statutory factors, or not being able to satisfy any historical protection or environmental policy requirements. Coordinate any necessary edits or changes to the ROI with the investigating examiner.
10. Summary of Investigation (SOI) – Prepare the SOI using the applicable form, which is automatically created through ViSION AT. There are separate forms depending on the specific type of FDI application. The SOI is the primary tool for the RO to present the facts, circumstances, and associated analysis regarding an FDI application. In addition to completing all applicable data fields, the case manager must ensure that the SOI presents a full description of the proposal (including the business plan), the analysis and conclusions

regarding the statutory factors, any other significant matters (including details regarding any proposed non-standard conditions, as discussed in [Item D](#) below), and the recommended course of action. The SOI may also incorporate or summarize key information from the ROI. [Appendix 45](#) provides a Quality Control Questionnaire, which is designed to help the case manager ensure that the SOI includes all necessary information.

11. Evaluation of the Statutory Factors – Evaluate each of the statutory factors for FDI. Document the analysis and conclusions with regard to the statutory factors in the SOI. Evaluating the statutory factors is discussed in detail later in this section in [Item C](#).
12. Resolution of Matters – Ensure that any issues or concerns conveyed to the organizers are resolved within 30 days of being communicated. If significant deficiencies are identified with regard to any statutory factors, the organizers should be provided an opportunity to address these matters during this time period prior to the FDIC taking action.
13. Final Action and Related Documents – If approval is recommended, prepare the draft Order, Statement, and transmittal letter reflecting the RO’s recommended action on the FDI application. An Order and a Statement must be prepared for each approval and denial action. If denial is recommended, the draft transmittal letter should fully explain the reasons for the denial. Since denial of an FDI application is not delegated to the RO, any denial case must be forwarded to the WO for final action. The delegations of authority are discussed in [Item E](#) below and describe when RO or WO action is required.

*If WO action is **not** required*, the case manager should email a draft of the SOI to the [RMEB](#) associate director ~~of the Risk Management Examination Branch (RMEB)~~ and copy the appropriate RMAS section chief. RMAS staff will provide feedback to the case manager following receipt of the SOI. After any questions or issues are resolved, the RMS senior deputy director (SDD) will communicate by email to the regional director that the WO does not disagree or object to the course of action proposed by the RO. Following this communication, the regional director may act on the filing under delegated authority, and the approval documents may be issued. The case manager should document the date of the SDD communication in the comments section of the ViSION AT record and ensure that the email from the SDD is maintained in RADD.

*If WO action is required*, the case manager should email the signed SOI and other applicable documents (the ROI, Order, Statement, and transmittal letter) to the RMEB associate director for final review, processing, and action. The SOI forwarded to the WO should be signed by the ~~appropriate RO official in accordance with outstanding delegations~~ [regional director or deputy regional director](#). The case manager should update the ViSION AT record to reflect that the application was forwarded to the WO for final action. The WO will coordinate with the RO and WO Legal during the final review and processing, inform the RO of the application’s disposition, issue the final approval documents to the applicant, and provide copies of all final documents to the RO for inclusion in RADD.

14. Documentation of Returned and Withdrawn Applications – Similar to the procedures for returned applications, document any withdrawals of an FDI application in a summary memorandum to the file that briefly describes the circumstances surrounding the closure of

the application file and the underlying rationale. Explanatory comments are also to be posted in ViSION AT. ROs are to maintain a single, centralized file of all summary memoranda for returned and withdrawn ~~filings~~applications. In the event the case has been forwarded to or otherwise resides in the WO, the WO will develop the summary memorandum, and provide a copy to the appropriate RO for the application file or, and if appropriate, maintain a copy in the centralized file of all returned and withdrawn applications handled at the WO level.

~~15. Record Retention – Per the FDIC’s record retention requirements, records, including the submitted applications materials, regarding approved and denied applications are to be retained for a period of 30 years. Records regarding returned and withdrawn applications are to be retained for a period of 10 years.~~

15. Update the ViSION Record – Update the ViSION AT record to reflect the final disposition of the application. All applicable fields need to be populated to indicate the action taken, the action date, and other necessary information and comments. For all approvals, the case manager should list the non-standard conditions in the specified location and update the ViSION AT record to reflect the consummation date once it is verified.

16. Record Retention – Upon final disposition of the application, ensure that the relevant documents are retained in RADD<sup>39</sup> in accordance with the FDIC’s recordkeeping and record retention requirements.<sup>40</sup> The case manager should ensure that the ROI, SOI, and other final case documents are scanned into RADD after the RO and WO review process is completed. The field examiner will be responsible for scanning the investigation workpapers (e.g., interview notes, meeting summaries/agendas, industry data, analytical information, etc.) into the Subject Matter folder for the proposed institution in RADD and will coordinate with the case manager to ensure that duplicate files, such as those related to business plan content or other application materials, are not retained. The description for each document stored in RADD should be clear and should include the ViSION AT number for the application.

## A. Field Investigation

The field investigation is an integral part of the FDI application process. Field investigations are generally conducted for all FDI applications except those involving an interim institution, an FSA proposing to convert into more than one insured institution, a state-chartered bank proposing to continue its insured status upon withdrawal from the FRS, or an application subject to expedited processing. Waivers of the field investigation for any other type of FDI application should be rare. The case manager or RO management should consult with the appropriate RMAS section chief in any other situation where a waiver is being considered.

~~The field investigation is an integral part of the application process.~~ The information obtained through discussions ~~held~~ with the proposed institution’s executive management and directors during an investigation, and the analysis conducted by the investigating examiner (as documented in the ROI), ~~provides~~provide essential information that will support the conclusions

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<sup>39</sup> If the application is approved, the documents should be moved from the RADD Subject Matter Folder to the RADD (Applications) folder for the active institution. Otherwise, the documents should be retained in the appropriate RADD Subject Matter folder.

<sup>40</sup> Per the FDIC’s record retention requirements, records regarding approved and denied applications are to be retained for a period of 30 years. Records regarding returned and withdrawn applications are to be retained for a period of 10 years.

regarding the FDI application. The field investigation should commence shortly following acceptance of the application given the target 60-day completion goal.

Once the application is accepted for ~~fling~~processing, the case manager should contact the field supervisor to discuss focal areas of the investigation and anticipated staffing needs, including any necessary specialty area assistance. The case manager should also contact DCP to discuss any needed staffing resources with regard to compliance or CRA. An on-site compliance review will normally be required as part of the field investigation for an operating noninsured institution where the FDIC will be the PFR. ~~The case manager should regularly interact with the investigating examiner to receive updates, provide consultation on complex or technical matters, help resolve any issues, and communicate any significant items to RO management or the WO.~~

Before the investigation commences, the case manager should contact the investigating examiner to discuss the investigation scope, the proposed institution's business model, primary observations noted during the initial review of the application, and elements of the proposal requiring particular attention or specialty area review. The discussion should also include any specific issues that should be addressed during the individual (organizer, director, and officer) and community interviews. Individual interviews are required in all investigations. The case manager should advise the investigating examiner on the extent to which community interviews will be required. The number of interviews conducted will vary depending on the nature and complexity of the FDI application, the characteristics of the target market, and whether additional insights are needed regarding the impact of the proposal on the community.

The case manager and the investigating examiner should coordinate the field investigation with the other relevant agencies, including the chartering authority and, as applicable, the local FRB. While each agency will develop its own conclusions and produce an independent field investigation report, the investigation may be conducted jointly or concurrently with the chartering agency to avoid duplication and alleviate regulatory burden on the applicant. The case manager may also participate in discussions with the other agency counterparts to assist in addressing any issues or concerns that arise during the investigation.

The case manager should regularly interact with the investigating examiner during the investigation to receive updates, provide consultation on complex or technical matters, help resolve any issues, and communicate any significant items to RO management or the WO. ~~The case manager~~ and the investigating examiner should communicate any significant identified concerns regarding the FDI application to the organizers by the completion of the field investigation. ~~The investigating examiner should consult with the case manager prior to the field investigation exit meeting to discuss the results of the investigation and the significance of the findings. The case manager and RO management may participate in the exit meeting, particularly if any significant concerns exist.~~

~~Waivers of the field investigation should be rare. However, a field investigation will generally not be conducted for an application subject to expedited processing. The case manager or RO management should consult with the appropriate RMAS section chief in any other situation where a waiver of the field investigation is being considered.~~

## B. Background Investigations

Background investigations are conducted following the acceptance of an application, are coordinated through the WO, and include [Federal Bureau of Investigation \(FBI\) fingerprint identification checks, FBI and Immigration and Customs Enforcement name \(ICE\) checks, and other](#) formal informational searches ~~of the proposed individuals~~ by the appropriate federal agencies. ~~Background~~ [It is RMS policy that background](#) investigations ~~are generally will be~~ conducted on all proposed organizers, directors, senior executive officers, and ~~10-percent-or-more~~ [percent-or-more](#) shareholders.<sup>32</sup> The background investigation results, as well as the case manager's review of the [IBFRs](#) and other pertinent information, provide essential information for assessing management's character and fitness.

[Each applicable regulator, including the FDIC, the chartering authority, and the FRB \(if PFR or if the proposal involves a holding company\) conducts its own independent background investigations. The FDIC's background investigation reports are only for the FDIC's use and may not be disclosed to outside parties, including other regulatory agencies.](#)

~~The case manager should coordinate the background investigations with the other applicable regulators in the case of companion applications (including related charter and holding company filings). The PFR should take the lead in conducting the background investigations, and the results may be adequate for the FDIC if the other agencies inform the FDIC in writing that no adverse findings were identified. If the other agencies are not able to provide written notification, the FDIC must conduct an independent background investigation.~~

~~The case manager is responsible for forwarding all completed fingerprint cards, consent forms, and other supporting information pertaining to background investigations to the designated WO section. Additionally, the case manager must ensure that all relevant information needed to complete the background investigations is entered in BIDS and that all necessary requests are submitted via BIDS. The WO will request submit the background investigations with investigation requests to the relevant agencies and authorities (e.g., the Federal Bureau of Investigation and Immigration and Customs Enforcement), and upon FBI and ICE). Following completion, the results will be posted and maintained in BIDS. The case manager will be notified when the results are available in BIDS.~~

[While the FDIC will not waive a background investigation, the regional director, upon request, may determine in limited circumstances that an individual does not need to provide all of the financial or biographical information required by the IBFR. Such determinations may only be made if the individual is well-known to the FDIC \(e.g., has a recent and longstanding tenure as an officer or director at a state nonmember institution\), there are no causes for concern regarding the individual's background, and other appropriate mitigating factors exist \(e.g., the bonding company has confirmed coverage on the individual, the individual will not be relied upon to provide financial support to the institution, or the individual will not play a significant role in setting policy or managing the institution\).<sup>41</sup> If an exception to providing financial or biographical information is allowed, the RO must nevertheless obtain sufficient information to complete the BIDS record and request the required background investigations.](#)

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<sup>32</sup> ~~The regional director may determine that a background investigation is not necessary for an organizer that is not expected to continue with the institution as a director, executive officer, or 10 percent or more shareholder.~~

<sup>41</sup> [In addition, when the proposed institution is being established as a wholly owned subsidiary of an eligible holding company, the FDIC may waive financial information for proposed directors or officers.](#)



Because background investigations may take an extended period of time, the FDIC may act on an application before all results are received. In such cases, a non-standard condition must be imposed that requires the institution to remove any director, senior executive officer, or 10-percent-or-more-shareholder if the FDIC objects to any such person based on information obtained during the background investigation. The case manager is expected to notify RO management, Legal, and the appropriate RMAS section chief of any adverse finding that will necessitate the removal of an individual.

### C. Evaluation of the Statutory Factors

In general, staff may approve an FDI application if each of the statutory factors plus the considerations required by the [NHPA](#) and the [NEPA](#) are resolved favorably. The applicant should be given an opportunity to withdraw the application if these factors and considerations cannot be favorably resolved. If the applicant does not withdraw the application or make acceptable modifications, the application will be recommended for denial.

The case manager should refer to the [SOP-ADI](#) for ~~the appropriate items to consider~~ [additional information](#) with regard to each statutory factor. [Certain information and analyses may impact multiple factors](#). Any element of the proposal that poses risk but has not been associated with another statutory factor should be assessed under risk to the DIF. Further, concerns identified with respect to the other statutory factors may also be incorporated into the assessment of ~~this factor~~ [risk to the DIF](#).

Based on the review of the application and the results of the field investigation, the case manager needs to make a determination as to whether each statutory factor is found to be favorable; favorable, subject to conditions; or unfavorable. [In order to favorably resolve a statutory factor, the analysis should lead to a clear and well-supported conclusion that no material concerns exist with regard to the factor.](#)

[“Favorable, subject to conditions” may be used in situations where the institution can be reasonably expected to address a pending issue in a timely manner in the normal course of business. In such situations, the matter in question would generally not be a material component of the proposal and would not adversely impact the institution’s overall risk profile.](#)

The imposition of non-standard conditions cannot be used as a means to ~~overcome otherwise unfavorable conclusions with respect to the~~ [favorably resolve any](#) statutory factors ~~that otherwise present material concerns~~. For example, [“favorable, subject to conditions,” would not be an appropriate conclusion if the situation involves weak or questionable earnings projections; an unacceptable or opaque control structure; insufficient capital levels; weak or marginal management or director candidates; apparent violations of a statute or regulation; or a higher risk business model without compensating factors, such as a strong risk management program. In such situations, the finding would be “unfavorable.”](#)

[Conversely, “favorable, subject to conditions,”](#) may be an appropriate conclusion with respect to the management factor if the institution is proposing to offer trust services as part of its diversified strategies, but has not yet selected a senior trust officer. In this case, assuming the ~~management factor~~ finding [regarding management](#) is otherwise satisfactory, it may be appropriate to impose a condition that the institution must appoint an acceptable senior trust



officer prior to initiating any trust services.

~~Conversely, favorable, subject to conditions, would not be appropriate if the circumstances involved, for instance, weak or questionable earnings projections; an atypical ownership structure; insufficient capital levels; weak or marginal management or director candidates; or a higher-risk business model without compensating factors, such as a strong risk management program. In such circumstances, the FDIC would expect the applicant to either withdraw the application or make appropriate modifications to resolve any issues.~~

## **~~D.~~ Approval Conditions**

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

The [FDIC's](#) standard conditions are drawn from [Section 303.2\(dd\) \(Subpart A\) of the FDIC Rules and Regulations](#), the [footnotes to Subpart B of the Delegations of Authority: Applications & Filings](#); and [Board Resolution 071098](#) (dated December 3, 2002, regarding Delegations of Authority). Standard conditions are conditions that the FDIC may impose unilaterally without seeking the applicant's written agreement.

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. The case manager should consider whether any non-standard conditions are appropriate and seek the applicant's written agreement to any proposed non-standard conditions before the FDIC approves an FDI application.

The most common non-standard conditions require development and implementation of an appropriate CRA plan; prior notification of any plans to establish an LPO; and FDIC approval of business plan changes, employment agreements and stock options plans, ~~operating policies~~, and additional directors or officers. 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. Any contemplated non-standard conditions should be discussed with RO management and, as circumstances dictate, with Legal and/or the appropriate RMAS section chief.

All applicable standard and non-standard conditions need to be included in the Order granting FDI. The Order should be issued with a formal Statement indicating the basis for approval. The Order and Statement will be publicly available on the FDIC's website. [Appendix 56](#) lists (in abbreviated form) the conditions that are frequently imposed in an Order. [Appendix 12](#) includes a list of prudential conditions that are typically imposed when processing applications involving financial institutions to be owned by commercial or financial companies, or that would be significantly involved in transactions or relationships with the parent company or any affiliates.

The FDIC may impose fewer conditions, additional conditions, or variations of the conditions listed in these appendices, depending on the facts and circumstances of a given proposal.

The SOI should describe the rationale for imposing any non-standard condition(s). Further, the applicant's written agreement to the non-standard conditions should be maintained in ~~the RORADD application file~~. If non-standard conditions are warranted and not agreed to by the applicant, the application must be forwarded to the WO for final disposition by the FDIC Board of Directors.

### FDIC Use of Written Agreements

In a limited number of cases, the FDIC has required the use of parent company agreements, capital and liquidity maintenance agreements (CALMAs), operating agreements, and passivity agreements to address specific situations or control potential risks. Written agreements provide a supplemental tool that may address specific supervisory matters with regard to an institution, ~~, including its business model and relationships. If the use of~~ The case manager should consider whether the organizational structure, parental or affiliate relationships, nature or complexity of the business model, or circumstances involving certain investors warrant the use of a written agreement. If a written agreement is contemplated, the RO should discuss the matter with ~~WO~~ RMAS and WO Legal.

Generally, parent company agreements and CALMAs have been used in cases in which the organizational structure includes parent companies not subject to FRB supervision: ~~(i.e., parents of non-bank banks). Such organizational structures often pose unique risks due to the lack of BHCA applicability, the potentially wide scope of operations of the parent company or its affiliates (which may include commercial activities), the inter-dependence on affiliated entities for key business functions or processes, and dual roles within the organization.~~

Parent company agreements may address a variety of circumstances regarding supervision, corporate governance, and the control exercised over the insured depository institution, and will include consent to examination by the FDIC. Among other items, a parent company agreement may help ensure that the institution's board and executive officers are independent of the parent company and any affiliates, that the institution operates under a separate and distinct business plan, and that the institution maintains separate books and records that adhere to U.S. GAAP.

CALMAs formally establish definitive commitments under which the parent company is required to provide any necessary capital or liquidity support to the insured institution. ~~Parent company agreements and CALMAs are generally executed by the FDIC, the institution, and the parent company (or companies).~~ CALMAs will normally require that all capital contributions must be in the form of cash unless other assets are approved. Liquidity provisions in a CALMA may require financial support to meet any ongoing liquidity obligations, as well as the establishment of a line of credit by the parent company that can be drawn upon at the option of the institution. CALMAs are often executed in conjunction with parent company agreements and have been used in cases involving non-bank banks and foreign ownership or control.

Parent company agreements and CALMAs also generally include provisions under which the FDIC may pursue formal enforcement action under Section 8 of the FDI Act if a party fails to comply with provisions of an agreement. Parent company agreements and CALMAs are generally executed by the FDIC, the institution, and the parent company (or companies).

Operating agreements have been used in limited cases to address certain risks or concerns regarding a proposed business model, primarily with respect to a proposed niche institution. Such agreements should not be pursued to overcome an otherwise unacceptable business plan. Rather, an operating agreement may be used to ensure that the institution’s risk profile ~~and~~, growth, activities, and business relationships (including any relationships with affiliates) remain within the parameters established in an otherwise acceptable business plan. Operating agreements are generally executed by the institution and the FDIC.

Passivity agreements have been entered into with investors seeking to rebut the presumption of control under Section 303.82 (Subpart E) of the FDIC Rules and Regulations.<sup>3342</sup> Passivity agreements may address matters such as business transactions and relationships between the investor and the insured institution, as well as the investor’s use of the control position to influence the institution’s management or policies. Passivity agreements are generally executed by the FDIC and the subject investor.

#### **D. Delegations of Authority**

The FDIC’s delegations of authority for FDI applications and other filings are included in a Matrix on the FDIC’s public website and in Board Resolution 071098, dated December 3, 2002. In addition, on September 11, 2007, the FDIC Board of Directors retained the right to act on certain ILC ~~filings~~filings including, but not limited to, FDI applications and business plan change requests. The Board also reserved to itself consideration of all “major matters,” that is any matter that would establish or change existing FDIC policy, could attract unusual attention or publicity, or would involve an issue of first impression. In addition, delegated authority will not be retained at the RMS division level unless all statutory factors are favorably resolved and any concerns with respect to the NHPA or NEPA are adequately addressed.

Regional directors need to consult with the SDD before approving FDI applications for which delegated authority resides at the RO level. As noted previously, the RO will provide monthly updates to the RMS division director and a draft SOI to the RMEB associate director to facilitate timely consultations. The WO will provide feedback to the RO following the receipt of the SOI. After any questions or issues are resolved, the SDD will notify the regional director by email whether the application may be approved at the RO level under delegated authority.

In the case of an FDI application for which delegated authority resides at the RO level, following consultation with the WO, the regional director will be the approving official. Further, the regional director must sign all recommendations forwarded to the WO for action. ROs must forward all FDI applications for which authority has not been delegated to the RO to the WO for final action. Authority to act has not been delegated to the RO for the following types of filings:

- FDI applications for *de novo* banksinstitutions owned by a company that is ~~not a “bank holding company” under~~exempted from the BHCA pursuant to the CEBA (e.g., ILCs ~~and banks organized under CEBA~~);
- FDI applications for certain special purpose banks and non-bank banks, including non-traditional banks, money desk operations with no teller windows, internet banks,

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<sup>3342</sup> Generally, such investors seek to control, directly or indirectly, the power to vote at least 10 percent, but less than 25 percent, of the institution’s outstanding shares. In cases involving parent companies not supervised by the FRB, the FDIC will evaluate the extent of control at the parent company level.

bankers' banks, and boutique or niche type banks that focus on particular market segments (e.g., sub-prime lending, limited purpose product lines, select customer bases, etc.); and

- FDI applications involving ~~banks~~institutions that are part of PBOs or that will have significant foreign ownership of 25 percent or more of the initial capital.

Delegations with respect to other FDI applications may be restricted due to the circumstances presented, including any application that presents major matters. For cases requiring final action at the WO, the RO must ~~provide an initial~~email a brief summary of the proposal to the RMEB associate director, ~~monthly updates~~ and copy the appropriate RMAS section chief within 10 days following receipt of the application, provide a monthly FDI application summary to the RMS division director, and, upon completion of the RO's evaluation of the application, forward the signed SOI and other pertinent case documents to the RMEB associate director.

## E. Availability of Informal Review Process

As appropriate, the case manager should advise applicants of the FDIC's informal review process. 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 RMS 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.

## Section V: Pre-Opening Activities

The case manager is expected to maintain regular contact with the organizers during the pre-opening process to help ensure that the proposed institution is prepared to begin operations in a seamless manner. During this time frame, the organizers should direct appropriate attention to the following areas, among others:

- Finalizing policies and procedures for all key business areas (e.g., loans, investments, liquidity, interest rate risk, BSA/AML, compliance, IT, code of ethics, etc.);
- Developing documents for delivering loan, deposit, and other banking products or services;
- Hiring and training staff;
- Formalizing all service/vendor relationships;
- Ensuring all physical office space is ready for occupancy;
- Ensuring IT systems will operate as planned;
- Developing strategies to remain aware of physical and cybersecurity threats; and
- Instituting appropriate security procedures and meeting with local law enforcement.

In addition to discussing progress and responding to any questions regarding these matters, the case manager should ensure that the pre-opening activities described below are completed.

## A. Pre-Opening Conditions

The case manager should verify that all pre-opening conditions included in the FDI Order are met prior to FDI becoming effective and the institution opening for business. Certain conditions may require that the organizers submit materials to the FDIC demonstrating compliance, while others may need to be verified through additional communication or correspondence with the organizers. To the extent possible, the case manager should verify compliance with pre-opening conditions via off-site activities.

The case manager generally needs to obtain the following documentation from the organizers to facilitate the verification process:

- A Certificate of Board Resolution indicating that the proposed institution's board has adopted the conditions of the FDI Order and that all applicable pre-opening conditions have been met;
- Evidence that the minimum required capital has been raised (*i.e.*, sufficient funds, net of pre-opening expenses, to meet the initial capitalization requirement must be in escrow);
- A final shareholder list with each shareholder's name, domicile, type and number of shares purchased, and dollar amount invested;
- Copies of any final contracts, leases, or other agreements related to the construction or rental of permanent quarters;
- A copy of the binder for fidelity insurance;
- Final details regarding any insider transactions or stock financing arrangements; and
- Any other pertinent documentation to verify compliance with pre-opening conditions.

The chartering authority or the FRB may conduct a pre-opening examination to confirm that the proposed institution is ready to commence operations. The case manager should confirm with the chartering authority that the proposed institution has been, or will be, granted a charter to conduct its proposed business as a depository institution. In addition, if the institution will be owned by a holding company, the case manager should confirm that the FRB has approved, or intends to approve, the holding company's acquisition of voting stock control of the proposed institution prior to its opening for business.

## B. Pre-Opening Meeting

After compliance with the pre-opening conditions has been verified and an opening date has been set, the case manager and the field supervisor are expected to meet with the proposed institution's board. The purpose of the meeting is to discuss the board's ongoing obligations with respect to the continuing conditions of the FDI Order and, if the institution is a state nonmember institution, familiarize the board with the FDIC's supervisory strategy during the *de novo* period. Refer to [Section VI of the Manual](#) for additional details regarding the supervisory strategy.

At the meeting, FDIC staff should emphasize the need for institution management to seek prior approval [from the regional director or the PFR, if not the FDIC](#), for any proposed material deviation or material change from the institution's business plan, and the need for the board to monitor the institution's performance to identify any early signs that correction is needed. FDIC staff should also provide the board with a copy of [FIL-24-2016, Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance](#), ~~delineating what constitutes a change in business plan.~~

When possible, the pre-opening meeting should be conducted jointly with the other applicable agencies including the state authority and/or the PFR, if the institution is not a state nonmember institution. If the institution will be the subsidiary of a holding company, appropriate FRB representatives should also be invited. Following the meeting, the case manager should prepare a memorandum to the file that lists the meeting attendees and summarizes the discussion. This meeting may be held within 30 days after opening if sufficient time is not available pre-opening.

### C. Executive Secretary Section Notification

Following verification of the pre-opening conditions (including confirmation of approval from the chartering authority), the case manager needs to email the following information to the FDIC's Executive Secretary Section (ESS), using the address for "new banks" in the internal Global Address Book:

- Name of the institution's president/CEO;
- Exact name of the institution;
- Institution's physical address, including zip code;
- Date the institution will open for business;
- Institution's fax number, phone number, and email address;
- Case manager's name and phone number (if different from the sender);
- Institution's FDIC Certificate number;
- Institution's class; and
- RMS field office.

The email should be sent to the ESS as soon as practical, but no later than two business days before the institution plans to open for business. The ESS will prepare the institution's deposit insurance certificate (which will indicate the effective date of FDI coverage) and forward it to the institution along with membership materials to be displayed at teller windows.

### **D. Application Tracking Record**

~~The case manager is expected to update the ViSION AT record to reflect the final disposition of the FDI application. All applicable fields need to be populated to indicate the action taken, the action date, and other necessary information and comments. For all approvals, the case manager should list the non-standard conditions in the specified location and update the ViSION AT record to reflect the consummation date once it is verified.~~

## Section VI: Post-Opening Considerations

As noted previously, the case manager will be the FDIC's primary supervisory contact for an insured institution once it opens for business. The below items summarize professional staff's key responsibilities during the *de novo* period for a newly insured institution.



## A. Supervisory Strategy

The case manager, in coordination with other appropriate staff, must develop an annual supervisory strategy for each assigned ~~state nonmember, de novo~~ institution. The supervisory strategy, ~~which~~ must be approved by the regional director; and should be consistent with the institution's size, complexity, and risk profile. In addition, the approved supervisory strategy and any related documentation should be included in RADD. The supervisory strategy for a state nonmember institution should address (at a minimum) the following items:

- Assessing compliance with the ongoing conditions of the FDI Order;
- Reviewing adherence to the FDIC-approved business plan;
- Evaluating the institution's primary risk areas;
- Monitoring growth in total assets, loans, deposits, and funding;
- Monitoring concentrations in higher-risk areas;
- Assessing the adequacy of risk management practices (including oversight of vendor relationships) in light of the institution's strategies and risk profile;
- Coordinating supervisory activities with DCP, other relevant specialty areas, and other applicable agencies; and
- Conducting quarterly supervisory monitoring activities, including on- and/or off-site activities, as appropriate.

~~The approved supervisory strategy and any related documentation should be included in RADD.~~

If the FDIC is not the PRF, the supervisory strategy may be more limited in scope with an emphasis on quarterly off-site monitoring activities and communication with the case manager's counterpart at the PFR to remain informed of any significant developments.

## B. On-Site Visitations and Examinations

On-site visitations and examinations should occur at appropriate intervals in accordance with ~~FDIC policy~~the policies of the PFR. Risk management examination schedules and institution monitoring for state nonmember institutions will generally be governed by the requirements detailed in Part 337.12 of the FDIC ~~Risk Management Manual of Examination Policies~~ Rules and Regulations.

Newly insured state nonmember institutions will typically undergo a visitation within six months of opening for business and a full-scope examination annually for the first three years of operation.<sup>3443</sup> The supervisory strategy for a state nonmember institution may incorporate more frequent visitation or call programs to monitor business plan implementation or specific areas of concern. If ~~the~~ state nonmember institution is a subsidiary of a multi-bank holding company that is in satisfactory condition, normal examination cycles are to be followed at the regional director's discretion.

## C. Off-site Monitoring Activities

The case manager is expected to conduct quarterly off-site monitoring activities for each assigned *de novo* institution. ~~The supervisory strategy for a state nonmember institution will describe the planned~~

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<sup>3443</sup> In addition, newly insured institutions will normally undergo a consumer compliance visitation within the first 12 months and full-scope compliance and CRA examinations within the first 24 months of operation. Thereafter, the institution will be subject to the standard examination frequency schedule for compliance and CRA with intervals based on ratings and asset size (refer to the FDIC Compliance Examination Manual for the frequency schedule for state nonmember banks).

~~off-site activities.~~—At a minimum, off-site activities should include quarterly off-site analysis of Call Report and Uniform Bank Performance Report financial information, and a comparison to business plan projections. ~~Further~~[As part of the supervisory strategy for a state nonmember institution](#), the case manager should periodically (at least quarterly) contact institution management to discuss financial and operating performance, progress in meeting business plan projections, and any other relevant items.

[In cases where the FDIC is not PFR, the case manager should contact the applicable other agency counterpart each quarter to discuss the institution’s performance and any noteworthy developments.](#) Documentation of off-site activities should be maintained in RADD.

#### **D. Business Plan Change Requests**

Business plan change requests are expected to be rare for a newly insured institution, as the approval of FDI is based on the business plan submitted and reviewed during the application process. Per a condition in the FDI Order, all new institutions are required to seek the prior approval of its PFR for any proposed major deviation or material change from the business plan during the first three years of operation. For state nonmember institutions, prior approval is required by the appropriate regional director.

~~The case manager should promptly communicate with institution management regarding issues involving business plan adherence. While normal business plan variations are acceptable, changes beyond the parameters described in FIL-24-2016, Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance require prior approval of the FDIC or the institution’s PFR, if not the FDIC.~~ Major deviations or material changes from a business 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, or other unexpected outcomes that could influence the institution’s risk profile. [The case manager should promptly communicate with institution management regarding issues involving business plan adherence.](#)

Although the overall processing time for business plan changes may vary depending on the nature and extent of the proposed changes, the FDIC should generally act on business plan change requests within 30 days of receiving a substantially complete request. [Refer to FIL-24-2016 includes for additional information, including](#) a set of questions and answers that address business plan content and changes to business plans. ~~The questions and answers provide clarifying information and should help guide RO reviews of business plans and requested changes to business plans.~~

#### **E. Other Filings**

The institution may submit applications, notices, or other filings [to the applicable agencies](#) during the *de novo* period. ~~The~~[For any such filings, whether submitted directly to the FDIC or provided to the FDIC for informational purposes, the](#) case manager should consider whether [the contemplated](#) activities or transactions ~~contemplated in any such filings~~ are consistent with the approved business plan. If inconsistencies are noted, the institution may need to file a request for a business plan change. All filings [that require FDIC action](#) must be processed in accordance with applicable laws, regulations, policies, [guidance](#), and the FDIC’s delegations of authority.

## Resources

Resource	Website
<b>Agency Contact Information and Websites</b>	
<a href="#">Bureau of Consumer Financial Protection</a> <del>Bureau</del>	<a href="http://www.consumerfinance.gov">http://www.consumerfinance.gov</a>
Conference of State Bank Supervisors (Directory of <del>State Banking Authorities</del> )	<a href="https://www.csbs.org/about/what/Pages/directory.aspx">https://www.csbs.org/about/what/Pages/directory.aspx</a> <del>state-bank-agency-contact-quick-access</del>
Federal Deposit Insurance Corporation (FDIC)	<a href="https://www.fdic.gov">https://www.fdic.gov</a>
<a href="#">FDIC Public Website Dedicated to Applications for Deposit Insurance</a>	<a href="https://www.fdic.gov/regulations/applications/depositinsurance/">https://www.fdic.gov/regulations/applications/depositinsurance/</a>
FDIC Office Directory and Contacts	<a href="http://www.fdic.gov/about/contact/directory/">http://www.fdic.gov/about/contact/directory/</a>
Federal Reserve Board of Governors	<a href="http://www.federalreserve.gov">http://www.federalreserve.gov</a>
National Credit Union Administration	<a href="https://www.ncua.gov/Pages/default.aspx">https://www.ncua.gov/Pages/default.aspx</a>
Office of the Comptroller of the Currency	<a href="http://www.occ.gov">http://www.occ.gov</a>
<b>Application Form and Related Documents<sup>3544</sup></b>	
Interagency Charter and Federal Deposit Insurance Application Form and Instructions	<a href="http://www.fdic.gov/formsdocuments/InteragencyCharter-InsuranceApplication.pdf">http://www.fdic.gov/formsdocuments/InteragencyCharter-InsuranceApplication.pdf</a>
Interagency Biographical and Financial Report	<a href="https://www.fdic.gov/formsdocuments/6200-06-regulations/laws/federal/2018/2018-interagency-biographical-and-financial-report-3064-0006.pdf">https://www.fdic.gov/formsdocuments/6200-06-regulations/laws/federal/2018/2018-interagency-biographical-and-financial-report-3064-0006.pdf</a>
<b>Laws, <u>and Regulations</u>, and Supervisory Guidance</b>	
Section 3 of the FDI Act	<a href="https://www.fdic.gov/regulations/laws/rules/1000-400.html">https://www.fdic.gov/regulations/laws/rules/1000-400.html</a>
Section 4 of the FDI Act	<a href="https://www.fdic.gov/regulations/laws/rules/1000-500.html">https://www.fdic.gov/regulations/laws/rules/1000-500.html</a>
Section 5 of the FDI Act	<a href="https://www.fdic.gov/regulations/laws/rules/1000-600.html">https://www.fdic.gov/regulations/laws/rules/1000-600.html</a>
Section 6 of the FDI Act	<a href="https://www.fdic.gov/regulations/laws/rules/1000-700.html">https://www.fdic.gov/regulations/laws/rules/1000-700.html</a>
Section 19 of the FDI Act	<a href="https://www.fdic.gov/regulations/laws/rules/1000-2100.html">https://www.fdic.gov/regulations/laws/rules/1000-2100.html</a>
Part 303 of the FDIC Rules and Regulations	<a href="https://www.fdic.gov/regulations/laws/rules/2000-200.html">https://www.fdic.gov/regulations/laws/rules/2000-200.html</a>
<a href="#">Part 337 of the FDIC Rules and Regulations</a>	<a href="https://www.fdic.gov/regulations/laws/rules/2000-5900.html">https://www.fdic.gov/regulations/laws/rules/2000-5900.html</a>
Part 345 of the FDIC Rules and Regulations	<a href="https://www.fdic.gov/regulations/laws/rules/2000-6500.html">https://www.fdic.gov/regulations/laws/rules/2000-6500.html</a>
Part 347 of the FDIC Rules and Regulations	<a href="https://www.fdic.gov/regulations/laws/rules/2000-6800.html">https://www.fdic.gov/regulations/laws/rules/2000-6800.html</a>
<a href="#">Part 359 of the FDIC Rules and Regulations</a>	<a href="https://www.fdic.gov/regulations/laws/rules/2000-7700.html">https://www.fdic.gov/regulations/laws/rules/2000-7700.html</a>
Part 364 of the FDIC Rules and Regulations	<a href="https://www.fdic.gov/regulations/laws/rules/2000-8600.html">https://www.fdic.gov/regulations/laws/rules/2000-8600.html</a>
<a href="#">Bank Holding Company Act</a>	<a href="https://www.fdic.gov/regulations/laws/rules/7500-2000.html">https://www.fdic.gov/regulations/laws/rules/7500-2000.html</a>
<a href="#">Community Reinvestment Act</a>	<a href="https://www.fdic.gov/regulations/laws/rules/6000-1500.html">https://www.fdic.gov/regulations/laws/rules/6000-1500.html</a>
<a href="#">Federal Reserve Act Sections 23A and B</a>	<a href="https://www.fdic.gov/regulations/laws/rules/7500-200.html">https://www.fdic.gov/regulations/laws/rules/7500-200.html</a>
<a href="#">Home Owners' Loan Act Section 5</a>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-4300.html">https://www.fdic.gov/regulations/laws/rules/8000-4300.html</a>
<a href="#">Home Owners' Loan Act Section 10</a>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-4360.html">https://www.fdic.gov/regulations/laws/rules/8000-4360.html</a>
<a href="#">Competitive Equality Banking Act</a>	<a href="https://www.fdic.gov/regulations/laws/rules/6000-1500.html">https://www.fdic.gov/regulations/laws/rules/6000-1500.html</a>
<a href="#">National Historic Preservation Act (NHPA)</a>	<a href="https://www.gpo.gov/fdsys/pkg/USCODE-2014-title54/pdf/USCODE-2014-title54-subtitleIII-divsnA.pdf">https://www.gpo.gov/fdsys/pkg/USCODE-2014-title54/pdf/USCODE-2014-title54-subtitleIII-divsnA.pdf</a>
<a href="#">National Environmental Policy Act of 1969 (NEPA)</a>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-5000.html">https://www.fdic.gov/regulations/laws/rules/8000-5000.html</a>
<b><u>Supervisory Guidance</u></b>	
FDIC Statement of Policy on Applications for Deposit Insurance (SOP-ADI)	<a href="https://www.fdic.gov/regulations/laws/rules/5000-3000.html">https://www.fdic.gov/regulations/laws/rules/5000-3000.html</a>
FIL-56-2014 (Guidance Related to the SOP-ADI)	<a href="https://www.fdic.gov/news/news/financial/2014/fil14056.html">https://www.fdic.gov/news/news/financial/2014/fil14056.html</a>
Q&As: SOP-ADI (November 2014)	<a href="https://www.fdic.gov/news/news/financial/2014/fil14056a.pdf">https://www.fdic.gov/news/news/financial/2014/fil14056a.pdf</a>
FIL-24-2016 (Supplemental Guidance <del>Related to the:</del> SOP-ADI)	<a href="https://fdic.gov/news/news/financial/2016/fil16024.html">https://fdic.gov/news/news/financial/2016/fil16024.html</a>
Q&As: SOP-ADI (April 2016)	<a href="https://fdic.gov/news/news/financial/2016/fil16024a.pdf">https://fdic.gov/news/news/financial/2016/fil16024a.pdf</a>

<sup>3544</sup> Application and IBFR forms are also available in Word format at [FDIC: Forms](#)

FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions (SOP-QFBA)	<a href="https://www.fdic.gov/regulations/laws/faqfbqual.html">https://www.fdic.gov/regulations/laws/faqfbqual.html</a>
FIL 35-2002 (Joint Agency Statement on Parallel-Owned Banking Organizations)	<a href="https://www.fdic.gov/news/news/financial/2002/fil0235.html">https://www.fdic.gov/news/news/financial/2002/fil0235.html</a>
FIL 44-2008 (Guidance for Managing Third-Party Risk)	<a href="https://www.fdic.gov/news/news/financial/2008/fil08044.html">https://www.fdic.gov/news/news/financial/2008/fil08044.html</a>
<del>FIL 47-2013 (Director and Officer Liability Insurance Policies, Exclusions, and Indemnification for Civil Money Penalties)</del>	<del><a href="https://www.fdic.gov/news/news/financial/2013/fil13047.pdf">https://www.fdic.gov/news/news/financial/2013/fil13047.pdf</a></del>

<a href="https://www.fdic.gov/news/news/financial/2013/fil13047.pdf">FIL-47-2013 (D&amp;O Liability Insurance Policies, Exclusions, and Indemnification for CMPs)</a>	<a href="https://www.fdic.gov/news/news/financial/2013/fil13047.pdf">https://www.fdic.gov/news/news/financial/2013/fil13047.pdf</a>
FIL-51-2016 (Reminder on FDIC Examination Findings)	<a href="https://www.fdic.gov/news/news/financial/2016/fil16051.html">https://www.fdic.gov/news/news/financial/2016/fil16051.html</a>
<b>Bank Holding Company Act</b>	<a href="https://www.fdic.gov/regulations/laws/rules/7500-2000.html">https://www.fdic.gov/regulations/laws/rules/7500-2000.html</a>
<b>Community Reinvestment Act</b>	<a href="https://www.fdic.gov/regulations/laws/rules/6000-1500.html">https://www.fdic.gov/regulations/laws/rules/6000-1500.html</a>
<b>Federal Reserve Act Sections 23A and B</b>	<a href="https://www.fdic.gov/regulations/laws/rules/7500-200.html">https://www.fdic.gov/regulations/laws/rules/7500-200.html</a>
<b>Home Owners' Loan Act Section 5</b>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-4300.html">https://www.fdic.gov/regulations/laws/rules/8000-4300.html</a>
<b>Competitive Equality Banking Act</b>	<a href="https://www.fdic.gov/regulations/laws/rules/6000-1500.html">https://www.fdic.gov/regulations/laws/rules/6000-1500.html</a>
<b>National Historic Preservation Act (NHPA)</b>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-5100.html">https://www.fdic.gov/regulations/laws/rules/8000-5100.html</a>
<b>National Environmental Policy Act of 1969 (NEPA)</b>	<a href="https://www.fdic.gov/regulations/laws/rules/8000-5000.html">https://www.fdic.gov/regulations/laws/rules/8000-5000.html</a>
FDIC Policy Statement Regarding Minority Depository Institutions	<a href="https://www.fdic.gov/regulations/resources/minority/sop5-only.PDF">https://www.fdic.gov/regulations/resources/minority/sop5-only.PDF</a>
FDIC Statement of Policy Regarding the NHPA	<a href="https://www.fdic.gov/regulations/laws/rules/5000-1400.html">https://www.fdic.gov/regulations/laws/rules/5000-1400.html</a>
FDIC Statement of Policy on NEPA Procedures Relating to Filings Made With the FDIC	<a href="https://www.fdic.gov/regulations/laws/rules/5000-1500.html">https://www.fdic.gov/regulations/laws/rules/5000-1500.html</a>
FDIC Statement of Policy Concerning the Responsibilities of Bank Directors and Officers	<a href="https://www.fdic.gov/regulations/laws/rules/5000-3300.html">https://www.fdic.gov/regulations/laws/rules/5000-3300.html</a>
FDIC Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities	<a href="https://www.fdic.gov/regulations/laws/rules/5000-500.html">https://www.fdic.gov/regulations/laws/rules/5000-500.html</a>
Interagency Guidance on Sound Incentive Compensation Policies	<a href="https://www.fdic.gov/regulations/laws/rules/5000-5350.html">https://www.fdic.gov/regulations/laws/rules/5000-5350.html</a>
Interagency Statement of Policy on the Uniform Financial Institutions Rating System	<a href="https://www.fdic.gov/regulations/laws/rules/5000-900.html">https://www.fdic.gov/regulations/laws/rules/5000-900.html</a>
<b>Other Resources</b>	
FDIC Delegations of Authority: Board Resolution	<a href="https://www.fdic.gov/regulations/laws/matrix/">https://www.fdic.gov/regulations/laws/matrix/</a>
FDIC Delegations of Authority Matrix	<a href="https://www.fdic.gov/regulations/laws/matrix/exhibit1.html">https://www.fdic.gov/regulations/laws/matrix/exhibit1.html</a>
FDIC's Deposit Insurance Handbook	<a href="https://www.fdic.gov/regulations/applications/handbook.pdf">https://www.fdic.gov/regulations/applications/handbook.pdf</a>
FDIC FDI Applications Resources	<a href="https://www.fdic.gov/regulations/applications/index.html">https://www.fdic.gov/regulations/applications/index.html</a>
FDIC Directors' Resource Center	<a href="https://www.fdic.gov/regulations/resources/director/">https://www.fdic.gov/regulations/resources/director/</a>
FDIC's Pocket Guide for Directors	<a href="https://www.fdic.gov/regulations/resources/director/pocket/index.html">https://www.fdic.gov/regulations/resources/director/pocket/index.html</a>
FDIC FOIA Service Center	<a href="https://www.fdic.gov/about/freedom/">https://www.fdic.gov/about/freedom/</a>
FDIC Risk Management Manual of Examination Policies	<a href="https://www.fdic.gov/regulations/safety/manual/">https://www.fdic.gov/regulations/safety/manual/</a>
FDIC Supervisory Insights, April 2016 (A Community Bank Director's Guide to Corporate Governance: 21st Century Reflections on the FDIC Pocket Guide for Directors)	<a href="https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/SI_SE2016.pdf">https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/SI_SE2016.pdf</a>
FDIC Supervisory Insights, Summer 2016 ( <i>De Novo</i> Banks: Economic Trends and Supervisory Framework)	<a href="https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum16/SI_Summer16.pdf">https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum16/SI_Summer16.pdf</a>
FDIC Compliance Examination Manual	<a href="https://www.fdic.gov/regulations/compliance/manual/index.html">https://www.fdic.gov/regulations/compliance/manual/index.html</a>
FDIC Trust Examination Manual	<a href="https://www.fdic.gov/regulations/examinations/trustmanual/">https://www.fdic.gov/regulations/examinations/trustmanual/</a>
FFIEC BSA/AML Examination Manual	<a href="http://www.ffiec.gov/bsa_aml_infobase/default.htm">http://www.ffiec.gov/bsa_aml_infobase/default.htm</a>
FFIEC Cybersecurity Awareness	<a href="https://www.ffiec.gov/cybersecurity.htm">https://www.ffiec.gov/cybersecurity.htm</a>
<b>FFIEC Information Technology Examination Manual</b>	<a href="https://www.fdic.gov/regulations/information/information/FFIEC.html">https://www.fdic.gov/regulations/information/information/FFIEC.html</a>
<b>FFIEC Information Technology Handbook on Outsourcing Technology Services, Information Security, and Business Continuity Planning</b>	<a href="http://www.ffiec.gov/it-handbook/it-booklets.aspx">http://www.ffiec.gov/it-handbook/it-booklets.aspx</a>
<b>FFIEC Information Technology Examination Handbook Infobase</b>	

Financial Services Information Sharing and Analysis Center Website	<a href="https://www.fsisac.com/">https://www.fsisac.com/</a>
U.S. Treasury's CDFI Fund website	<a href="https://www.cdfifund.gov/Pages/default.aspx">https://www.cdfifund.gov/Pages/default.aspx</a>



## *Appendix 1: Applications with Unique Characteristics*

[Appendix 1: Federal Banking Agency and State Banking Authority Roles](#) Applications that present any of the unique characteristics described below warrant heightened scrutiny and typically require action at the WO level.

### Applications by nonbank banks

- The term “nonbank bank” refers to an insured institution that is a bank for purposes of the FDI Act, but is not a bank for purposes of the BHCA. Such institutions include ILCs, as well as credit card banks and trust banks organized under the CEBA.
- Proposals involving nonbank banks that are to be owned by commercial or financial companies or significantly involved in transactions with such companies can present unique characteristics that warrant the imposition of conditions that are not routinely imposed on traditional community bank proposals. These conditions are sometimes referred to as “prudential” conditions.
- The following prudential conditions have been imposed in prior approval actions:
  - Prior to the effective date of deposit insurance, the organizers will have appointed and will thereafter maintain a board of directors, the majority of which will be independent of [applicant’s parent] and its affiliated entities, who must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities. Further, absent the prior written non-objection of the appropriate regional director, the majority of the board of directors will comprise individuals whose principal residence or business activities are located within a reasonable distance of the bank’s main office, such that the individuals will be capable of providing ongoing and direct oversight of the bank’s activities.
  - Prior to the effective date of deposit insurance, the bank will have appointed and will thereafter retain executive officers who possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities. Further, absent the prior written non-objection of the appropriate regional director, each such officer’s permanent place of work will be physically located at the bank’s main office located in [city, state], such that the individuals will be capable of providing ongoing and direct oversight of the bank’s activities. At a minimum, such executive officers will include (or be similarly qualified and titled) the [president/chief executive officer, senior credit officer, chief financial officer, and chief operations officer].
  - The bank will develop and continue to maintain a current written business plan, adopted by the bank’s board of directors, that is appropriate to the nature and complexity of activities conducted by the bank, and that the business plan be maintained separately from the business plans of [applicant’s parent] and its affiliated entities. Further, the board of directors will ensure that executive officers are delegated reasonable authority to implement the plans independently of [applicant’s parent] and its affiliated entities, and that the bank’s management, staff, and other resources are adequate to carry out the bank’s business plan in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities.
    - The bank will conduct business pursuant to operating policies that are commensurate with the proposed business plan, independent from those of affiliated entities, and adopted by the board of directors of the bank. Also, the board of directors will adopt controls reasonably designed to ensure compliance with and enforcement of such policies. Further, the board of directors will ensure that executive officers are delegated reasonable authority to implement and enforce the policies independently of [applicant’s parent] and its affiliated entities. At a minimum, such operating policies and procedures will encompass the bank’s lending, investment, liquidity, and

<u>Agency</u>	<u>Primary Roles</u>
<u>FDIC</u>	<ul style="list-style-type: none"> <li>• <u>Insures the deposits of all depository institutions approved for FDI.</u></li> <li>• <u>Together with the respective chartering state authority, supervises state-chartered institutions (banks and savings associations) that are not members of the FRS.</u></li> <li>• <u>Maintains backup supervisory responsibility for institutions for which the FRB and the OCC are the PFRs.</u></li> <li>• <u>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.</u></li> <li>• <u>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.</u></li> </ul>
<u>FRB</u>	<ul style="list-style-type: none"> <li>• <u>Serves as PFR for state-chartered banks that are members of the FRS, bank and financial holding companies (and certain subsidiaries), and savings and loan holding companies.</u></li> <li>• <u>Supervises other firms designated as systemically significant by the FSOC, and other entities pursuant to the Dodd-Frank Act.</u></li> <li>• <u>Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the FSOC for FRB supervision.</u></li> </ul>
<u>OCC</u>	<ul style="list-style-type: none"> <li>• <u>Charters and serves as PFR for national banks and FSAs.</u></li> </ul>
<u>State Banking Authorities</u> <sup>45</sup>	<ul style="list-style-type: none"> <li>• <u>Charters state banks and savings associations, regardless of whether the institution is a member of the FRS.</u></li> <li>• <u>Together with the respective PFR, supervises state-chartered institutions and certain holding companies.</u></li> </ul>

<sup>45</sup> 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.

## *Appendix 2: Applications with Unique Characteristics*

Applications with unique characteristics, as described below, may present added complexities or less frequently encountered elements. Such applications typically require action at the WO level.

### Applications by nonbank banks

- The term “nonbank bank” refers to an insured institution that is a bank for purposes of the FDI Act, but is not a bank for purposes of the BHCA. Such institutions include ILCs, as well as credit card banks and trust banks organized under the CEBA.
- Proposals involving nonbank banks that are to be owned by commercial or financial companies or significantly involved in transactions with such companies can present unique characteristics that warrant the imposition of conditions that are not routinely imposed on traditional community bank proposals. These conditions are sometimes referred to as “prudential” conditions.
- The following prudential conditions have been imposed in prior approval actions:
  - Prior to the effective date of deposit insurance, the organizers will have appointed and will thereafter maintain a board of directors, the majority of which will be independent of [applicant’s parent] and its affiliated entities, who must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities. Further, absent the prior written non-objection of the appropriate regional director, the majority of the board of directors will comprise individuals whose principal residence or business activities are located within a reasonable distance of the bank’s main office, such that the individuals will be capable of providing ongoing and direct oversight of the bank’s activities.
  - Prior to the effective date of deposit insurance, the bank will have appointed and will thereafter retain executive officers who possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities. Further, absent the prior written non-objection of the appropriate regional director, each such officer’s permanent place of work will be physically located at the bank’s main office located in [city, state], such that the individuals will be capable of providing ongoing and direct oversight of the bank’s activities. At a minimum, such executive officers will include (or be similarly qualified and titled) the [president/chief executive officer, senior credit officer, chief financial officer, and chief operations officer].
  - The bank will develop and continue to maintain a current written business plan, adopted by the bank’s board of directors, that is appropriate to the nature and complexity of activities conducted by the bank, and the business plan will be maintained separately from the business plans of [applicant’s parent] and its affiliated entities. Further, the board of directors will ensure that executive officers are delegated reasonable authority to implement the plans independently of [applicant’s parent] and its affiliated entities, and that the bank’s management, staff, and other resources are adequate to carry out the bank’s business plan in a safe and sound manner and independently of the activities of [applicant’s parent] and its affiliated entities.
  - The bank will conduct business pursuant to operating policies that are commensurate with the proposed business plan, independent from those of affiliated entities, and adopted by the board of directors of the bank. Also, the board of directors will adopt controls reasonably designed to ensure compliance with and enforcement of such policies. Further, the board of directors will ensure that executive officers are delegated reasonable authority to implement and enforce the policies independently of [applicant’s parent] and its affiliated entities. At a minimum, such operating policies and procedures will encompass the bank’s lending, investment, liquidity, and

asset-liability management activities.

- The bank will adhere to U.S. ~~Generally Accepted Accounting Principles~~ [GAAP](#) and maintain separate accounting and other business records, including customer account records. The bank's books and records will be maintained under the control and direction of authorized bank officials and available for review by the FDIC at the applicant's main office located in [city, state]. Further, the bank's books and records will be sufficiently detailed and maintained in a manner that provides bank officials with the objective and transparent information necessary to administer the bank's affairs.
- To the extent management, staff, or other personnel or resources are employed by both the bank and [applicant's parent] or any of its affiliated entities, the bank's board of directors will ensure that such arrangements are governed by written contracts that provide bank officials with the authority and control necessary to direct and administer the bank's affairs, including direct supervisory authority over such personnel, to the extent the relationship affects the bank.
- In addition to conditions, CALMAs or other types of agreements with proposed institutions' parent companies may be necessary depending on the risks presented.

### **Applications considered "niche" proposals**

- Niche proposals generally involve institutions that present a concentrated business focus, significant specialized activities, or other unique characteristics. Such institutions may reflect a lack of diversification in assets or funding; a large proportion of revenue or income derived from limited or non-traditional products, services, or activities; or a concentrated focus on a relatively narrow demographic group or non-traditional delivery channels.
- The following have previously been determined to be niche proposals:
  - Lending - subprime, credit card, auto financing, CRE, and commercial and industrial, including lending based on enterprise value.
  - Funding - stored value, brokered or internet deposits, wholesale funding, loan originations and sales, and securitizations.
  - ~~Other~~ [Services/Activities/Attributes](#) - wealth management and trust operations, payment system or transaction processing, cash management or sweep services, and significant reliance on fee income.
  - Customer Base - limited or narrow customer markets, including proposals intended to derive the customer base from affiliate relationships or directly support the sales of affiliates.
  - Delivery Channels - internet only, production offices, and money desk operations with no teller windows.
  - [Other - proposals that emphasize the use and capabilities of emerging technologies, and other proposals with other unique attributes.](#)
- Niche institutions ~~also~~ include those seeking a special purpose, limited purpose, or wholesale designation under the CRA, and may include institutions whose activities involve material off-balance sheet activities or are significantly dependent on affiliate or third-party relationships.]]

### **Applications involving failed bank acquisitions**

- As described in the [SOP-ADI](#), the FDIC may apply modified application processes for proposed institutions formed for the purpose of acquiring assets and assuming liabilities of an insured institution in default. In such cases, the FDIC will consider abbreviated information submissions and applications, and may issue conditional approval for FDI.
- Investors that are interested in acquiring the deposits of failing institutions must have conditional approval for a charter from the applicable authority and meet the FDIC's bid criteria. In certain cases it may also be necessary to obtain conditional approval from the FRS to establish a holding company.
- While the statutory factors per [Section 6 of the FDI Act](#) must be met, the primary considerations under the modified process include an acceptable business plan, readily available capital, and a satisfactory management team. In addition, it may be necessary to take into account the [SOP-QFBA](#).

## **Applications by publicly owned entities**

- Public ownership refers to institutions to be owned or controlled by domestic governmental entities (e.g., a state, county, or municipality).
- Such institutions may present concerns regarding the institution's ability to operate independently of the political process; a potential lack of continuity in the institution's policies, management, and oversight, which could result from changes in the governmental entity's leadership; and the institution's ability to raise capital ~~through non-traditional sources~~.
- Institutions that are to be owned or controlled by Native American tribes or bands may not present the same concerns as other publicly owned institutions given provisions of federal law that allow Native American-owned institutions to function as both governmental and economic for-profit entities.

## **Applications involving foreign ownership**

### *General guidelines*

- Foreign ownership refers to ownership by a foreign non-banking entity, a foreign bank, or a person who is not a citizen of the U.S.
- If foreign ownership of the voting shares of the proposed institution, in the aggregate, is expected to equal 25 percent or more, or if foreign ownership is less than 25 percent but the foreign owners will control the proposed institution, case managers are to ~~notify the International Affairs Branch (IAB) of DIR via email as soon as possible~~ consult with RMAS staff and WO Legal.
- ~~IAB will assist with reviewing the foreign ownership structure and other foreign ownership matters. As needed, IAB may facilitate contact with foreign supervisory authorities, coordinate with RMAS and Legal, and provide recommendations for non-standard conditions.~~
- ~~In other instances involving foreign ownership of less than 25 percent or where the foreign owner is not a control party, IAB is available to provide assistance upon request.~~
- In addition, the International Affairs Branch of DIR is available to assist in the application review, and may assist in facilitating requests for information and communication with foreign regulatory agencies.

### *Agreements and conditions*

- Upon receiving an FDI application involving foreign controlling ownership, the case manager should inform the organizers that it is FDIC policy to require controlling groups, persons, or entities to execute an agreement to consent to the jurisdiction of the U.S. courts and the FBAs, and an agreement to appoint an agent in the U.S. for service of process for domestic banking law matters.
- These requirements will be included in the non-standard conditions and must be agreed to in writing. The foreign controlling owner will also be required to ensure that the FDIC receives updated information as circumstances warrant.
- Model agreements, which will be provided by ~~IAB and~~ Legal, are to be signed before forwarding the case documents to the WO for final action. The RO, in consultation with Legal, should confirm that the agreements are properly executed. If an agreement is signed outside the U.S., the foreign person or official authorized to execute the agreement on behalf of the foreign entity (signor) must have appeared in person at a U.S. Embassy or Consulate, signed the agreement in the presence of the consular official, and obtained the consular official's authentication of execution. If the agreement is signed in the U.S., the signor must be properly notarized under state law.

### *Part 347 (FDI Applications for a U.S. Branch or Depository Institution Subsidiary of a Foreign Bank)*

- Section 347.204 of the FDIC Rules and Regulations contains specific requirements for FDI applications for a U.S. branch or depository institution subsidiary of a foreign bank that has been determined to be subject to CCS by the appropriate FBA, as defined in Section 3(q) of the FDI Act.
- The foreign bank is required to provide certain binding written commitments including, but not limited to, making available information about the foreign bank and its affiliates outside the U.S. and allowing for the examination of any U.S. office of the foreign bank. The FDIC will not process an FDI application without the written commitments.

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## Applications Involving Parallel-Owned Banking Organizations

- A PBO is created when at least one U.S. depository institution and one foreign bank are controlled either directly or indirectly by the same person or entity, or group of persons or entities, without any CCS of the organization. Often, a PBO is created when a foreign bank and a domestic bank are

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### Applications Involving Parallel-Owned Banking Organizations

- ~~A PBO is created when at least one U.S. depository institution and one foreign bank are controlled either directly or indirectly by the same person or entity, or group of persons or entities, without any CCS of the organization. Often, a PBO is created when a foreign bank and a domestic bank are~~ commonly controlled outside of a traditional holding company structure (*i.e.*, through direct ownership of natural persons). The inability or unwillingness of a single regulator to comprehensively supervise the domestic and foreign banks on a consolidated basis poses unique risks.
- While PBOs often involve foreign ownership, PBOs are not exclusive to foreign ownership.
- A PBO does not include structures in which one depository institution is a subsidiary of the other, or the organization is controlled by a company subject to the BHCA. If the controlling person or entity appears to control a foreign bank, the case manager should notify ~~IAB and RMAS. IAB, working in consultation with Legal, will determine~~ and WO Legal, who will assist in determining whether ~~or~~



**Appendix 3: Deposit Insurance Application Summary**

**Institution Name, City, State**

**Date of Summary**

**Application Type: Indicate FDINEW or FDIONI**

**Supervisory Region**

*Note to the Preparer:* The Application Summary is a living document that should be regularly updated during processing to reflect the most current information. Each of the headings below should be addressed using the format of a bulleted outline; the extent of the commentary may vary depending on the nature and complexity of the proposal. The written summary should be limited to three pages and should incorporate the proposal’s key elements, along with any significant risks, issues, or concerns, and any mitigating information. With respect to the Financial Data Table, “Other Significant Data” may include, depending on significance, fee income, non-core funding, other loan categories, or other significant components of the balance sheet, income statement, or cash flow statement.

**TRACKING DATA**

**Regional Office Information**

<b>Authority Delegated to (Regional Office or Washington Office)</b>	
<b>Application Receipt Date</b>	
<b>Acknowledgment Date</b>	
<b>Information Request Date (add lines as needed for any subsequent requests)</b>	
<b>Response to Information Request (if not yet received, show due date)</b>	
<b>Acceptance Date</b>	
<b>Investigation Start Date (if not yet started, indicate the projected date)</b>	
<b>Expected Next Communication Date</b>	
<b>Expected Method of Next Communication (e.g., letter, call, meeting)</b>	
<b>Previous Communication Dates (since receipt of the application)</b>	
<b>ROI Completion Date</b>	
<b>SOI Completion Date</b>	
<b>Compliance with Timeframes (Yes or No)</b>	
<b>Comments if 30 Days or More Since Receipt and Not Accepted:</b>	

**Comments if Not in Compliance with Timeframes:**

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**Washington Office (WO) Information**

<b>Received in WO (if WO action is required)</b>	
<b>WO Information Request Date</b>	
<b>Response to WO Info. Request (if not yet received, show due date)</b>	
<b>Expected Next Communication Date</b>	
<b>Expected Method of Next Communication (e.g., letter, call, meeting)</b>	
<b>WO Documents Complete Date</b>	
<b>Management Briefing Date (indicate if actual or projected)</b>	
<b>Board Date (indicate if actual or projected)</b>	
<b>Compliance with Timeframes (Yes or No)</b>	

**Comments Regarding WO Status (including an explanation if not in compliance with timeframes):**

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FINANCIAL DATA TABLE				
Projections	Day 1	Year 1	Year 2	Year 3
Total Assets (\$ Thousands)				
Total Loans (\$ Thousands)				
CRE (% of Total Loans)				
C&I (% of Total Loans)				
1-4 Fam. (% of Total Loans)				
Consumer (% of Total Loans)				
Total Deposits (\$ Thousands)				
Borrowings (\$ Thousands)				
Capital (\$ Thousands)				
Tier 1 Leverage Ratio (%)				
Net Income (\$ Thousands)				
ROAA (%)				
Other Significant Data				
Other Significant Data				
Commentary				
<p><b>General</b></p> <ul style="list-style-type: none"> <li>Indicate whether the application is substantially complete and the effective date of the determination; or if not, identify the information being sought and the expected timing of the response.</li> </ul> <p><b>Proposal Summary</b></p> <ul style="list-style-type: none"> <li>Provide a brief overview of the proposal.</li> <li>Specify the charter type and whether the proposal involves a “niche” or “special purpose” institution.</li> <li>Describe the ownership structure (<i>e.g.</i>, parent company, primary investors, <i>etc.</i>) and form (<i>e.g.</i>, C Corp, S Corp, or LLC).</li> <li>Note any significant affiliate or third-party relationships.</li> <li>Identify any companion applications or filings.</li> </ul> <p><b>Business Plan</b></p> <ul style="list-style-type: none"> <li>Provide a brief summary of the business plan.</li> <li>Discuss the target market(s) and office structure (number of branches, any LPOs, <i>etc.</i>).</li> <li>Describe the main lending focus, the primary funding sources, and any anticipated concentrations.</li> <li>Discuss any non-core funding (<i>e.g.</i>, borrowings, brokered deposits, listing service deposits, <i>etc.</i>).</li> <li>Discuss any significant non-interest income sources.</li> <li>Discuss any other key operational elements.</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>Include the name of and brief background information regarding the proposed CEO.</li> <li>As appropriate, briefly address other key members (chief financial officer, chief lending officer, and chief operating officer) of the management team.</li> <li>Briefly describe the board composition and, as appropriate, the identities and backgrounds of the prominent directors.</li> <li>If negative background information was identified on any proposed management/board candidates (either personally or professionally), discuss accordingly.</li> <li>If any management or board positions remain unfilled, discuss the status of the recruitment efforts.</li> <li>Indicate the anticipated ownership of the board/management, collectively, and individually for any person expected to own 5 percent or more of the proposed institution’s shares.</li> </ul>				

### **Capital**

- Indicate the dollar amount of capital that will be raised.
- Describe the form (stock classes), solicitation type (*e.g.*, private placement or public offering), and status of the capital raise.
- Note any unique features of the capital structure.
- Discuss whether projected capital is commensurate with the proposed institution's risk profile.

### **Other Matters**

- Describe any other significant aspects of the proposal not addressed above.
- Summarize any matters requiring ~~enhanced~~expanded review or consultation with specialists.
- Summarize any potential concerns with regard to favorably resolving the statutory factors.
- Comment on the attitude/views of the other regulatory agencies.

### **Application Review and Field Investigation**

- Briefly describe ~~the review and investigation~~any unique elements of the application review strategy.
- Summarize the key focus areas and status of the field investigation.
- Briefly describe issues previously identified and resolved, and the mitigating considerations.

### **Findings and Recommendation**

- Briefly assess and support findings regarding the statutory factors:
  - financial history and condition
  - capital adequacy
  - future earnings prospects
  - character and fitness of management
  - convenience and needs of the community to be served
  - consistency of corporate powers
  - risk to the DIF
- Describe any non-standard conditions being contemplated; indicate if the FDIC has received the applicant's written consent to the non-standard conditions.
- Discuss the anticipated next steps, including the supervisory strategy if approval is recommended.

### **Appendix 4: Additional Considerations Regarding Stock Benefit Plans**

- In general, stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful operation of the institution.
- Stock benefit 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.
- While each proposed stock benefit plan will be evaluated on a case-by-case basis, the following summarizes a framework for stock benefits that the FDIC considers to be consistent with Appendix A to Part 364.

#### **Framework for Recipients Based on Role in an Institution’s Organization or Operation**

<u>Role</u>	<u>Benefits</u>
<u>Incorporator – no other role</u>	<ul style="list-style-type: none"> <li>• <u>Incorporators not continuing as directors or officers should not receive stock benefits based only on “incorporator” status.</u></li> </ul>
<u>Incorporator – that is also a proposed director or senior executive officer</u>	<ul style="list-style-type: none"> <li>• <u>Maximum of one option or warrant for each share subscribed in the initial offering; subject to vesting requirements.</u></li> <li>• <u>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.</u></li> <li>• <u>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.</u></li> </ul>
<u>Provider of organizational funds (seed money)</u>	<ul style="list-style-type: none"> <li>• <u>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.</u></li> </ul>
<u>Provider of professional or other services</u>	<ul style="list-style-type: none"> <li>• <u>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.</u></li> </ul>
<u>Asset (non-cash) contributor</u>	<ul style="list-style-type: none"> <li>• <u>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).</u></li> <li>• <u>Maximum of one option or warrant for each share received in exchange for the assets contributed.</u></li> <li>• <u>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.</u></li> </ul>
<u>Loan guarantor</u>	<ul style="list-style-type: none"> <li>• <u>Stock benefits granted to each individual guaranteeing a loan should be offered pro rata based on the amount drawn.</u></li> <li>• <u>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.</u></li> </ul>
<u>Investor in initial capital raise</u>	<ul style="list-style-type: none"> <li>• <u>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.</u></li> </ul>
<b>Post-Opening Stock Benefit Plans</b>	
<u>Director, officer, or employee</u>	<ul style="list-style-type: none"> <li>• <u>Stock benefits that are part of a comprehensive plan to reward future performance will be reviewed as part of each individual’s total compensation.</u></li> </ul>

**Appendix 45: SOI Quality Control Questionnaire for FDI Applications**

Critical Questions	Y, N, or NA
1. Does the Proposed Transaction section of the SOI:	
<ul style="list-style-type: none"> <li>• Describe the FDI proposal in sufficient detail?</li> </ul>	
<ul style="list-style-type: none"> <li>• Describe the anticipated business model, including the primary products and services, funding sources, and operational focus?</li> </ul>	
<ul style="list-style-type: none"> <li>• Note any concerns about whether the proposal represents significant policy or legal issues, or is a matter of first impression?</li> </ul>	
<ul style="list-style-type: none"> <li>• Summarize any related applications (e.g., companion filings to the FDIC and/or other agencies)?</li> </ul>	
<ul style="list-style-type: none"> <li>• Provide details regarding other material contextual information (e.g., pertinent ownership, affiliate, or insider issues)?</li> </ul>	
2. Does the Statutory Factors section of the SOI:	
<ul style="list-style-type: none"> <li>• Address each statutory factor under a separate heading?</li> </ul>	
<ul style="list-style-type: none"> <li>• Include a level of information and analysis for each statutory factor that is commensurate with the complexity and inherent risks of the proposal?</li> </ul>	
<ul style="list-style-type: none"> <li>• Discuss any unfavorable information or other material issues regarding compliance, CRA, IT, BSA/AML, <del>or</del> other specialty areas. <del>Does, or</del> the parent organization <del>present financial issues or concerns</del> <a href="#">(including any affiliates)</a>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Provide specific mitigating information (if any exists) for any negative information identified with regard to any statutory factor?</li> </ul>	
<ul style="list-style-type: none"> <li>• Clearly indicate whether each statutory factor was favorably resolved, favorably resolved subject to conditions, or unfavorably resolved?</li> </ul>	
3. Does the Other Significant Matters section of the SOI:	
<ul style="list-style-type: none"> <li>• Discuss any noteworthy regulatory, policy, or legal issues that are not addressed elsewhere in the SOI?</li> </ul>	
<ul style="list-style-type: none"> <li>• Discuss any regulatory or policy issues that must be addressed per outstanding policy?</li> </ul>	
<ul style="list-style-type: none"> <li>• If not addressed elsewhere and applicable, discuss the institution's anticipated compliance and CRA programs, and DCP's opinion of filing (including the source and date of the opinion)?</li> </ul>	
<ul style="list-style-type: none"> <li>• If not addressed elsewhere and applicable, discuss the institution's plans with regard to IT, including cybersecurity?</li> </ul>	
<ul style="list-style-type: none"> <li>• Describe any consultations with the WO, Legal, or any specialty areas?</li> </ul>	
<ul style="list-style-type: none"> <li>• List any recommended non-standard conditions, describe the rationale for the conditions, and identify the individual that agreed to the conditions and the date of agreement?</li> </ul>	
<ul style="list-style-type: none"> <li>• If any actions by other regulatory agencies are subject to conditions, summarize the conditions?</li> </ul>	
<ul style="list-style-type: none"> <li>• Discuss the attitude of the other regulators, and include dates of any correspondence documenting other regulatory actions on the filing and any related filings?</li> </ul>	
<ul style="list-style-type: none"> <li>• Include a statement as to who has delegated authority to act on the filing? If the regional director does not have delegated authority, include a statement as to why he/she does not have delegated authority?</li> </ul>	
4. Does the Conclusion and Recommendation section of the SOI:	

<ul style="list-style-type: none"> <li>• Include a brief statement regarding the RO's recommended course of action with regard to the filing?</li> </ul>	
<ul style="list-style-type: none"> <li>• Provide an executive summary supporting the recommendation?</li> </ul>	
<ul style="list-style-type: none"> <li>• Describe any information (if applicable) that mitigates any identified areas of concern?</li> </ul>	
<p>5. Is there a signature block, immediately below the Conclusion and Recommendation section, for the approving individual? The signature block should include the individual's name and title, and the date of the action.</p>	



## Appendix 6: Frequently Imposed Conditions

- 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 ALLL 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 bank holding company or thrift 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 operation, the institution shall seek the prior approval of 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 an LPO 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.

*List of Acronyms and Abbreviations*

<b>ALLL</b>	Allowance for Loan and Lease Losses
<b>AML</b>	Anti-Money Laundering
<b>BHCA</b>	Bank Holding Company Act
<b>BIDS</b>	Background Investigation Database System
<b>BSA</b>	Bank Secrecy Act
<b>C Corp</b>	C Corporation
<b>CALMAs</b>	Capital and Liquidity Maintenance Agreements
<b>CCS</b>	Comprehensive Consolidated Supervision
<b>CDFI</b>	Community Development Financial Institution
<b>CEBA</b>	Competitive Equality Banking Act
<b>CEO</b>	Chief Executive Officer
<b>CRA</b>	Community Reinvestment Act
<b>CRE</b>	Commercial Real Estate
<b>DCP</b>	Division of Depositor and Consumer Protection
<b>DIF</b>	Deposit Insurance Fund
<b>DIR</b>	Division of Insurance and Research
<b>ESS</b>	Executive Secretary Section
<b>FBA</b>	Federal Banking Agency
<b>FBI</b>	<a href="#">Federal Bureau of Investigation</a>
<b>FDI</b>	Federal Deposit Insurance
<b>FDI Act</b>	Federal Deposit Insurance Act
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FFIEC</b>	Federal Financial Institutions Examination Council
<b>FIL</b>	Financial Institution Letter
<b>FIRREA</b>	Financial Institution Reform, Recovery, and Enforcement Act of 1989
<b>FO</b>	Field Office
<b>FRB</b>	Federal Reserve Board
<b>FRS</b>	Federal Reserve System
<b>FSA</b>	Federal Savings Association
<b>FSOC</b>	Financial Stability Oversight Council
<b>HOLA</b>	Home Owners' Loan Act
<b>IAB</b>	International Affairs Branch
<b>IAP</b>	Institution-Affiliated Party
<b>IBFR</b>	Interagency Biographical and Financial Report
<b>ICE</b>	<a href="#">Immigration and Customs Enforcement</a>
<b>ILC</b>	Industrial Loan Company
<b>IT</b>	Information Technology
<b>LLC</b>	Limited Liability Company
<b>LPO</b>	Loan Production Office
<b>MDI</b>	Minority Depository Institution
<b>NCUA</b>	National Credit Union Administration
<b>NEPA</b>	National Environmental Policy Act
<b>NHPA</b>	National Historical Preservation Act
<b>OCC</b>	Office of the Comptroller of the Currency
<b>PBO</b>	Parallel-Owned Banking Organization
<b>PFR</b>	Primary Federal Regulator

<b>RADD</b>	Regional Automated Documentation Distribution and Imaging Systems
<b>RMAS</b>	Risk Management and Applications Section
<b>RMEB</b>	Risk Management Examination Branch
<b>RMS</b>	Division of Risk Management Supervision
<b>RO</b>	Regional Office
<b>ROI</b>	Report of Investigation
<b>S Corp</b>	S Corporation
<b>SDD</b>	Senior Deputy Director
<b>SHPO</b>	State Historic Preservation Officer
<b>SOI</b>	Summary of Investigation
<b>SOP-ADI</b>	FDIC Statement of Policy on Applications for Deposit Insurance
<b>SOP-QFBA</b>	FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions
<b>THPO</b>	Tribal Historic Preservation Officer
<b>UFIRS</b>	Uniform Financial Institutions Rating System
<b><u>U.S. GAAP</u></b>	<u><a href="#">U.S. Generally Accepted Accounting Principles</a></u>
<b>ViSION AT</b>	Virtual Supervisory Information On the Net (Applications Tracking Module)
<b>WO</b>	Washington Office