ABA Business Law Section

Spring Meeting

March 29, 2019

Let’s Make a Bank!: Developments in De Novo Bank, Industrial Loan Company, and Fintech Charters

Mergers, Acquisitions, and Strategic Initiatives Subcommittee of the Banking Law Committee

De novo bank and other depository institution formation reached historically low levels in the period following the 2007-09 financial crisis. In 2007, the Federal Deposit Insurance Corporation (“FDIC”) approved 191 applications for deposit insurance. By 2009, that number had fallen to eleven approvals and declined even further in the following years (2010 - ten approvals; 2011 - three approvals; 2012 - zero approvals; 2013 - two approvals; 2014 - zero approvals; 2015 - three approvals; 2016 - two approvals).

However, in recent years, the formation of de novo depository institutions has begun to rebound with eight FDIC approvals of deposit insurance applications in 2017 and 15 such approvals in 2018. In addition to the raw numbers of approvals for deposit insurance, several recent regulatory developments have brightened the outlook for new financial institutions. On January 23, 2018, FDIC Chairperson Jelena McWilliams indicated in her Senate confirmation testimony that she intended to begin processing industrial loan company (“ILC”) applications for deposit insurance in good faith once she was sworn in; on July 31, 2018, the Office of the Comptroller of the Currency (“OCC”) began accepting applications from nondepository financial technology companies for limited purpose national bank charters; and on December 6, 2018, the FDIC published new guidance on organizing de novo institutions and applying for deposit insurance. Each of these developments standing alone would be positive developments for the financial institution startup market, but together they indicate that the regulatory environment is quickly becoming more favorable to financial institution startups.

As noted above, the market for de novo banks and other insured depository institutions collapsed after the 2007-09 financial crisis. In response to the increase in deposit insurance applications in recent years, the FDIC has revised its handbook for de novo organizers as well as its deposit insurance applications manual. While the revisions to both documents do not establish any new policies or guidance, they do provide organizers and the public greater transparency and clarity related to the FDIC’s review and approval of applications for deposit insurance. Additionally, the same day it revised its handbook and manual related to deposit insurance applications, the FDIC also issued a Financial Institutions Letter announcing that it had established a process for organizers to officially request FDIC staff review of a draft deposit insurance application. Taken together, these developments demonstrate the FDIC’s renewed commitment to making deposit insurance applications more accessible and efficient.

In addition to traditional de novo deposit insurance application processing, the FDIC has also shown an openness to processing deposit insurance applications for ILCs. ILCs are state-chartered depository institutions which are regulated by the FDIC and their home state regulator.
Because ILCs are generally not “banks” for purposes of the Bank Holding Company Act, a company controlling a ILC would not be a bank holding company subject to extensive regulation and supervision under the Bank Holding Company Act. In 2006, the FDIC declared a self-imposed moratorium of the approval of applications for FDIC deposit insurance made by ILCs. The Dodd-Frank Act imposed an additional moratorium which expired in 2013. Since the end of the moratorium, no ILCs have been approved for deposit insurance, and several ILCs which had applied for deposit insurance have withdrawn their applications (although at least one has resubmitted an application). However, as noted above, FDIC Chairperson McWilliams has indicated that the FDIC will process ILC applications in good faith, providing another avenue for persons considering chartering a depository institution.

Finally, the OCC has been working for several years on a “fintech charter.” This charter would be a limited purpose national bank which (i) does not accept deposits; and (ii) engages in the business of financial technology and banking. In December 2016, the OCC announced that it was considering issuing a fintech charter and asked for public comment on several issues related to the charter. In May of 2017, the New York Department of Financial Services and the Conference of State Bank Supervisors (“CSBS”) filed lawsuits against the OCC, seeking to enjoin implementation of the fintech proposal. Both suits were dismissed. In July 2018, the OCC announced that it would begin accepting and processing fintech charter applications. Shortly thereafter, CSBS filed suit again to block the implementation of the fintech charter. To date, no charters have been issued under this authority, and the future of the fintech charter is still unclear pending the CSBS litigation.
FDIC Issues an Update to its Publication Entitled Applying for Deposit Insurance – A Handbook for Organizers of De Novo Institutions, Finalizes its Deposit Insurance Applications Procedures Manual, and Establishes a Designated Applications Mailbox

Summary: The FDIC issued an update to its publication entitled Applying for Deposit Insurance – A Handbook for Organizers of De Novo Institutions, and is issuing its Deposit Insurance Applications Procedures Manual in final form. The handbook, which was developed to facilitate the process of establishing new banks, was originally issued on December 22, 2016. The manual was issued for public comment on July 10, 2017, and provides comprehensive instruction to staff regarding the deposit insurance application process. The mailbox provides an additional channel for interested parties to ask questions of designated applications specialists.

Statement of Applicability to Institutions With Total Assets Under $1 Billion: This Financial Institution Letter applies to all existing and proposed insured depository institutions.

Distribution:
FDIC-Insured Depository Institutions

Suggested Routing:
Chief Executive Officer
Chief Financial Officer

Related Topics:
12 CFR Part 303 (Subparts A and B)
FDIC Statement of Policy on Applications for Deposit Insurance - Effective October 1, 1998
Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance Questions and Answers (Q&As) Posted November 2014 and April 2016

Attachments:
Applying for Deposit Insurance – A Handbook for Organizers of De Novo Institutions
Procedures Manual on Deposit Insurance Applications

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Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's website at www.fdic.gov/news/news/financial/2018/
To receive FILs electronically, please visit www.fdic.gov/about/subscriptions/fil.html

Paper copies of FDIC financial institution letters may be obtained through the FDIC’s Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

- The handbook addresses the informational needs of organizers of de novo institutions. It offers information for navigating the phases of establishing an insured institution: pre-filing activities, the application process, and pre-opening activities.

- The manual provides comprehensive instruction to staff regarding the deposit insurance application process. It addresses pre-filing activities, application review and acceptance, application processing, pre-opening activities, and post-opening considerations, among other important items.

- The handbook and manual do not establish new policy or guidance, or modify existing policy or guidance. The publications, however, provide organizers and the public with transparency and clarity about the FDIC’s process for reviewing and approving applications for deposit insurance.

- The update to the handbook and finalization of the manual reflect technical edits from their prior publicly released versions, and clarifications on pertinent topics.

- The FDIC also established a designated Applications Mailbox (ApplicationsMailbox@fdic.gov) as an additional means by which bankers, applicants, and other interested parties may pose questions regarding a specific application or the application process.

- Interested parties should continue to submit comments regarding pending applications subject to the Community Reinvestment Act or other public comment through the FDIC’s website (www5.fdic.gov/cra/).

- Additional resources are available on the FDIC website dedicated to applications for deposit insurance.
The information contained in this Handbook is intended to assist organizers in forming a new insured depository institution. Users of the Handbook should review all applicable statutes, rules, regulations, and policies for formal application requirements.
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INTRODUCTION

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

• **Section I: Pre-Filing Activities** highlights important considerations for the early stages of institution formation such as identifying organizers, directors, and key officers; developing the institution’s business plan; determining the appropriate amount of capital to be raised; and engaging in pre-filing meetings.

• **Section II: The Application Process** discusses the statutory framework for applications for deposit insurance; provides tips for a successful filing; and describes the FDIC’s application evaluation process, including field investigations.

• **Section III: Pre-Opening Activities** discusses other key aspects related to the successful opening and operation of an institution.

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

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

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

Preparing the Application

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

Applicants must answer all questions in the Application Form and provide appropriate supporting information. If information is not available at the time of filing, the FDIC will determine whether the information is necessary to begin the evaluation of the application. If additional information is needed, the FDIC will provide the applicant a written request identifying the items needed. If no additional information is needed, the FDIC will notify the applicant that the application is substantially complete and begin its evaluation.

Evaluating the Application

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

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

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


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

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

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

Generally, if the statutory factors are favorably resolved, the application will be approved. If the statutory factors cannot be favorably resolved, the applicant will be given an opportunity to withdraw the application, or the application will be recommended for denial.

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

Applications involving an institution (including a non-bank bank\footnote{The term non-bank bank refers to an insured depository institution that is a “bank” for purposes of the FDI Act, but is not a “bank” for purposes of the Bank Holding Company Act (BHCA). Such institutions include certain industrial loan companies and credit card banks organized under the Competitive Equality Banking Act. Existing insured non-bank banks include institutions controlled by parent organizations engaged in a variety of commercial activities, including manufacturing and retail activities.}) that would be owned by a commercial or financial company, or that would be significantly involved in transactions or relationships with the parent company or any affiliates, present unique characteristics that may warrant the imposition of prudential conditions beyond those routinely imposed in approving community bank proposals. Appendix 3 presents examples of those conditions.

\section*{SECTION I: PRE-FILING ACTIVITIES}

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

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

**Organizers**

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

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

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

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

**Assembling the Board of Directors and Management Team**

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

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

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

The FDIC expects institutions to have a minimum of five directors. When selecting board members, organizers should consider the board’s composition to ensure it encompasses diverse business and financial backgrounds, including appropriate banking experience and community involvement in the identified geographic market area. The FDIC’s expectations for bank directors embody basic, common sense principles. See additional discussion in the Pocket Guide for Directors (Pocket Guide) issued in 1988; the Statement Concerning the Responsibilities of Bank Directors and Officers (D&O Statement), issued in 1992; the special edition of the FDIC’s Supervisory Insights, A Community Bank Director’s Guide to Corporate Governance: 21st Century Reflections on the FDIC Pocket Guide for Directors, issued in 2016; and the SOP.

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

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

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

Organizers should also consider the framework provided by the FDIC and other federal banking regulators for institutions to create and strengthen their diversity policies and practices, including an organizational commitment to diversity, workforce and employment practices, procurement and business practices, and practices to promote transparency of organizational diversity and inclusion.7

Other Considerations Regarding Director Selection

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

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

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

### MORE TO KNOW: Statistics on Director Litigation Involving Failed Banks

In addition to supervisory and other authorities, the FDIC may bring actions against directors of failed financial institutions. However, the FDIC does not bring actions against directors lightly or in haste. Potential claims are evaluated based on the legal standards established by applicable law, including the business judgment rule where applicable, and are pursued only if the claims are deemed meritorious. Before any lawsuit against a director or officer can be filed, the FDIC completes a multi-layer review and approval process that includes approval, with limited exceptions, by the FDIC Board of Directors.

Not all bank failures result in director and officer lawsuits. From a historical perspective, the FDIC pursued claims against directors and officers in 24 percent of the bank failures occurring between 1985 and 1992. More recently with respect to bank failures occurring during the period of 2007 through year-end 2017, the FDIC pursued claims against directors and officers in 38 percent of the failures. The FDIC Board authorized suit against directors and officers of 152 failed institutions, or approximately 29 percent of the failures during the period. During this period, recoveries from director and officer claims represented approximately 34 percent of total recoveries from the professional liability program. Additional recoveries resulted from residential mortgage-backed securities claims, residential mortgage malpractice and mortgage fraud claims, and claims against other professionals, including appraisers, accountants, and attorneys. Current information regarding professional liability lawsuits may be found at [www.fdic.gov/bank/individual/failed/pls/](http://www.fdic.gov/bank/individual/failed/pls/).

### Assembling the Management Team

Organizers must identify the proposed full-time chief executive officer (CEO) and may identify other key executive officers prior to filing a deposit insurance application. Key executive officers typically include the chief financial officer, chief lending officer, and chief operating officer, but may include others as well, depending on the proposed business plan and the institution’s size, complexity, and risk profile. 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, organizers should identify acceptable candidates as soon as practicable and closely manage their recruitment. The FDIC recognizes that certain management candidates may be employed by other companies or institutions prior to formally joining the proposed
institution. The FDIC will, to the extent required or permitted by law, maintain the confidentiality of the affected candidates until employment arrangements are finalized.

**Evaluating Management, including the Board of Directors**

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

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

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

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

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

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

9 Section 303.101 of the FDIC Rules and Regulations defines “senior executive officer” as a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. Other individuals may also be deemed a senior executive officer depending on their influence over the institution, participation in developing policies or strategies, or other facts and circumstances.
Prior to submitting candidates for consideration, the organizing group should perform its own due diligence on each proposed individual to ensure that they are suitable for their respective roles. Background and experience issues that have made approval of applications for deposit insurance problematic include the following:

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

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

MORE TO KNOW: Additional Considerations in Board/Management Selections

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

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

Management Succession Planning and Talent Development
- Management succession planning and talent development are important for a new institution to ensure continuity in key senior management positions.
Setting Business Goals and Objectives

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

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

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

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

Charter, Ownership Structure, and Tax Election

In order for an institution to obtain deposit insurance from the FDIC, it must have a charter to conduct its proposed business activities. Institutions may obtain either a bank or savings association10 charter from the appropriate state banking authority or the OCC.

In addition to traditional bank and savings association charters, the OCC and some states offer limited or special purpose charters. These charter types may include, for example, insured and uninsured limited purpose trust company charters, and charters for institutions whose operations are limited to credit card operations. The OCC and some states also offer charters that envision business models that are narrower in scope than traditional institutions. For example, charters may be granted to institutions that are primarily focused on community development or cash management activities, or that may operate as bankers’ banks. Charting agencies have also granted “shelf” charters,11 whose operations commence with the acquisition of one or more failed banks, and certain states also offer insured industrial loan company charters.

Organizers should carefully review the federal and state laws applicable to each charter type, as charter selection will generally relate to the proposed business model. Such reviews should also consider any implications under the BHCA or, as applicable, the Home Owners’ Loan Act.12 Organizers should engage in early discussions with the FDIC and the chartering agency

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10 The term “savings association” is defined in Section 3(b)(1) of the FDI Act. Savings associations, which may include federal or state savings associations, are also commonly referred to as thrift institutions.

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

12 Certain limited or special purpose banks and industrial loan companies may not be considered “banks” for purposes of the BHCA.
regarding charter selection, particularly if the organizers contemplate a distinctive charter type. Importantly, regardless of charter type, each applicant must meet the same statutory requirements to be granted deposit insurance.

All institutions have a primary federal regulator (PFR), which serves as the federal agency responsible for supervising the institution. The FDIC is the PFR if the institution is a state-chartered institution that is not a member of the Federal Reserve System (FRS); the Federal Reserve Board (FRB) is the PFR if the institution is a state-chartered, FRS-member institution; and the OCC is the PFR for all institutions with a national bank or federal savings association charter.13

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

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

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13 In addition, the Bureau of Consumer Financial Protection supervises and examines consumer financial service providers under its jurisdiction for compliance with federal consumer financial laws.
Exhibit 1: Federal Banking Agency and State Banking Authority Roles

<table>
<thead>
<tr>
<th>Agency</th>
<th>Primary Roles</th>
</tr>
</thead>
</table>
| FDIC           | • Insures the deposits of all depository institutions approved for federal deposit insurance.                                                                                              • Together with the respective chartering state authority, supervises state-chartered institutions (state-chartered banks and savings associations) that are not members of the FRS.  
• Maintains backup supervisory responsibility for institutions for which the FRB and the OCC are the PFRs.  
• Acts as receiver for all failed insured banks and savings associations, and may be appointed to resolve non-bank financial companies if their failure would have serious adverse effects on U.S. financial stability and other statutory requirements are met.  
• Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the Financial Stability Oversight Council (FSOC) for FRB supervision that describe the company’s strategy for its rapid and orderly resolution under the bankruptcy code in the event of the company’s material financial distress or failure. |
| FRB            | • Serves as PFR for state-chartered banks that are members of the FRS, as well as bank and financial holding companies (and certain subsidiaries), and savings and loan holding companies.                                                                                       • Supervises other firms designated as systemically significant by the FSOC and other entities pursuant to the Dodd-Frank Act.  
• Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the FSOC for FRB supervision.                                                                                       |
| OCC            | • Charters and serves as PFR for national banks and federal savings associations.                                                                                                                                                                                                                                                            |
| State Banking Authorities\(^\text{14}\) | • Charters state banks and savings associations, regardless of whether the institution is a member of the FRS.                                                                                                           • Together with the respective PFR, supervises state-chartered institutions and certain holding companies.                                                                                                      |

Depending on the institution’s planned charter type and organizational structure, organizers likely will interact with multiple government agencies (federal as well as state, if a state charter is pursued) in pre-filing matters and the application process. If the relevant filings are approved and the institution commences operations, interactions between the institution and applicable

\(^{14}\) 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.
regulatory agencies will continue after opening through established supervisory processes (e.g., visitations, examinations, and other on-site or off-site reviews).

Although each federal agency and state authority makes independent decisions regarding applications, they also collaborate on pre-filing activities, application reviews, examinations, and supervisory activities for institutions, as appropriate.15

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

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

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

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

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

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

15 In addition to the other federal agencies and state authorities, the FDIC will also consult with the appropriate functional regulators regarding the affiliation of an institution with a company subject to functional regulation (e.g., insurance companies, securities companies, broker-dealers, etc.) pursuant to the Gramm-Leach-Bliley Act.
Defining the Institution’s Market and Identifying Office Locations

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

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

The main office location should be determined before an application is filed. However, applicants are cautioned against purchasing any fixed assets or entering into any non-cancelable construction contracts, leases, or other binding arrangements related to the proposal unless and until the FDIC approves the application. If the main office location will involve an insider transaction, the organizing group should refer to the SOP discussion of the financial history and condition factor for specific considerations.

The institution’s main office and branch locations should make prudent business sense and enable the institution to reach its target customer base. In selecting office locations, organizers should consider applicable laws, tax consequences, future growth plans, real estate lease and purchase options, and budget implications. The basis for the selected target market and planned office locations should be explained in detail in the institution’s business plan.

Developing the Business Plan

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

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

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

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

Business Plan Content

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

Description of the Business

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

Marketing Plan

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

Management Plan

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

If 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 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

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

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

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

Cyber threats and other operational issues can disrupt, degrade, or compromise an institution’s operations thereby affecting capital and liquidity, or harm the institution’s customers. Organizers should develop strategies to protect the institution from ongoing and emerging threats. These strategies should address operational resilience, including back-up and disaster recovery, incident response, cyber threat intelligence, governance, skills, testing of plans, and independent review of controls. Non-standard conditions regarding technology strategies may be imposed on a case-by-case basis. The regulatory agencies have provided guidance on third party relationships and outsourcing, information security and business continuity planning, and cybersecurity.16

Financial Management Plan

This section discusses the institution’s capital goals; earnings goals; plans for raising capital; dividend policy; funding plans, including how the institution will identify and measure liquidity risk; and types of investment securities to be held. This section also discusses the institution’s objectives, strategies, and risk tolerance for interest-rate risk, including how the institution will identify and measure interest-rate risk. Further, this section addresses the loan review program, including how the institution will identify and measure credit risk, and its methodology for determining the allowance for loan and lease losses.17


17 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
Narrow focus proposals, including monoline operations or other proposals considering a limited set of banking activities, should address in this section how the institution will mitigate concentration risk, how the institution intends to maintain adequate liquidity, and how credit-sensitive funding risks will be managed. This section should also demonstrate that sufficient capital is available to address uncertainties, as well as a clear ability to raise capital if needed.

**Monitoring and Revising the Plan**

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

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

**Financial Projections**

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

**Additional Considerations Regarding Business Plans**

Bank CEOs who have successfully opened a *de novo* institution have, in a variety of settings, provided advice regarding several important aspects of the organization of an institution. For example, the FDIC included a panel discussion with bank CEOs who have successfully opened a *de novo* institution at each of its *de novo* outreach meetings held during 2016 and 2017. The CEOs discussed best practices and shared advice from their experiences with other meeting participants. CEOs who are members of the FDIC’s Advisory Committee on Community Banking have similarly shared advice from their experiences opening their banks.

The CEOs have noted that institutions should develop a business plan that is sustainable through each stage of the business cycle, and then operate under the established plan. The CEOs further

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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.
indicated that organizers should regularly discuss the business plan to ensure everyone has confidence in the plan and should ensure that potential investors understand the plan and are investing for long-term growth.

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

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

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

Organizers should 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, prospective material changes from the submitted plan, and other related matters.

Planning for Organizational Expenses

De novo institutions incur certain organizational expenses before they open for business. For example, all organizing groups expend time and resources to prepare an application and supporting documentation including a business plan, feasibility studies, and pro forma financial projections. There also are costs associated with facilitating a capital raise, retaining members of the management team, and completing other organizational activities. Planning for such organizational expenses at the outset of the pre-filing process can help minimize unforeseen expenditures and funding needs.
Many organizers rely on third parties (e.g., attorneys, consultants, or other professionals) to assist in the organizational process. Although these parties may be experienced and helpful in navigating regulatory requirements, the FDIC does not require organizers to engage third-party firms to facilitate the application process. The use of third parties should be carefully considered based on the nature of the proposal and the level of expert guidance needed by the organizers. In many cases, sufficient expertise may exist within the organizing group to handle key aspects of the institution’s organization.

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

**Determining the Initial Amount of Capital**

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

Because each proposed *de novo* institution is unique in terms of its business plan, management team, market competition, and local economy, the FDIC does not prescribe a minimum dollar level of capital for any given proposal. Instead, the FDIC considers the unique factors of each application and sets a minimum capital requirement based on an evaluation of the proposed institution’s market dynamics, anticipated size, complexity, activities, concentrations, and business model. The FDIC will require higher capital if the proposal presents more than routine risk or novel characteristics. For example, proposals involving monoline operations or high levels of non-core funding may need higher capital to mitigate the risks of engaging in a single line of business or operating with potentially volatile funding.

The FDIC expects the initial capital of each *de novo* institution to be sufficient to provide a tier 1 capital to assets leverage ratio\(^{18}\) of not less than 8 percent throughout the first three years of operation.\(^{19}\) In addition, the institution must maintain an adequate allowance for loan and lease losses. The business plan should not assume, for the first three years of operation, any new or additional capital raises beyond the initial capital contributions made during the institution’s organization phase. During the first three years of operation, any cash dividends should be paid only from net operating income, and should not be paid until an appropriate allowance for loan and lease losses has been established and overall capital is adequate. Organizers should not assume that the institution will make any dividend payments during this time frame.

See the **SOP** for additional details regarding capital.

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\(^{18}\) As defined in the appropriate capital regulation of the institution’s PFR.

\(^{19}\) 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.
Pre-Filing Meetings

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

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

As a general rule, pre-filing meetings are attended by the FDIC, the chartering authority, and, as appropriate, the FRB as PFR or holding company supervisor. FDIC representatives generally include staff from the regional office and field office for the location in which the institution would be headquartered. Staff from the FDIC’s Washington Office may also attend. During the meeting, the participating agencies will discuss regulatory expectations and provide an overview of the application process, including general timelines for processing. Staff may also address special information needs and other matters specific to the application so that the applicant can include appropriate information in the submission.

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

Draft Proposals

The FDIC has established a voluntary process for the receipt and review of draft deposit insurance proposals. While the process may be particularly helpful for business models that present unusual or complex aspects, or for groups seeking technical assistance, any organizing group may choose to submit a draft proposal to obtain feedback beyond that typically available through the existing pre-filing process. For additional information, refer to the FDIC’s public website dedicated to applications for deposit insurance, which includes the document that implements the FDIC’s draft proposal review process.

SECTION II: THE APPLICATION PROCESS

After completing the initial organizational steps and gaining insights from the pre-filing meeting, organizers should be in a position to prepare and submit applications to the appropriate regulatory agencies. Section 5 of the FDI Act requires any proposed depository institution seeking federal deposit insurance to file an application with the FDIC.
The Application Form may be used to apply for deposit insurance from the FDIC, as well as a charter from either the OCC or the applicable state authority.\(^{20}\)

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

**Overview of the Review and Evaluation Process**

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

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

- Within three business days of receipt of an application for deposit insurance, the FDIC will provide a written response to the applicant acknowledging receipt and requesting publication of the filing in a local newspaper, if publication has not already occurred. FDIC staff will then coordinate internally and with other relevant agencies to conduct an initial review of the application and facilitate a common understanding of the proposal. The focus of the initial review is on the completeness, accuracy, and consistency of the filing.

- Within 30 days of receipt of the application, the FDIC will provide a letter to the applicant noting either that the application is substantially complete and accepted for filing, or that additional information is needed. If additional information is needed, the letter will include specific questions and requests, and will include a date by which the information should be submitted. Applicants are normally provided up to 30 days to respond to such requests.

- If the application is substantially complete, a field investigation will be coordinated among the relevant agencies, including the chartering authority and, as applicable, the local Federal Reserve Bank. In completing the field investigation, the FDIC will communicate any identified issues or concerns to the applicant or advise the applicant that no issues or concerns exist. This communication may occur by letter or through a presentation to the proponents. The field investigation process should be completed within 60 days of the date the application was accepted for filing.

\(^{20}\) Use of the Application Form is optional; however, the material submitted to the FDIC must contain all information required in the form, unless the FDIC otherwise indicates. Organizers should sign the applicable certification page(s) even if the form itself is not being used.
• Following the field investigation process, the FDIC will complete the review process, notify the applicant in writing of any proposed non-standard conditions, seek the applicant’s written concurrence to the non-standard conditions, and finalize the recommendation for action. This process should be completed within 30 days of the FDIC’s prior communication.

Should an applicant have concerns regarding the FDIC’s review of its application, including concerns with respect to processing timeframes or other pre-decisional matters, the applicant may request a review by the Division Director similar to the informal review process discussed in FIL-51-2016, Reminder on FDIC Examination Findings, dated July 29, 2016. 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.

Application Requirements

Part 303 of the FDIC Rules and Regulations describes the FDIC’s application requirements in detail.21 The Application Form, which should be filed with the appropriate FDIC regional office,22 includes information that the chartering authority and the FDIC will need to evaluate the proposal. It provides general instructions, specific information fields and forms (e.g., organizer certification forms and director oath forms), and supplemental guidelines for business plans including template financial schedules. Pursuant to Sections 303.7 and 303.23 of the FDIC Rules and Regulations, applicants must also publish a notice of the institution’s proposed formation in a newspaper of general circulation in the community in which the main office of the institution will be located.

Application Content

The core portion of the Application Form includes the following eight sections and general information requirements:

Overview – Business description, any legal or permissibility issues, copies of related applications,23 offering materials, and corporate documents.

Management – List of the organizers, proposed directors, senior executive officers, and 10-percent-or-more shareholders, and an IBFR and fingerprint card for each of those individuals;

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21 The procedures governing the processing of a deposit insurance application are contained in Part 303, Subpart B of the FDIC Rules and Regulations (12 CFR part 303).
22 FDIC regional office staff will advise the organizers on the number of hard copies of the application that should be provided (in addition to the original signed copy) and will communicate procedures for secure electronic submission.
23 Related applications may include holding company filings, as well as institution-specific filings. Institution-specific filings may include, for example, applications to establish branches or offer fiduciary services upon opening, each of which would be subject to separate application and publication requirements.
signed oath of director forms; and details regarding director and management qualifications, responsibilities, compensation, conflicts of interest, and interlocks.

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

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

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

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

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

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

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

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

Public vs. Confidential Information

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

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

**MORE TO KNOW: Examples of Public vs. Confidential Information**

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

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

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

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

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

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

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

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

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

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

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

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

**Convenience and Needs of the Community to be Served** – The deposit and credit needs of the community to be served, and the applicant’s willingness and ability to serve those needs; and the

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25 Per [Section 5 of the FDI Act](#), the FDIC Board of Directors shall consider the factors described in Section 6 in determining whether to approve the application for deposit insurance.
proposed institution’s CRA documentation, including any applicable public file information, prepared in accordance with the requirements of the institution’s PFR.

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

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

In some cases, the FDIC is unable to favorably resolve each of the statutory factors and the request for federal deposit insurance is not granted. We notify the organizers of such a determination as soon as possible, explain the rationale for our conclusion, and present potential options that the organizers might consider to address the unfavorable statutory factor(s) if such options exist. The organizers may choose to modify the application to address the underlying concerns or withdraw the application after reflecting on our conclusions. In practice, the FDIC will not deny an application without first giving the applicant the opportunity to withdraw the application.

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

**FDIC Staff Involvement and Field Investigations**

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

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

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

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

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

Depending on the application characteristics and the findings with regard to the statutory factors, the application may be acted on at the regional level, at the divisional level (at the FDIC’s Washington Office), or by the FDIC Board of Directors.²⁶

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

Approval Conditions

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

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

The most common non-standard conditions require FDIC approval of business plan changes, employment agreements and stock options plans, bank 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

²⁶ For example, authority to act is retained by the FDIC Board of Directors on applications for institutions that are more than 25 percent foreign-owned or controlled, institutions that share common ownership with a foreign institution without a common parent company, institutions organized as industrial loan companies, and institutions that would raise unique or unprecedented policy matters.
not exceed the three-year *de novo* period. However, certain conditions may be imposed for any length of time deemed necessary to mitigate risk.

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

All approval conditions are enumerated in the FDIC’s Order for Federal Deposit Insurance, which is issued with a formal Statement indicating the basis for approval. Each of these documents will be made publicly available on the FDIC’s website. Appendix 2 lists (in abbreviated form) the conditions that are frequently imposed in an Order granting deposit insurance. The FDIC may impose fewer conditions, additional conditions, or variations of these conditions, depending on the facts and circumstances of each particular proposal.

**SECTION III: PRE-OPENING ACTIVITIES**

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

*Satisfying Pre-Opening Conditions*

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

*Completing the Capital Raise*

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

*Other Pre-Opening Considerations*

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

- Finalize policies and procedures for all key business areas (*e.g.*, loans, investments, liquidity, interest rate risk, BSA/AML, compliance, IT, code of ethics, *etc.*);
• Develop documents for delivering loan, deposit, and other banking products or services;
• Hire and train staff;
• Formalize all service/vendor relationships;
• Ensure all physical office space is ready for occupancy;
• Ensure IT systems will operate as planned;
• Develop strategies to remain aware of physical and cybersecurity threats;\(^27\) and
• Institute appropriate security procedures and meet with local law enforcement.

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

**CONCLUSION**

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

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

\(^27\) The Financial Services Information Sharing and Analysis Center (FS-ISAC) is an industry forum for collaborating on critical security threats facing the financial services sector. More information is available on the FS-ISAC website, [https://www.fsisac.com](https://www.fsisac.com).
### Resources

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<td>Conference of State Bank Supervisors (Directory of State Banking Authorities)</td>
<td><a href="https://www.csbs.org/state-bank-agency-contact-quick-access">https://www.csbs.org/state-bank-agency-contact-quick-access</a></td>
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<tr>
<td>Federal Deposit Insurance Corporation (FDIC)</td>
<td><a href="https://www.fdic.gov">https://www.fdic.gov</a></td>
</tr>
<tr>
<td>FDIC Public Website Dedicated to Applications for Deposit Insurance</td>
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</tr>
<tr>
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<td>Federal Reserve Board of Governors</td>
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<tr>
<td>National Credit Union Administration</td>
<td><a href="https://www.ncua.gov/Pages/default.aspx">https://www.ncua.gov/Pages/default.aspx</a></td>
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**Application Form and Related Documents**


**Laws and Regulations**


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28 Application and IBFR forms are also available in Word format at [FDIC: Forms](http://www.fdic.gov/formsdocuments/InteragencyCharter-InsuranceApplication.pdf)
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<tr>
<td>FFIEC IT Examination Handbook Infobase</td>
<td><a href="https://ithandbook.ffiec.gov/">https://ithandbook.ffiec.gov/</a></td>
</tr>
<tr>
<td>Financial Services Information Sharing and Analysis Center Website</td>
<td><a href="https://www.fsisac.com/">https://www.fsisac.com/</a></td>
</tr>
</tbody>
</table>
Appendix 1: FDIC Regional Office Contact Information

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

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

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

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

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

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

Additional information is available at https://www.fdic.gov/about/contact/directory.
Appendix 2: Frequently Imposed Conditions

Sample Conditions Included in an FDIC Deposit Insurance Order

1. The applicant will provide a specific amount of initial paid-in capital.

2. The tier 1 capital-to-assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution’s PFR) will be maintained at not less than 8 percent throughout the first three years of operation and an adequate allowance for loan and lease losses will be provided.

3. Any changes in proposed management or proposed ownership to the extent of 10 percent or more of stock, including new acquisitions of or subscriptions to 10 percent or more of stock, shall be approved by the FDIC prior to the institution opening for business.

4. The applicant will adopt an accrual accounting system for maintaining the books of the institution.

5. Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct such business, and its establishment and operation have been fully approved by the appropriate state and/or federal supervisory authority.

6. Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction.

7. Where applicable, a registered or proposed holding company has obtained approval of the Board of Governors of the FRS to acquire voting stock control of the proposed depository institution prior to its opening for business.

8. Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate Regional Director for review and comment.

9. Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved.

10. The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the appropriate Regional Director.

11. The applicant will have adequate fidelity coverage.

12. The institution will obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective and submit certain audit-related documents to the appropriate FDIC office within specified time frames.

13. The institution shall operate within the parameters of the business plan submitted to the FDIC. During the first three years of operations, the institution shall 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 a loan production office at least 60 days prior to opening the facility.

16. In cases primarily involving special purpose de novo institutions, where the applicant’s business plan indicates there will only be an intercompany or similar deposit, the institution shall acquire, prior to the effective date of deposit insurance, and continue to maintain the requisite deposits to be “engaged in the business of receiving deposits other than trust funds,” as defined in Section 303.14 of the FDIC Rules and Regulations.

17. If the transaction does not take effect within the specified time period, or unless a request for an extension of time has been approved, the consent granted shall expire at the end of the time period.

18. Until the FDIC’s conditional commitment becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment if warranted.
Appendix 3: Examples of Prudential Conditions

While the non-standard conditions that may be imposed for a given deposit insurance proposal depend on the proposal’s specific circumstances, the following prudential conditions have been imposed in prior approval actions:

1. 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.

2. 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].

3. 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.

4. 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.

5. The bank will adhere to U.S. 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.

6. 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.
Appendix 4: Important Considerations Regarding Compensation and Related Plans

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

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

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

Employment Agreements
- Generally, the FDIC has not objected to employment agreement durations of three years or fewer, or employment agreements with automatic renewal features that are subject to a satisfactory annual performance appraisal.
Stock Benefits Framework – Based on Role in an Institution’s Organization or Operation

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<th>Benefits</th>
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<tr>
<td>Incorporator – no other role</td>
<td>• Incorporators not continuing as directors or officers should not receive stock benefits based only on “incorporator” status.</td>
</tr>
<tr>
<td>Incorporator – that is also a proposed director or senior executive officer</td>
<td>• Maximum of one option or warrant for each share subscribed in the initial offering; subject to vesting requirements.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td>Provider of organizational funds (seed money)</td>
<td>• 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.</td>
</tr>
<tr>
<td>Provider of professional or other services</td>
<td>• 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.</td>
</tr>
<tr>
<td>Asset (non-cash) contributor</td>
<td>• 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).</td>
</tr>
<tr>
<td></td>
<td>• Maximum of one option or warrant for each share received in exchange for the assets contributed.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td>Loan guarantor</td>
<td>• Stock benefits granted to each individual guaranteeing a loan should be offered pro rata based on the amount drawn.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td>Investor in initial capital raise</td>
<td>• 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.</td>
</tr>
</tbody>
</table>

**Post-Opening Stock Benefit Plans**

| Director, officer, or employee                                      | • Stock benefits that are part of a comprehensive plan to reward future performance will be reviewed as part of each individual’s total compensation. |
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 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 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. General FDI Application Matters
Section II. Pre-Filing Activities
Section III. Application Receipt, Review, and Acceptance
Section IV. Application Processing
Section V. Pre-Opening Activities
Section VI. Post-Opening Considerations

The FDIC strives to act on FDI applications within four 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 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.

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1 A newly organized insured depository institution is commonly referred to as a “de novo” institution.
2 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.
3 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\(^4\) 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\(^5\) charter from the applicable chartering authority\(^6\) 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 \textit{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).\(^7\)

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 institutions that are primarily focused on community development\(^8\) or cash management

\(^4\) 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.

\(^5\) The term “savings association” is defined in \textit{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.

\(^6\) 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.

\(^7\) The phrase “engaged in the business of receiving deposits other than trust funds” is defined in \textit{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.

\(^8\) 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 \textit{U.S. Treasury’s CDFI Fund website} for additional details.
activities, or that may operate as “bankers’ banks.”\textsuperscript{9} Chartering authorities have also granted “shelf charters,”\textsuperscript{10} whose operations commence with the acquisition of one or more failed banks, and certain states offer insured industrial loan company (ILC)\textsuperscript{11} 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.”\textsuperscript{12} See also the \textit{FDIC Policy Statement Regarding Minority Depository Institutions} for additional information.\textsuperscript{13}

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.

\textbf{B. Types of FDI Applications}

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

\begin{itemize}
\item \textsuperscript{9} A “bankers’ bank” is a financial institution that provides financial services to other banks.
\item \textsuperscript{10} “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. 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 \textit{FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions} (SOP-QFBA) for additional information.
\item \textsuperscript{11} For purposes of the Manual, an ILC refers to either an industrial loan company or an industrial bank.
\item \textsuperscript{12} Minority, as defined by Section 308 of FIRREA, means any Black American, Asian American, Hispanic American, or Native American.
\item \textsuperscript{13} The \textit{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.
\end{itemize}
Regardless of a proposed institution’s charter type, FDI applications generally fall within one of the categories identified in the table below.

<table>
<thead>
<tr>
<th>FDI Application Types</th>
<th>1. Newly insured depository institution with no existing operations.</th>
<th>Historically, this is the most common type of FDI application that the FDIC has received.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Existing and operating institution that is not insured by the FDIC.</td>
<td>Examples include credit unions, limited purpose trust companies, and other types of noninsured entities.</td>
<td></td>
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<tr>
<td>3. Interim institutions, which are typically created to facilitate other transactions, such as mergers or organizational structure changes.</td>
<td>An FDI application is required for any:</td>
<td>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.</td>
</tr>
<tr>
<td>4. Conversion of an existing federal savings association (FSA) into more than one insured institution.</td>
<td>An FDI application is required under the specific circumstances described in Section 5(i)(5)(A) of the Home Owners’ Loan Act (HOLA) 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 separate application is required for each bank resulting from the conversion. Otherwise, there is no requirement to file an FDI application upon conversion of an FSA into a state or national bank.</td>
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<tr>
<td>5. Withdrawal from membership in the FRS</td>
<td>To continue its insured status upon withdrawal from membership in the FRS, a state-chartered bank must submit a letter FDI application, as described in Sections 303.21 and 303.25 of the FDIC Rules and Regulations.</td>
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</table>

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.

<table>
<thead>
<tr>
<th>Examples of When an FDI Application is Not Required</th>
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| 1. Continuation of insurance. | Section 4 of the FDI Act 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 Section 5(a)(2) of the FDI Act, 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
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 any FDIC information request.  

- **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. 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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14 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.

15 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.

16 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.17

All institutions have a 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 1 summarizes the primary supervisory roles of the applicable agencies.

G. Corporate Form

A de novo institution may choose different corporate forms depending on its specific circumstances. There are notable differences between corporate forms, 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, 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 number and type of shareholders. A C Corp pays taxes on its income directly, while its shareholders are

17 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 which supervises and examines consumer financial service providers under its jurisdiction for compliance with federal consumer financial laws.
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. While every reasonable effort should be made to ensure timely processing, these types of applications may take longer to process than the typical 120 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 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 2 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?18
• 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 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.

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18 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).
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 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.

<table>
<thead>
<tr>
<th>Summary of the FDI Application Review and Processing Timeline</th>
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<tr>
<td>➢ Within three business days of receiving the application</td>
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<tr>
<td>➢ Within 30 days of receipt</td>
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<td></td>
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<tr>
<td>➢ Once the application is accepted as</td>
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</tbody>
</table>

¹⁹ ViSION is the acronym for Virtual Supervisory Information On the Net. AT is the Applications Tracking Module within the ViSION system.
substantially complete evaluation of the statutory factors and other activities.
  • Coordinate and commence the field investigation.

- Within 60 days of deeming the application substantially complete
  • Complete the field investigation.
  • Communicate any identified concerns to the applicant.

- Within 30 days of completing the field investigation
  • Resolve any identified issues or concerns.
  • Complete application processing.
  • Obtain the applicant’s written concurrence to any proposed non-standard conditions.
  • Finalize the recommendation for action.

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, 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. 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 discussed in the application. The letter should 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.

Within three business days of receiving the application, the case manager should notify DCP, FO management, and the appropriate RMS and Legal specialists that the application was received. 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.

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20 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.
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. 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 30th 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 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.

C. Standard or Expedited Processing

The case manager must determine whether the application is subject to standard or expedited processing. It is expected that most FDI applications will be subject to standard processing and acted on within 120 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 or an eligible holding company will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision.

21 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.

22 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; (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.

23 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.
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 consummation of the related transaction. However, if the application relates to a mutual-to-stock conversion (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 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 factors.

Also within 30 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 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, offer fiduciary services, or resolve a management interlock?

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

Since 1935, governing statutes have required that the FDIC consider specific factors when evaluating an FDI application. 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, 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.

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24 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.

25 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 an application for FDI.

**Application Form**

The Application Form requests the information necessary for the FDIC to evaluate the statutory factors. 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.

**Management**

The quality of management (including directors and officers) is the single most important contributor to the success of any FDIC-insured institution. The investigating examiner’s 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.

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.

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27 In order to favorably resolve the management factor, evidence 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.
• 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;
  o 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
  o 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 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**

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 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 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.

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. The FDIC Library may also be able to obtain compensation studies for certain markets.

Employment Agreements and Severance Provisions

The case manager should review the institution’s proposed employment agreements to verify that the incentives are properly balanced against risk (e.g., the agreements should not incorporate bonuses tied solely to loan growth). 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). Severance provisions providing for payments in excess of the Internal Revenue Code threshold must be fully justified and require review by 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 into 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:

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28 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.
• 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 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. Refer to the SOP-ADI and Appendix 4 for additional considerations regarding stock benefit plans.

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 develop such plans.

Board of Directors

The case manager should 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 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.\(^{29}\) and reflect an adequate allowance for loan and lease losses (ALLL).\(^{30}\) In addition, the case manager should verify that:
  o No additional capital raises are reflected in the pro forma financial statements.
  o Capital calculations are accurate and conform to regulatory definitions.
  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 regional director or the PFR, if not the FDIC. This matter will generally need to be addressed through the use of a non-standard condition in the Order granting FDI.

- If amended pro forma financial statements are needed, the case manager should request the 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. 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.

\(^{29}\) 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.

\(^{30}\) 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.
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. The case manager 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 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\(^{31}\) 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 offices.
- 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 NHPA.

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\(^{31}\) The SOP-ADI uses the term “proponents” rather than organizers in discussing certain statutory factors.
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, in conjunction with the PFR (if not the FDIC), will communicate with the applicant, the SHPO and/or THPO, 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 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 verify that the requested information regarding information technology (IT) has been provided and 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 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 paid with stock for professional services rendered during the organizational phase. The 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 (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 for additional information.

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32 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.
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:

- 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 analyses and assumptions with respect to products and services, the selected markets, relevant economic considerations, and the competitive 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 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 developed resources for institutions on third-party relationships and outsourcing, information security and business continuity planning, and cybersecurity.\textsuperscript{33}

**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 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 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. 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. In general, if an applicant has provided the information required in the Application Form, 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.

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.

- If the application was **substantially complete** when received by the FDIC, the case manager should 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.

- If the application was **not substantially complete** when received, the case manager should consult with the ARD on whether to return 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 when the additional 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.

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34 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).

35 “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.

36 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.

37 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.
If a decision is made to return the application, the case manager should call the applicant to advise that the materials will be returned with a letter 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 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.38

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.

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.

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38 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.
**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, 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** – Ensure that all relevant information needed to complete the background investigations 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** – 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 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 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 may be communicated in a letter to the organizers by the conclusion of the field investigation. 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 5 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 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 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 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, if appropriate, maintain a copy in the centralized file of all returned and withdrawn applications handled at the WO level.

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\(^{39}\) in accordance with the FDIC’s recordkeeping and record retention requirements.\(^{40}\) 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 information obtained through discussions 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), provide essential information that will support the conclusions 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 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.

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

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39 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.

40 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.
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 application to the organizers by the completion of the field investigation.

### 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 by the appropriate federal agencies. It is RMS policy that background investigations will be conducted on all proposed organizers, directors, senior executive officers, and 10-percent-or-more shareholders. 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 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 submit the background investigation requests to the relevant agencies and authorities (e.g., 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).\textsuperscript{41} 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.

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 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 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 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.”

\textsuperscript{41} 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.
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 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.

**D. Approval Conditions**

The FDIC imposes certain conditions on all institutions that are granted deposit insurance. These conditions include minimum initial and ongoing capital for the three-year *de novo* period, 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, 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 6 lists (in abbreviated form) the conditions that are frequently imposed in an Order. Appendix 2 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 RADD. 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. 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 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. 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, 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. 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.

E. 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 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 institutions owned by a company that is exempted from the BHCA pursuant to the CEBA (e.g., ILCs);
- FDI applications for certain special purpose banks and non-bank banks, including non-traditional banks, money desk operations with no teller windows, internet banks,

42 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 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 email a brief summary of the proposal to the RMEB associate director 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.

F. 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.
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.

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 de novo institution. The supervisory strategy 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.

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 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 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.43 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 a 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. 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. 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.

43 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).
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.

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 for additional information, including a set of questions and answers that address business plan content and 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. 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 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

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<th>Resource</th>
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<tr>
<td><strong>Agency Contact Information and Websites</strong></td>
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<td>Bureau of Consumer Financial Protection</td>
<td><a href="http://www.consumerfinance.gov">http://www.consumerfinance.gov</a></td>
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<tr>
<td>Conference of State Bank Supervisors (Directory)</td>
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<td>Federal Deposit Insurance Corporation (FDIC)</td>
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<td>FDIC Public Website Dedicated to Applications for Deposit Insurance</td>
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<td>FDIC Office Directory and Contacts</td>
<td><a href="http://www.fdic.gov/about/contact/directory/">http://www.fdic.gov/about/contact/directory/</a></td>
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<td>Federal Reserve Board of Governors</td>
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<td>National Credit Union Administration</td>
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<td>Interagency Charter and Federal Deposit Insurance Application Form and</td>
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<td>Section 3 of the FDI Act</td>
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<td><strong>Supervisory Guidance</strong></td>
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44 Application and IBFR forms are also available in Word format at FDIC: Forms
| FDIC Policy Statement Regarding Minority Depository Institutions | [https://www.fdic.gov/regulations/resources/minority/sop5-only.PDF](https://www.fdic.gov/regulations/resources/minority/sop5-only.PDF) |

**Other Resources**

- **FDIC Delegations of Authority: Board Resolution** [https://www.fdic.gov/regulations/laws/matrix/](https://www.fdic.gov/regulations/laws/matrix/)
- **FDIC FDI Applications Resources** [https://www.fdic.gov/regulations/applications/index.html](https://www.fdic.gov/regulations/applications/index.html)
- **FDIC FOIA Service Center** [https://www.fdic.gov/about/freedom/](https://www.fdic.gov/about/freedom/)
- **FDIC Trust Examination Manual** [https://www.fdic.gov/regulations/examinations/trustmanual/](https://www.fdic.gov/regulations/examinations/trustmanual/)
- **FFIEC BSA/AML Examination Manual** [http://www.ffiec.gov/bsa_aml_infobase/default.htm](http://www.ffiec.gov/bsa_aml_infobase/default.htm)
- **FFIEC Cybersecurity Awareness** [https://www.ffiec.gov/cybersecurity.htm](https://www.ffiec.gov/cybersecurity.htm)
- **FFIEC Information Technology Examination Handbook Infobase** [https://ithandbook.ffiec.gov/](https://ithandbook.ffiec.gov/)
- **Financial Services Information Sharing and Analysis Center Website** [https://www.fsisac.com/](https://www.fsisac.com/)
- **U.S. Treasury’s CDFI Fund website** [https://www.cdfifund.gov/Pages/default.aspx](https://www.cdfifund.gov/Pages/default.aspx)
### Appendix 1: Federal Banking Agency and State Banking Authority Roles

<table>
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<tr>
<th>Agency</th>
<th>Primary Roles</th>
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| FDIC         | • Insures the deposits of all depository institutions approved for FDI.  
• Together with the respective chartering state authority, supervises state-chartered institutions (banks and savings associations) that are not members of the FRS.  
• Maintains backup supervisory responsibility for institutions for which the FRB and the OCC are the PFRs.  
• Acts as receiver for all failed insured banks and savings associations, and may be appointed to resolve non-bank financial companies if their failure would have serious adverse effects on U.S. financial stability and other statutory requirements are met.  
• Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the Financial Stability Oversight Council (FSOC) for FRB supervision. |
| FRB          | • 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.  
• Supervises other firms designated as systemically significant by the FSOC, and other entities pursuant to the Dodd-Frank Act.  
• Reviews resolution plans filed by certain large banking organizations and non-bank financial companies designated by the FSOC for FRB supervision. |
| OCC          | • Charters and serves as PFR for national banks and FSAs.                                                                                                                                                     |
| State Banking Authorities 45 | • Charters state banks and savings associations, regardless of whether the institution is a member of the FRS.  
• Together with the respective PFR, supervises state-chartered institutions and certain holding companies.                                                                                           |

45 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 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
The bank will adhere to U.S. 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.
- Services/Activities - 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 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.
- 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 consult with RMAS staff and WO Legal.
- 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 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.

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 RMAS and WO Legal, who will assist in determining whether the proposed institution will be part of a PBO or foreign banking organization.
**Appendix 3: Deposit Insurance Application Summary**

<table>
<thead>
<tr>
<th>Institution Name, City, State</th>
<th>Date of Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Type: Indicate FDINEW or FDIONI</td>
<td>Supervisory Region</td>
</tr>
</tbody>
</table>

**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

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

#### Washington Office (WO) Information

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

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

<table>
<thead>
<tr>
<th>Projections</th>
<th>Day 1</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
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<tr>
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<tr>
<td>Total Loans ($ Thousands)</td>
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<tr>
<td>CRE (% of Total Loans)</td>
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<tr>
<td>C&amp;I (% of Total Loans)</td>
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<tr>
<td>1-4 Fam. (% of Total Loans)</td>
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<tr>
<td>Consumer (% of Total Loans)</td>
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</tr>
<tr>
<td>Total Deposits ($ Thousands)</td>
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<tr>
<td>Borrowings ($ Thousands)</td>
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<tr>
<td>Capital ($ Thousands)</td>
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<tr>
<td>Tier 1 Leverage Ratio (%)</td>
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</tr>
<tr>
<td>Net Income ($ Thousands)</td>
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<tr>
<td>ROAA (%)</td>
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<tr>
<td>Other Significant Data</td>
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<tr>
<td>Other Significant Data</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

### Commentary

#### General
- 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.

#### Proposal Summary
- Provide a brief overview of the proposal.
- Specify the charter type and whether the proposal involves a “niche” or “special purpose” institution.
- Describe the ownership structure (e.g., parent company, primary investors, etc.) and form (e.g., C Corp, S Corp, or LLC).
- Note any significant affiliate or third-party relationships.
- Identify any companion applications or filings.

#### Business Plan
- Provide a brief summary of the business plan.
- Discuss the target market(s) and office structure (number of branches, any LPOs, etc.).
- Describe the main lending focus, the primary funding sources, and any anticipated concentrations.
- Discuss any non-core funding (e.g., borrowings, brokered deposits, listing service deposits, etc.).
- Discuss any significant non-interest income sources.
- Discuss any other key operational elements.

#### Management
- Include the name of and brief background information regarding the proposed CEO.
- As appropriate, briefly address other key members (chief financial officer, chief lending officer, and chief operating officer) of the management team.
- Briefly describe the board composition and, as appropriate, the identities and backgrounds of the prominent directors.
- If negative background information was identified on any proposed management/board candidates (either personally or professionally), discuss accordingly.
- If any management or board positions remain unfilled, discuss the status of the recruitment efforts.
- 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.
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 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 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

<table>
<thead>
<tr>
<th>Role</th>
<th>Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporator – no other role</td>
<td>- Incorporators not continuing as directors or officers should not receive stock benefits based only on “incorporator” status.</td>
</tr>
</tbody>
</table>
| Incorporator – that is also a proposed director or senior executive officer | - Maximum of one option or warrant for each share subscribed in the initial offering; subject to vesting requirements.  
  - On a case-by-case basis, additional stock benefits may be granted to an incorporator who will also be a senior executive officer, based on the individual’s demonstrated financial commitment, time, and expertise.  
  - In certain cases, additional stock benefits may be allowed for other roles, such as when the individual is also a provider of organizational funds or professional services, as described below. |
| Provider of organizational funds (seed money) | - Maximum of one option or warrant for each share received in repayment of the seed money invested.  Stock benefits should only be granted if seed money is repaid in the form of stock; amounts repaid in cash should not receive stock benefits. |
| Provider of professional or other services | - Maximum of one option or warrant for each share received in lieu of cash payment for the market value of professional or other services rendered.  Stock benefits may only be granted if fees for services are being paid in the form of stock; amounts paid in cash should not receive stock benefits. |
| Asset (non-cash) contributor               | - Capital is expected to take the form of cash; the valuation of any assets proposed to be contributed should be supported by one or more independent appraisal(s).  
  - Maximum of one option or warrant for each share received in exchange for the assets contributed.  
  - Stock benefits should be granted only if payment for the assets to be contributed is in the form of stock; amounts paid in cash should not receive stock benefits. |
| Loan guarantor                             | - Stock benefits granted to each individual guaranteeing a loan should be offered pro rata based on the amount drawn.  
  - The market value of the stock benefit should not exceed the lower of the amount drawn on the loan or the amount of the guarantee. |
| Investor in initial capital raise          | - Any stock benefits granted to investors in the initial capital raise should be offered proportionately to all investors, and should not exceed one option or warrant per each share subscribed in the initial offering. |

### Post-Opening Stock Benefit Plans

- Stock benefits that are part of a comprehensive plan to reward future performance will be reviewed as part of each individual’s total compensation.
### Appendix 5: SOI Quality Control Questionnaire for FDI Applications

<table>
<thead>
<tr>
<th>Critical Questions</th>
<th>Y, N, or NA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Does the Proposed Transaction section of the SOI:</strong></td>
<td></td>
</tr>
<tr>
<td>• Describe the FDI proposal in sufficient detail?</td>
<td></td>
</tr>
<tr>
<td>• Describe the anticipated business model, including the primary products and services, funding sources, and operational focus?</td>
<td></td>
</tr>
<tr>
<td>• Note any concerns about whether the proposal represents significant policy or legal issues, or is a matter of first impression?</td>
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</tr>
<tr>
<td>• Summarize any related applications (e.g., companion filings to the FDIC and/or other agencies)?</td>
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</tr>
<tr>
<td>• Provide details regarding other material contextual information (e.g., pertinent ownership, affiliate, or insider issues)?</td>
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</tr>
<tr>
<td><strong>2. Does the Statutory Factors section of the SOI:</strong></td>
<td></td>
</tr>
<tr>
<td>• Address each statutory factor under a separate heading?</td>
<td></td>
</tr>
<tr>
<td>• Include a level of information and analysis for each statutory factor that is commensurate with the complexity and inherent risks of the proposal?</td>
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<tr>
<td>• Discuss any unfavorable information or other material issues regarding compliance, CRA, IT, BSA/AML, other specialty areas, or the parent organization (including any affiliates)?</td>
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</tr>
<tr>
<td>• Provide specific mitigating information (if any exists) for any negative information identified with regard to any statutory factor?</td>
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</tr>
<tr>
<td>• Clearly indicate whether each statutory factor was favorably resolved, favorably resolved subject to conditions, or unfavorably resolved?</td>
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</tr>
<tr>
<td><strong>3. Does the Other Significant Matters section of the SOI:</strong></td>
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</tr>
<tr>
<td>• Discuss any noteworthy regulatory, policy, or legal issues that are not addressed elsewhere in the SOI?</td>
<td></td>
</tr>
<tr>
<td>• Discuss any regulatory or policy issues that must be addressed per outstanding policy?</td>
<td></td>
</tr>
<tr>
<td>• 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)?</td>
<td></td>
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<tr>
<td>• If not addressed elsewhere and applicable, discuss the institution’s plans with regard to IT, including cybersecurity?</td>
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<tr>
<td>• Describe any consultations with the WO, Legal, or any specialty areas?</td>
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<tr>
<td>• 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?</td>
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<tr>
<td>• If any actions by other regulatory agencies are subject to conditions, summarize the conditions?</td>
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</tr>
<tr>
<td>• Discuss the attitude of the other regulators, and include dates of any correspondence documenting other regulatory actions on the filing and any related filings?</td>
<td></td>
</tr>
<tr>
<td>• 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?</td>
<td></td>
</tr>
<tr>
<td><strong>4. Does the Conclusion and Recommendation section of the SOI:</strong></td>
<td></td>
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<tr>
<td>• Include a brief statement regarding the RO’s recommended course of action with regard to the filing?</td>
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</tr>
</tbody>
</table>
- Provide an executive summary supporting the recommendation?
- Describe any information (if applicable) that mitigates any identified areas of concern?

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.
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.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Abbreviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALLL</td>
<td>Allowance for Loan and Lease Losses</td>
</tr>
<tr>
<td>AML</td>
<td>Anti-Money Laundering</td>
</tr>
<tr>
<td>BHCA</td>
<td>Bank Holding Company Act</td>
</tr>
<tr>
<td>BIDS</td>
<td>Background Investigation Database System</td>
</tr>
<tr>
<td>BSA</td>
<td>Bank Secrecy Act</td>
</tr>
<tr>
<td>C Corp</td>
<td>C Corporation</td>
</tr>
<tr>
<td>CALMAs</td>
<td>Capital and Liquidity Maintenance Agreements</td>
</tr>
<tr>
<td>CCS</td>
<td>Comprehensive Consolidated Supervision</td>
</tr>
<tr>
<td>CDFI</td>
<td>Community Development Financial Institution</td>
</tr>
<tr>
<td>CEBA</td>
<td>Competitive Equality Banking Act</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CRA</td>
<td>Community Reinvestment Act</td>
</tr>
<tr>
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<td>Commercial Real Estate</td>
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<td>DCP</td>
<td>Division of Depositor and Consumer Protection</td>
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<td>DIF</td>
<td>Deposit Insurance Fund</td>
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<tr>
<td>DIR</td>
<td>Division of Insurance and Research</td>
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<tr>
<td>ESS</td>
<td>Executive Secretary Section</td>
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<td>Federal Banking Agency</td>
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<td>Federal Financial Institutions Examination Council</td>
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<td>FIL</td>
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<td>Financial Institution Reform, Recovery, and Enforcement Act of 1989</td>
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<td>Field Office</td>
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<td>Federal Reserve Board</td>
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<td>Federal Reserve System</td>
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<td>Federal Savings Association</td>
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<td>Financial Stability Oversight Council</td>
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<td>Home Owners’ Loan Act</td>
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<td>IAP</td>
<td>Institution-Affiliated Party</td>
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<td>IBFR</td>
<td>Interagency Biographical and Financial Report</td>
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<td>Immigration and Customs Enforcement</td>
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<td>Industrial Loan Company</td>
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<td>Information Technology</td>
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<tr>
<td>LPO</td>
<td>Loan Production Office</td>
</tr>
<tr>
<td>MDI</td>
<td>Minority Depository Institution</td>
</tr>
<tr>
<td>NCUA</td>
<td>National Credit Union Administration</td>
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<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<tr>
<td>NHPA</td>
<td>National Historical Preservation Act</td>
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<tr>
<td>OCC</td>
<td>Office of the Comptroller of the Currency</td>
</tr>
<tr>
<td>PBO</td>
<td>Parallel-Owned Banking Organization</td>
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<tr>
<td>PFR</td>
<td>Primary Federal Regulator</td>
</tr>
<tr>
<td>RADD</td>
<td>Regional Automated Documentation Distribution and Imaging Systems</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>RMAS</td>
<td>Risk Management and Applications Section</td>
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<tr>
<td>RMEB</td>
<td>Risk Management Examination Branch</td>
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<tr>
<td>RMS</td>
<td>Division of Risk Management Supervision</td>
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<tr>
<td>RO</td>
<td>Regional Office</td>
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<tr>
<td>ROI</td>
<td>Report of Investigation</td>
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<tr>
<td>S Corp</td>
<td>S Corporation</td>
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<tr>
<td>SDD</td>
<td>Senior Deputy Director</td>
</tr>
<tr>
<td>SHPO</td>
<td>State Historic Preservation Officer</td>
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<td>SOI</td>
<td>Summary of Investigation</td>
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<tr>
<td>SOP-ADI</td>
<td>FDIC Statement of Policy on Applications for Deposit Insurance</td>
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<tr>
<td>SOP-QFBA</td>
<td>FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions</td>
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<td>THPO</td>
<td>Tribal Historic Preservation Officer</td>
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<td>UFIRS</td>
<td>Uniform Financial Institutions Rating System</td>
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<tr>
<td>U.S. GAAP</td>
<td>U.S. Generally Accepted Accounting Principles</td>
</tr>
<tr>
<td>ViSION AT</td>
<td>Virtual Supervisory Information On the Net (Applications Tracking Module)</td>
</tr>
<tr>
<td>WO</td>
<td>Washington Office</td>
</tr>
</tbody>
</table>
Financial Institution Letter
FIL-82-2018
December 6, 2018

Review Process for Draft Deposit Insurance Proposals

Summary: The FDIC is establishing a process to allow prospective organizers the option to request FDIC review of a draft deposit insurance proposal prior to filing an official application. The FDIC will review draft proposals to identify potential issues, provide preliminary feedback, and work with organizers on their submissions before submitting a formal application.

Statement of Applicability to Institutions with Less Than $1 Billion in Total Assets: This Financial Institution Letter applies to all proposed insured depository institutions.

Distribution: FDIC-Insured Depository Institutions

Suggested Routing: Chief Executive Officer

Related Topics: 12 CFR Part 303 (Subpart A and Subpart B)
FDIC Statement of Policy on Applications for Deposit Insurance - Effective October 1, 1998
Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance - November 2014
Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance - April 2016
Applying for Deposit Insurance – A Handbook for Organizers of De Novo Institutions
Procedures Manual on Deposit Insurance Applications
Implementing Document: FDIC Process for Reviewing Draft Deposit Insurance Proposals

Contact: Donald R. Hamm, Special Advisor, Division of Risk Management Supervision, dhamm@fdic.gov, (202) 898-3528

Note: FDIC financial institution letters (FILs) may be accessed from the FDIC’s website at www.fdic.gov/news/news/financial/2018/
To receive FILs electronically, please visit www.fdic.gov/about/subscriptions/fil.html.
Paper copies of FDIC financial institution letters may be obtained through the FDIC’s Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

- The FDIC has established a process for prospective organizers to request FDIC review of a draft deposit insurance proposal.
- The draft review process is intended to provide the FDIC and organizing groups the opportunity to better understand and work through possible challenges with a proposal through a collaborative process before a formal application is filed.
- This draft review process builds on FDIC’s recent efforts to engage in more fulsome pre-filing discussions with organizers of novel, unique or complex proposals seeking federal deposit insurance.
- The process is expected to be particularly helpful for business models that present unusual or complex aspects, for groups seeking technical assistance, and is also open to any organizing group seeking feedback on a proposal beyond that which is typically available through the existing pre-filing process.
- The FDIC expects to provide an update to the organizers within 30 days, and to complete its review and communicate overall feedback to organizers within 60 days of receiving a draft proposal. The timeframe may vary depending on the attributes of a specific proposal.
- Because a draft proposal is not a formal or complete application, feedback will be limited to matters raised in the review of the submitted materials.
- Additional resources are available on the FDIC website dedicated to applications for deposit insurance.
Industrial Loan Companies: Why Alt-Lenders are Pursuing an ILC Charter

The LoanTape Conference

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January 30, 2018
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Regulatory Consequences of Becoming a Bank Holding Company (“BHC”)

An entity that is determined to “control” a “bank” for the purposes of the Bank Holding Company Act, would become subject to regulation by the Board of Governors of the Federal Reserve System. Such regulation would include the following consequences (among others), most of which would be applied on a consolidated basis across the entity and all of its affiliates:

– Regular Examinations
– Capital Requirements
– Liquidity Requirements
– Leverage Limitations
– Activities Restrictions
– Corporate Governance Standards
## Chartering Options Not Requiring Parent-Company BHC Registration

<table>
<thead>
<tr>
<th>Entity Type</th>
<th>Primary Regulator</th>
<th>Benefits</th>
<th>Drawbacks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Uninsured State Banking License (only available in select states)</strong></td>
<td>• Home state regulator</td>
<td>• May engage in certain activities permissible for state-licensed banks</td>
<td>• May not be exempt from non-bank financial licensing requirements. • Activities restrictions, and ongoing regulatory requirements • No rate exportation or preemption • Uncertainty regarding admission to membership in payment systems</td>
</tr>
<tr>
<td><strong>State Non-Banking Licenses (Finance Lender, Money Transmitter, etc.)</strong></td>
<td>• Each host state’s regulator • FinCEN • IRS (if MSB) • CFPB</td>
<td>• May engage in activities permissible for state-licensed non-banks in each host state • Potentially less-burdensome regulatory requirements, when compared to the regulatory burdens faced by banks</td>
<td>• Inconsistent state-by-state licensing process and ongoing regulatory requirements • Narrow scope of permissible activities • Limited-to-nonexistent ability to offer deposits • May be reliant on partnerships with banks • No rate exportation or preemption</td>
</tr>
<tr>
<td><strong>“Fintech” charter (Special Purpose National Bank Charter)</strong></td>
<td>• OCC • If FDIC-insured, CFPB oversight if assets are greater than $10b. • If not FDIC-insured, CFPB oversight only to same extent as state non-banking licensees</td>
<td>• Engage in (most) activities permissible for national banks (lending, potential payments systems access, potential discount window access, etc.) • Federal preemption of state licensing requirements • Able to export home state rates</td>
<td>• Does not currently exist; uncertain whether it ever will exist and, if so, in what form • Potentially no ability to take deposits, and if permissible, taking deposits would render it a “bank” and parent entity would be considered a BHC • Subject to same regulatory burdens as national banks (affiliate transactions, examinations, capital, etc.) • Regulatory risk of certainty due to politicization • Potential for parent-company commitments</td>
</tr>
<tr>
<td><strong>Industrial Loan Company (“ILC”)</strong></td>
<td>• FDIC (or Fed if ILC becomes a Fed member) • Home state regulator • CFPB (if assets greater than $10b)</td>
<td>• May engage in activities permissible for state-licensed banks, including lending, merchant acquiring, debit card issuance and prepaid cards, etc. • May be exempt from certain state non-bank financial licensing requirements • Able to export home state rates</td>
<td>• Cannot accept “demand deposits” if assets are greater than $100 million • Uncertain regulatory landscape (approval prospects not entirely certain) • Potential for higher capital requirements • Potential for parent-company commitments • Charter only available in six states (and only NV and UT permit commercial entity owners).</td>
</tr>
</tbody>
</table>
The “Fintech” National Bank Charter

What it is: Special Purpose National Bank Charter designed for “Fintech” companies, regulated by the OCC

Current Status: The last formal OCC guidance relating to the proposed Fintech charter was released on March 17, 2017. Since the swearing in of the new Comptroller of the Currency on November 27, 2017, the OCC has provided little meaningful public guidance regarding the future of the Fintech charter, and it does not appear to be an OCC priority. In a press conference on December 20, 2017, new Comptroller Joseph Otting offered cautious and vague support.

Potential Benefits

– Ability to engage in (nearly all) activities that are permissible for national banks
– Preemption of state law to the extent that such state laws are preempted by the National Bank Act (as amended by the Dodd-Frank Act)
– Ability to export home-state interest rates
– Potentially eligible for Federal Reserve System membership, and the accompanying access to the Fed’s payments systems and the Fed’s “discount window”
– May not be subject to deposit-triggered regulatory regimes, such as the requirements of the Federal Deposit Insurance Act or the Community reinvestment Act
– Potential eligibility for Visa and MasterCard membership

Potential Disadvantages

– The Fintech charter does not currently exist, and bringing the charter into existence does not currently appear to be an OCC priority
– Several lawsuits have been filed against the OCC for the purpose of preventing the OCC from offering the Fintech charter
– The most recent guidance published by the OCC appears to suggest that entities which are otherwise required to obtain FDIC deposit insurance due to the nature of their operations will not be eligible to apply for a Fintech charter; conversely, if a Fintech chartered entity was either allowed or required to obtain FDIC deposit insurance, it would be a “bank” for the purposes of the Bank Holding Company Act, and its parent would become a BHC
– Potential that OCC will require entities “controlling” Fintech chartered company to enter into commitments relating to capital, governance, etc.
The Industrial Loan Company (ILC) Charter

What it is: State-chartered depository institution, supervised by the FDIC and home state regulator

Current Status: In 2006, the FDIC declared a self-imposed moratorium of the approval applications for FDIC deposit insurance made by ILCs, which expired in 2008. An additional moratorium was imposed by the Dodd-Frank Act in 2010, which expired in 2013. Since then, the FDIC has "slow-walked" applications, causing applicants to withdraw. However, there are currently no official prohibitions on the approval of an application for FDIC deposit insurance made by an ILC. In her Senate confirmation hearing on January 23, 2018, Jalena McWilliams, President Trump's nominee to head the FDIC explicitly indicated that she intended to start processing ILC applications in good faith once she took office.

Recent Activity: In 2017, both SOFI (Social Finance, Inc.) and Square, Inc. applied to the FDIC for deposit insurance. SOFI withdrew its application in October, 2017, presumably for reasons unrelated to the FDIC’s willingness to move forward with the application. Square, Inc.’s application is still pending.

Potential Benefits

- Ability to engage in nearly all activities permissible for FDIC-insured state-chartered banks
- Ability to accept certain types of deposits
- Eligible to apply for Fed system membership and its associated benefits, such as access the Fed payments systems and the Fed discount window (but would lead to Fed replacing the FDIC as primary federal regulator)
- Many states exempt ILCs from money transmitter licensing requirements
- Ability to export home-state interest rates
- Ability to become an issuing and/or acquiring member of MasterCard and Visa, and to sponsor debit card transactions

Potential Disadvantages

- While statements from McWilliams are very promising, it remains to be seen how quickly things will change at the FDIC
- ILCs holding more than $100 million in total assets may not accept “demand deposits” from consumers (only able to accept federally-insured deposits or deposits made into negotiable order of withdrawal “NOW” accounts)
- ILCs with more than $10 billion in assets are subject to CFPB supervision
Exploring Special Purpose National Bank Charters for Fintech Companies
Preface by the Comptroller of the Currency

When President Abraham Lincoln signed the law creating the national banking system and the Office of the Comptroller of the Currency (OCC), the very notion of establishing a national bank charter was itself innovative. Our country’s leaders provided the Comptroller with the authority to grant a national charter because they recognized the public value of a robust, unified, and nationwide system of banks.

The national banking system became a source of strength for the nation and our economy. National banks and, later, federal savings associations became anchors of their communities and the predominant providers of financial services for consumers and businesses. The system flourished because it enabled and encouraged national banks and federal savings associations to adapt to the changing needs of their customers and the market.

More than 150 years later, we have a diversified and evolving financial services industry. New technology makes financial products and services more accessible, easier to use, and much more tailored to individual consumer needs. At the same time, consumer preferences and demands are evolving, driven by important demographic changes: for example, the entry of 85 million millennials into the financial marketplace in the United States. Responding to those market forces are thousands of technology-driven nonbank companies offering a new approach to products and services. Five years ago these services either were available only from traditional banks or not available at all. Initially, many of these nonbank providers of financial services viewed themselves as competitors of banks. Now, some financial technology—or fintech—companies are considering whether to become banks.

These industry developments raise fundamental policy questions. Is the nation better served when banking products are provided by institutions subject to ongoing supervision and examination? Should a nonbank company that offers banking-related products have a path to become a bank? And, what conditions should apply if a nonbank company becomes a national bank?

I challenged staff at the OCC to explore these important questions when I asked them to examine the agency’s authority to grant special purpose national bank charters to fintech companies and the conditions under which we might do so. This paper summarizes that work, describes the OCC’s legal authority to grant a special purpose charter, and articulates what the OCC considers to be necessary conditions if the OCC is to exercise that authority. It makes clear that if we decide to grant a national charter to a particular fintech company, that institution will be held to the same high standards of safety and soundness, fair access, and fair treatment of customers that all federally chartered institutions must meet.

Public comment will help inform our consideration of these issues. We welcome your feedback on all of the issues raised in this paper and on the specific questions included at the end.
**Introduction**

The OCC’s chartering authority includes the authority to charter special purpose national banks. In fact, many special purpose national banks are operating today—primarily trust banks and credit card banks. A question raised by technological advances in financial services and evolving customer preferences is whether it would be appropriate for the OCC to consider granting a special purpose national bank charter to a fintech company. For a number of reasons, the OCC believes it may be in the public interest to do so.

First, applying a bank regulatory framework to fintech companies will help ensure that these companies operate in a safe and sound manner so that they can effectively serve the needs of customers, businesses, and communities, just as banks do that operate under full-service charters. Second, applying the OCC’s uniform supervision over national banks, including fintech companies, will help promote consistency in the application of law and regulation across the country and ensure that consumers are treated fairly. Third, providing a path for fintech companies to become national banks can make the federal banking system stronger. The OCC’s oversight not only would help ensure that these companies operate in a safe and sound manner, it would also encourage them to explore new ways to promote fair access and financial inclusion and innovate responsibly. Fintech companies vary widely in their business models and product offerings. Some are marketplace lenders providing loans to consumers and small businesses, others offer payment-related services, others engage in digital currencies and distributed ledger technology, and still others provide financial planning and wealth management products and services.

If the OCC decides to grant a charter to a particular fintech company, the institution would be held to the same rigorous standards of safety and soundness, fair access, and fair treatment of customers that apply to all national banks and federal savings associations. The OCC acknowledges, however, that to approve a fintech charter the agency may need to account for differences in business models and the applicability of certain laws. For example, a fintech company with a special purpose national charter that does not take deposits, and therefore is not insured by the Federal Deposit Insurance Corporation (FDIC), would not be subject to laws that apply only to insured depository institutions.

Where a law does not apply directly, the OCC may, nonetheless, work with a fintech company to achieve the goals of a particular statute or regulation through the OCC’s authority to impose conditions on its approval of a charter, taking into account any relevant differences between a full-service bank and special purpose bank. In this way, the OCC could advance important policy objectives, such as enhancing the ways in which financial services are provided in the 21st century, while ensuring that new fintech banks operate in a safe and sound manner, support their communities, promote financial inclusion, and protect customers.

This paper explores these and other issues related to the OCC’s consideration of charter applications from fintech companies. The OCC welcomes comments about how it can foster responsible innovation in the chartering process while continuing to provide the robust oversight that its mandate requires.
Background

The OCC’s responsible innovation work to date

In August 2015, the OCC began an initiative to better understand innovation occurring in the financial services industry and to develop a framework supporting responsible innovation. To gain a broad perspective, the OCC conducted extensive research and had discussions with fintech companies, banks, community and consumer groups, academics, and other regulators. This work led to the publication of a white paper in March 2016 that outlined clear principles to guide the development of a framework to support responsible innovation in the federal banking system.¹ In October 2016, the OCC announced plans to implement its framework for responsible innovation, including the establishment of an Office of Innovation to serve as the central point of contact and clearinghouse for requests and information related to innovation.² The office also will conduct outreach and provide technical assistance and other resources for banks and nonbanks on regulatory expectations and principles.

Chartering authority

The OCC has authority to grant charters for national banks and federal savings associations under the National Bank Act and the Home Owners’ Loan Act, respectively.³ That authority includes granting charters for special purpose national banks. A special purpose national bank may limit its activities to fiduciary activities or to any other activities within the business of banking. A special purpose national bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: receiving deposits, paying checks, or lending money.⁴

Special purpose national bank charters have been in use for some time. The most common types of these charters are trust banks (national banks limited to the activities of a trust company) and credit card banks (national banks limited to a credit card business).⁵ Though the focus of this paper is on fintech companies in particular, there is no legal limitation on the type of “special purpose” for which a national bank charter may be granted, so long as the entity engages in


³ See 12 USC 1 et seq. and 1461 et seq. The OCC also has authority, under the International Banking Act, 12 USC 3102, to license a foreign bank to operate a federal branch or agency in the United States.

⁴ See 12 CFR 5.20(e)(1). This paper focuses on the national bank charter, because it has more flexibility than the federal savings association charter. Federal savings associations are subject to asset and investment limitations and are required to have deposit insurance. See 12 CFR 160.30 and 5.20(e)(3).

⁵ The OCC also has chartered other special purpose national banks including bankers’ banks, community development banks, and cash management banks.
fiduciary activities or in activities that include receiving deposits, paying checks, or lending money. As the next section describes, the OCC has the legal authority to construe these activities to include bank-permissible, technology-based innovations in financial services.

**Features and attributes of a national bank charter**

**Corporate structure**

A national bank charter is a federal form of corporate organization that authorizes a bank to conduct business on a nationwide basis and subjects the bank to uniform standards and rigorous federal oversight. All national banks, including special purpose national banks, are organized under, and governed by, the National Bank Act. The corporate organization and structure provisions of the National Bank Act (e.g., classes of shares, voting rights, number of directors, and term of office) govern the corporate structure of a special purpose national bank.

**Bank-permissible activities**

A special purpose national bank may engage only in activities that are permissible for national banks. Bank-permissible activities are identified in statutes, in the OCC’s regulations, and in legal opinions and corporate decisions that the OCC regularly publishes. The OCC and the courts that have considered the scope of bank-permissible activities also recognize that the business of banking develops over time as the economy and business methods evolve.

Consistent with legal precedent, the OCC views the National Bank Act as sufficiently adaptable to permit national banks—full-service or special purpose—to engage in new activities as part of the business of banking or to engage in traditional activities in new ways. For example, discounting notes, purchasing bank-permissible debt securities, engaging in lease-financing transactions, and making loans are forms of lending money. Similarly, issuing debit cards or engaging in other means of facilitating payments electronically are the modern equivalent of paying checks. The OCC would consider on a case-by-case basis the permissibility of a new activity that a company seeking a special purpose charter wishes to conduct.

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8 See, e.g., 12 CFR 7.5002 (OCC regulation authorizing national banks to use electronic means to conduct activities they are otherwise authorized to conduct, subject to appropriate safety and soundness and compliance standards and conditions).
Rules and standards applicable to a special purpose national bank

In general, a special purpose national bank is subject to the same laws, regulations, examination, reporting requirements, and ongoing supervision as other national banks. Statutes that by their terms apply to national banks apply to all special purpose national banks, even uninsured national banks. These laws include, for example, statutes and regulations on legal lending limits and limits on real estate holdings.9

Other laws that apply to special purpose banks include the Bank Secrecy Act (BSA), other anti-money laundering (AML) laws, and the economic sanctions administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC). In addition, special purpose national banks generally are subject to the prohibitions on engaging in unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act and unfair, deceptive, or abusive acts or practices under section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The OCC’s chartering regulation and licensing policies and procedures also would apply to a special purpose national bank. The established charter policies and procedures are set forth in 12 CFR Part 5 and the “Charters” booklet of the Comptroller’s Licensing Manual and are discussed in the Chartering process section below.10

A special purpose national bank also has the same status and attributes under federal law as a full-service national bank.11 State law applies to a special purpose national bank in the same way and to the same extent as it applies to a full-service national bank. Limits on state visitorial authority also apply in the same way. A special purpose national bank would look to the relevant statutes (including the preemption provisions added to the National Bank Act by Dodd-Frank), regulations (including the OCC’s preemption regulations), and federal judicial precedent to determine if or how state law applies. For example, under these statutes, rules, and precedents, state laws would not apply if they would require a national bank to be licensed in order to engage in certain types of activity or business. Examples of state laws that would generally apply to national banks include state laws on anti-discrimination, fair lending, debt collection, taxation, zoning, criminal laws, and torts. In addition, any other state laws that only incidentally affect national banks’ exercise of their federally authorized powers to lend, take deposits, and engage in other federally authorized activities are not preempted. Moreover, the OCC has taken the position that state laws aimed at unfair or deceptive treatment of customers apply to national banks.12

Many other federal statutes apply to any bank, financial institution, or other type of entity based on the activities in which the entity engages. For example, banks that engage in residential real

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9 See 12 USC 84 and 12 CFR 32 (lending limits) and 12 USC 29 and 12 CFR 7.1000 (limits on holding real estate).


11 A special purpose national bank has the same charter as a full-service national bank. It limits its activities through the bank’s articles of association or through OCC-imposed conditions for approving the charter.

12 The OCC looks to the substantive content of the state statute and not its title or characterization to determine whether it falls within this category.
estate lending must comply with the Truth in Lending Act, Real Estate Settlement Procedures Act, Home Mortgage Disclosure Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Servicemembers Civil Relief Act, and Military Lending Act.

Some statutes, however, apply to a national bank only if it is FDIC-insured and, therefore, would not apply to an uninsured special purpose national bank. For example, certain provisions in the Federal Deposit Insurance Act (FDIA), such as section 1831p-1 (safety and soundness standards) and section 1829b (retention of records), only apply to insured depository institutions. In addition, if a national bank is not insured, the provisions in the FDIA governing the receivership of insured depository institutions would not apply. The OCC recently issued a proposed rule that would address this regulatory gap by establishing a framework for the receivership of an uninsured national bank under the receivership provisions in the National Bank Act. The proposed rule primarily focuses on uninsured national trust banks, but specifically contemplates application to other special purpose national banks. The Community Reinvestment Act (CRA) is an example of another law that only applies to insured institutions.

As discussed in the Chartering process section below, the OCC could impose requirements on an uninsured special purpose bank as a condition for granting a charter that are similar to certain statutory requirements applicable to insured banks, if it deems the conditions appropriate based on the risks and business model of the institution.

**Coordination among regulators**

The OCC is the primary prudential regulator and supervisor of national banks. Depending on the structure of the bank and the activities it conducts, other regulators will have oversight roles as well. A fintech company considering a special purpose national bank charter likely would need to engage with other regulators in addition to the OCC. The OCC traditionally coordinates with other banking regulators on charter-related activities and would continue to coordinate and communicate where appropriate with other regulators in the case of an application by a fintech company for a special purpose national bank charter.

*Federal Reserve:* With rare exceptions, all national banks, including insured and uninsured trust banks and other special purpose national banks, are required to be members of the Federal

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13 While certain provisions of the FDIA do not apply to uninsured national banks, the OCC can address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices under its other supervisory and enforcement authorities. The FDIA’s principal enforcement section, 12 U.S.C. 1818, generally would apply to any national banking association, including an uninsured national bank. See 12 USC 1818(b)(5).


15 12 USC 2901 et seq. See also 12 CFR Part 25 (OCC CRA regulations).

16 Such conditions are conditions imposed in writing by the OCC in connection with any action on any application, notice, or other request under 12 USC 1818(b)(1). As such they are enforceable under 12 CFR 1818.
Reserve System.\textsuperscript{17} National banks become member banks by subscribing for the stock of the appropriate Federal Reserve Bank.\textsuperscript{18} Since most special purpose national banks would be member banks, the statutes and regulations that apply to member banks also would apply to them.\textsuperscript{19} These statutes and regulations are administered by the Board of Governors of the Federal Reserve System (Federal Reserve Board) and the Federal Reserve Banks.

In addition, the Federal Reserve Board administers and interprets the scope and requirements of the Bank Holding Company Act (BHCA). If a fintech company interested in operating as a special purpose national bank has or plans to have a holding company that would be the sole or controlling owner of the bank (and investors would, in turn, own shares in the holding company), the BHCA could apply. A national bank is a “bank” for purposes of the BHCA if (A) it is either (i) an FDIC-insured bank or (ii) a bank that both accepts demand deposits and engages in the business of making commercial loans and (B) it does not qualify for any of the exceptions from the definition of “bank” in the BHCA.\textsuperscript{20}

\textit{Federal Deposit Insurance Corporation}: A fintech company that proposes to accept deposits other than trust funds would be required to apply to, and receive approval from, the FDIC. Generally, a bank must be engaged in the business of receiving deposits other than trust funds for the FDIC to consider granting deposit insurance.\textsuperscript{21} For example, some national trust banks engage only in fiduciary and related activities and do not engage in the business of receiving deposits other than trust funds. As a result, they are not FDIC-insured.\textsuperscript{22} If the OCC chartered another type of special purpose national bank that did not receive deposits other than trust funds, such as a fintech company, that new bank also would not be eligible for FDIC insurance.

\textit{Consumer Financial Protection Bureau}: A special purpose national bank that engages in an activity that is regulated under a federal consumer financial law, as defined by Dodd-Frank, may also be subject to oversight by the Consumer Financial Protection Bureau (CFPB). A special purpose national bank that is an insured depository institution generally would be supervised by either the CFPB or the OCC for purposes of all federal consumer financial laws based on its

\begin{itemize}
  \item \textsuperscript{17} See 12 USC 222. National banks located in territories and insular possessions of the United States are not required to be member banks. See 12 USC 466.
  \item \textsuperscript{18} See 12 USC 282; 12 CFR 209.2(b).
  \item \textsuperscript{19} For example, the Federal Reserve Act imposes quantitative and qualitative restrictions on a member bank’s transactions with its affiliates. 12 USC 371c, 371c-1. These restrictions are implemented by the Federal Reserve Board. See 12 CFR Part 223.
  \item \textsuperscript{20} See 12 USC 1841.
  \item \textsuperscript{21} See 12 USC 1815(a). The FDIC’s regulations provide that an institution is engaged in the business of receiving deposits other than trust funds if it maintains one or more non-trust deposit accounts in the minimum aggregate amount of $500,000. 12 CFR 303.14(a).
  \item \textsuperscript{22} There are several FDIC-insured trust banks. Currently, four national trust banks have FDIC insurance.
\end{itemize}
asset size. Under Dodd-Frank, the CFPB would supervise an uninsured special purpose national bank engaged in certain activities for compliance with federal consumer financial law.

**Baseline supervisory expectations**

All national banks are required to meet high supervisory standards. Consistent with the OCC’s mission, these standards include safety and soundness requirements, as well as requirements to provide fair access to financial services, treat customers fairly, and comply with all applicable laws and regulations. The OCC tailors these standards based on the bank’s size, complexity, and risks. As a national bank, a special purpose national bank also would be expected to meet these high standards, tailored to its size, complexity, and risks.

The OCC has identified the following baseline supervisory expectations for any entity seeking a national charter. These baseline expectations stress the importance of a detailed business plan, governance, capital, liquidity, compliance risk management, financial inclusion, and recovery and resolution planning. As with other applicants seeking a national bank charter, applicants for a special purpose charter are strongly encouraged, prior to filing an application, to meet with the OCC to discuss these baseline expectations in detail and how the expectations (and any others arising from the particular proposal) apply to their proposed bank. Those meetings enable the OCC to work with the applicant to develop and tailor supervisory standards to each applicant based on the applicant’s circumstances including its size, business model, complexity and risk profile.

**Robust, well-developed business plan**

A well-developed business plan is a key component of any charter proposal. The OCC expects a company seeking any type of national bank charter to clearly articulate why it is seeking a national bank charter and provide significant detail about the proposed bank’s activities. The business plan is a written summary of how the proposed bank will organize its resources to meet its goals and objectives and how it will measure progress. As such, the business plan should be comprehensive, reflecting in-depth planning by the organizers, Board of Directors, and management.

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23 The CFPB has exclusive supervisory authority and primary enforcement authority over special purpose national banks that are insured depository institutions and have assets greater than $10 billion. See 12 CFR 5515. The OCC generally has exclusive supervisory and enforcement authority over special purpose national banks that are insured depository institutions and have assets of $10 billion or less. See 12 USC 5516, 5581(c)(1)(B).

24 See 12 USC 5514. Section 5514(a) defines the “scope of coverage” for the CFPB’s supervisory authority over nondepository covered persons, which does not include all activities governed by a federal consumer financial law. Instead, the “scope of coverage” set forth in subsection (a) includes specified activities (e.g., offering or providing: origination, brokerage, or servicing of consumer mortgage loans; payday loans; or private education loans) as well as a means for the CFPB to expand the coverage through specified actions (e.g., a rulemaking to designate “larger market participants”). 12 USC 5514(a).

25 See the “Charters” booklet of the Comptroller’s Licensing Manual for more information on business plan requirements.
The plan should clearly define the market the proposed bank plans to serve and the products and services it will provide. In addition, it should realistically forecast market demand, economic conditions, competition, and the proposed bank’s customer base. The plan also must demonstrate a realistic assessment of risk, describing management’s assessment of all risks inherent in the proposed products and services, including risks relating to BSA/AML requirements, consumer protection, fair lending requirements, and the design of related risk management controls and management information systems. Additionally, the plan should describe the experience and expertise of proposed management, including the Board, to manage the proposed bank.

The business plan should cover a minimum of three years and provide a full description of proposed actions to accomplish the primary functions of the proposed bank. The description should provide enough detail to demonstrate that the proposed bank has a reasonable chance for success, will operate in a safe and sound manner, and will have adequate capital to support its risk profile. The OCC expects a proposed bank’s business plan to outline the plans for initial and future capital contributions, as well as to provide specific information on how the proposed bank intends to maintain and monitor appropriate capital levels. The plan should also identify external sources available to bolster capital levels, if needed. Additionally, the business plan should include comprehensive alternative business strategies to address various best-case and worst-case scenarios (e.g., financial performance, revenue growth, market share). The business plan also should include the organizing group’s knowledge of and plans for serving the community, if applicable.

**Governance structure**

The OCC expects the governance structure for any proposed special purpose national bank to be commensurate with the risk and complexity of its proposed products, services, and activities, as it is for other national banks. The OCC sets high standards for governance and for risk management systems that identify, monitor, manage, and control risk in national banks. The OCC expects national banks to have the expertise, financial acumen, and risk management framework to promote safety and soundness oversight. The Board of Directors must have a prominent role in the overall governance structure by participating on key committees and guiding the risk management framework. Board members also must actively oversee management, provide credible challenge, and exercise independent judgment.

**Capital**

The OCC’s evaluation of a bank’s capital is important, not only to assess the strength of an individual bank, but also to evaluate the safety and soundness of the entire federal banking system. Bank capital, among other things, helps to ensure public confidence in the stability of individual banks and the banking system; supports the volume, type, and character of the business conducted; and provides for the possibility of unexpected loss.

Minimum and ongoing capital levels need to be commensurate with the risk and complexity of the proposed activities (including on- and off-balance sheet activities). The OCC’s evaluation of capital adequacy (initial and ongoing) consider the risks and complexities of the proposed...
products, services, and operating characteristics, taking into account both quantitative and qualitative factors. Key qualitative elements that influence the determination of capital adequacy include the scope and nature of the bank’s proposed activities, quality of management, funds management, ownership, operating procedures and controls, asset quality, earnings and their retention, risk diversification, and strategic planning. In addition to assessing the quality and source of capital, the OCC also considers on- and off-balance sheet composition, credit risk, concentration, and market risks.

Special purpose national bank charter applicants whose business activities may be off-balance sheet would be subject to the OCC’s minimum regulatory capital requirements, but the minimum capital levels required may not adequately reflect the risks associated with off-balance sheet activities. To account for this gap, applicants are expected to propose a minimum level of capital that the proposed bank would meet or exceed at all times. For example, national trust banks typically have few assets on the balance sheet, usually composed of cash on deposit with an insured depository institution, investment securities, premises and equipment, and intangible assets. Because these banks do not make loans or rely on deposit funding, the OCC typically requires them to hold a specific minimum amount of capital, which often exceeds the capital requirements for other types of banks. Similarly, the OCC would consider adapting capital requirements applicable to a fintech applicant for a special purpose national bank charter as necessary to adequately reflect its risks and to the extent consistent with applicable law.

**Liquidity**

The OCC’s evaluation of liquidity focuses on a bank’s capacity to readily and efficiently meet expected and unexpected cash flows and collateral needs at a reasonable cost, without adversely affecting either daily operations or the financial condition of the bank. As with capital, minimum and ongoing liquidity (both operating and contingent obligations) for a special purpose national bank need to be commensurate with the risk and complexity of the proposed activities. In assessing the liquidity position of a proposed bank, the OCC considers a proposed bank’s access to funds as well as its cost of funding. Some key areas of consideration include projected funding sources, needs, and costs; net cash flow and liquid asset positions; projected borrowing capacity; highly liquid asset and collateral positions (including the eligibility and marketability of such assets under a variety of market environments); requirements for unfunded commitments; and the adequacy of contingency funding plans. All aspects of liquidity should address the impact to earnings and capital, and incorporate planned and unplanned balance sheet changes, as well as varying interest rate scenarios, time horizons, and market conditions.

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27 The OCC’s capital requirements are set forth at 12 CFR Part 3.

Exploring Special Purpose National Bank Charters for Fintech Companies

Compliance risk management

The OCC expects all national banks to manage compliance risks effectively. A strong compliance infrastructure contributes to a national bank’s safe and sound operation, as well as the provision of fair access to financial services, fair treatment of customers, and compliance with applicable laws.

An applicant seeking a special purpose national bank charter, like any applicant for a national bank charter, is expected to demonstrate a culture of compliance that includes a top-down, enterprise-wide commitment to understanding and adhering to applicable laws and regulations and to operating consistently with OCC supervisory guidance. In addition, the applicant would need appropriate systems and programs to identify, assess, manage and monitor the compliance process (e.g., policies and procedures, practices, training, internal controls, and audit), and a commitment to maintain adequate compliance resources.

Appropriate compliance risk management includes a well-developed compliance management system that is commensurate with the risks to the proposed bank and includes:

- a compliance program designed to ensure and monitor compliance with the requirements imposed by the BSA, other AML statutes, and related regulations, as well as OFAC economic sanctions obligations; and
- a consumer compliance program designed to ensure fair treatment of customers and fair access to financial services, as well as compliance with Section 5 of the Federal Trade Commission Act, the unfair, deceptive, or abusive acts or practices prohibitions of Dodd-Frank, and all other applicable consumer financial protection laws and regulations.

The OCC expects any applicant seeking a special purpose national bank charter to provide a sufficient description of the proposed bank’s activities for the OCC to fully understand the BSA/AML and compliance risks the proposed bank faces, how it intends to assess, manage, and monitor these risks, and how it would comply with relevant laws, regulations, and requirements.

As with any national bank, the compliance risk management system appropriate for a specific bank should consider the nature of the company’s business, its size, and the diversity and complexity of the risks associated with its operations. While this general standard is consistent across all national banks, applying the standard to a fintech company’s business model could raise novel considerations. The OCC would consider and address in its evaluation of a fintech charter application whether and how innovative elements of a business model may affect the proposed bank’s compliance risk profile.

Financial inclusion

The OCC’s statutory mission includes ensuring that national banks treat customers fairly and provide fair access to financial services.29 This part of the OCC’s mission is directly related to

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29 See 12 USC 1.
financial inclusion. For insured depository institutions, this mission is advanced, in part, through the CRA framework, under which the OCC assesses an institution’s record of helping meet the credit needs of its entire community, including low- and moderate-income neighborhoods, individuals, and underserved geographic areas. Special purpose national banks that are not insured depository institutions, however, are not subject to the CRA.

Distinct from any direct CRA obligation, the OCC is guided by certain principles in determining whether to approve a charter application to establish a national bank. These principles include “encouraging” the national bank “to provide fair access to financial services by helping to meet the credit needs of its entire community” and “promoting fair treatment of customers including efficiency and better service.” The OCC expects an applicant seeking a special purpose national bank charter that engages in lending activities to demonstrate a commitment to financial inclusion that supports fair access to financial services and fair treatment of customers. The nature of the commitment would depend on the entity’s business model and the types of loan products or services it intends to provide.

The OCC’s chartering regulation generally requires an applicant for a national bank charter to submit a business plan that demonstrates how the proposed bank plans to respond to the needs of the community, consistent with the safe and sound operation of the bank. Although this element of the business plan is not mandatory for all special purpose banks, the OCC expects a special purpose bank engaged in lending to explain its commitment to financial inclusion in its business plan. In developing the financial inclusion component of its business plan, a proposed special purpose bank engaged in lending should consider the following elements:

- an identification of, and method for defining, the relevant market, customer base, or community;
- a description of the nature of the products or services the company intends to offer (consistent with its business plan), the marketing and outreach plans, and the intended delivery mechanisms for these products or services;
- an explanation of how such products and services, marketing plans, and delivery mechanisms would promote financial inclusion (e.g., provide access to underserved consumers or small businesses); and

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30 The problem of financially unserved and underserved sectors of society is a global issue. The World Bank has described “financial inclusion” to mean that “individuals and businesses have access to useful and affordable financial products and services that meet their needs—transactions, payments, savings, credit and insurance—delivered in a responsible and sustainable way.” See the World Bank Financial Inclusion Overview page at http://www.worldbank.org/en/topic/financialinclusion/overview. Separately, recent final guidance from the Basel Committee on Banking Supervision addresses financial inclusion, focusing on unserved and underserved customers. See Guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion (September 2016) at http://www.bis.org/bcbs/publ/d383.pdf.

31 See 12 USC 2902 (defining “regulated financial institution” to mean an “insured depository institution”). See also 12 CFR 25.12 (defining “bank” as a national bank with federally insured deposits).

32 See 12 CFR 5.20(f)(1)(ii) and (iv).

33 See 12 CFR 5.20(h)(5).
• full information regarding how the proposed bank’s policies, procedures, and practices are designed to ensure products and services are offered on a fair and non-discriminatory basis. For example, the OCC may ask an applicant that plans to extend credit to provide the terms on which it plans to lend, including a description of the protections it plans to provide to individuals and small business borrowers.

As with other elements of the applicant’s business plan, the OCC may require a company to obtain approval, or no-objection, from the OCC if it departs materially from its financial inclusion plans.

**Recovery and exit strategies; resolution plan and authority**

As noted above, the OCC expects a proposed bank’s business plan to include alternative business and recovery strategies to address various best-case and worst-case scenarios. Simply put, the OCC expects business plans to articulate specific financial or other risk triggers that would prompt the Board and management’s determination to unwind the operation in an organized manner. These strategies must provide a comprehensive framework for evaluating the financial effects of severe stress that may affect an entity and options to remain viable under such stress. The business plan must address material changes in the institution’s size, risk profile, activities, complexity, and external threats, and be integrated into the entity’s overall risk governance framework. Plans must be specific to that entity, aligned with the entity’s other plans, and coordinated with any applicable parent or affiliate planning. A plan should include triggers alerting the entity to the risk or presence of severe stress, a wide range of credible options an entity could take to restore its financial strength and viability, and escalation and notification procedures. While the objective of these business and recovery strategies is to remain a viable entity, the OCC may also require a company to have a clear exit strategy.

**Chartering process**

The OCC’s standard process for reviewing and making decisions about charter applications would apply to applications from fintech companies for a special purpose national bank charter. Charter applications are reviewed and processed through the OCC’s Licensing Department. The “Charters” booklet of the *Comptroller’s Licensing Manual*[^34] contains detailed information about that process, which consists of four stages:

• The prefiling stage, in which potential applicants engage with the OCC in formal and informal meetings to discuss their proposal, the chartering process, and application requirements. At this stage, applicants also prepare a complete application, including a business plan.
• The filing stage, in which the organizers submit the application. Organizers also must publish notice of the charter application as soon as possible before or after the date of the filing.
• The review and evaluation stage, in which the OCC conducts background and field investigations, and reviews and analyzes the application to determine whether the proposed bank: has a reasonable chance of success; will be operated in a safe and sound manner; will

[^34]: See the “Charters” booklet of the *Comptroller’s Licensing Manual.*
provide fair access to financial services; will ensure compliance with laws and regulations; will promote fair treatment of customers; and will foster healthy competition.

- The decision stage, which includes three phases:
  - The preliminary conditional approval phase, when the OCC decides whether to grant preliminary conditional approval;
  - The organization phase, when the bank raises capital, prepares for opening, and the OCC conducts a preopening examination; and
  - The final approval phase, when the OCC decides whether the bank has met the requirements and conditions for opening.

The OCC imposes a number of standard requirements on a bank when it grants preliminary conditional approval, such as the establishment of appropriate policies and procedures and the adoption of an internal audit system appropriate to the size, nature, and scope of the bank’s activities. The OCC may impose additional conditions for a variety of reasons, including for example to ensure the newly chartered bank does not change its business model from that proposed in the application without prior OCC approval; to mandate higher capital and liquidity requirements; or to require the bank to have a resolution plan to sell itself or wind down if necessary. In addition, in the case of an uninsured bank, the OCC may impose requirements by way of conditions similar to those that apply by statute to an insured bank, to the extent appropriate given the business model and risk profile of a particular applicant. The OCC likely would impose additional conditions in connection with granting a special purpose national bank charter requested by a fintech company based on the fintech company’s business model and risk profile.35

The OCC recognizes it also may need to tailor some requirements that apply to a full-service national bank to address the business model of a special purpose national bank. The OCC has experience in adapting legal requirements to different types of business models. For example, as noted above, the OCC has modified capital requirements for certain trust banks.36 Similarly, the OCC would consider adapting requirements applicable to a fintech applicant for a special purpose national bank charter to the extent consistent with applicable law.

The OCC recommends that potential applicants carefully review the OCC chartering regulation and the “Charters” booklet of the Comptroller’s Licensing Manual for a full description of the charter application process and requirements. The OCC also strongly urges groups or individuals interested in a special purpose national bank charter to engage with the OCC well in advance of filing an application to ensure they understand the requirements. In addition, interested parties

35 An applicant may be required, as a condition of approval, to enter into an “operating agreement” with the OCC containing the substantive charter conditions. The special purpose charters section of the “Charters” booklet of the Comptroller’s Licensing Manual has additional information on operating agreements and other documents used for some special purpose national trust banks.

36 The OCC is funded through assessments and fees charged to the institutions it supervises. See 12 USC 16. Consistent with this authorization, the OCC has modified the assessments it charges an independent trust bank or a credit card bank to account for the scope and activities of the entity and the amount and type of assets that the entity holds. The OCC would determine assessments for a fintech special purpose national bank to account for similar factors.
are advised to consult the Comptroller’s Handbook for additional information on how the OCC supervises and examines national banks. The Office of Innovation also can be an important resource to fintech companies interested in exploring the possibility of a special purpose national bank charter. Contact information for the Licensing Department and the Office of Innovation may be found on the OCC’s website.

Request for comment

As the OCC considers the granting of special purpose national bank charters to fintech companies, it seeks feedback on all aspects of this paper. The OCC also solicits responses to the following questions. Respondents should provide written comments by January 15, 2017 (45 days from this paper’s publication). Submissions should be sent to specialpurposecharter@occ.treas.gov.

1. What are the public policy benefits of approving fintech companies to operate under a national bank charter? What are the risks?

2. What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose national bank that limits the type of assets it holds?

3. What information should a special purpose national bank provide to the OCC to demonstrate its commitment to financial inclusion to individuals, businesses and communities? For instance, what new or alternative means (e.g., products, services) might a special purpose national bank establish in furtherance of its support for financial inclusion? How could an uninsured special purpose bank that uses innovative methods to develop or deliver financial products or services in a virtual or physical community demonstrate its commitment to financial inclusion?

4. Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?

5. How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion?

6. Should the OCC use its chartering authority as an opportunity to address the gaps in protections afforded individuals versus small business borrowers, and if so, how?

7. What are potential challenges in executing or adapting a fintech business model to meet regulatory expectations, and what specific conditions governing the activities of special purpose national banks should the OCC consider?

The Comptroller’s Handbook is a collection of booklets that contain the concepts and procedures established by the OCC for the examination of banks. It is available at www.occ.gov.
8. What actions should the OCC take to ensure special purpose national banks operate in a safe and sound manner and in the public interest?

9. Would a fintech special purpose national bank have any competitive advantages over full-service banks the OCC should address? Are there risks to full-service banks from fintech companies that do not have bank charters?

10. Are there particular products or services offered by fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?

11. How can the OCC enhance its coordination and communication with other regulators that have jurisdiction over a proposed special purpose national bank, its parent company, or its activities?

12. Certain risks may be increased in a special purpose national bank because of its concentration in a limited number of business activities. How can the OCC ensure that a special purpose national bank sufficiently mitigates these risks?

13. What additional information, materials, and technical assistance from the OCC would a prospective fintech applicant find useful in the application process?
Policy Statement on Financial Technology Companies’ Eligibility to Apply for National Bank Charters
July 31, 2018

It is the policy of the Office of the Comptroller of the Currency (OCC) to consider applications for national bank charters from companies conducting the business of banking, provided they meet the requirements and standards for obtaining a charter. This policy includes considering applications for special purpose national bank charters from financial technology (fintech) companies that are engaged in the business of banking but do not take deposits.

This policy statement is based on broad authority granted to the OCC by the National Bank Act, as implemented in existing regulation and established OCC procedures.

The OCC is issuing this policy statement to clarify its intent to exercise its existing chartering authority. The OCC also recognizes the importance of supporting responsible innovation in the federal banking system to better enable the system to

• evolve to meet the needs of the consumers, businesses, and communities it serves;
• operate in a safe and sound manner;
• provide fair access to financial services;
• treat customers fairly; and
• promote economic opportunity and job creation.

The OCC recognizes that the business of banking evolves over time, as do the institutions that provide banking services. As the banking industry changes, companies that engage in the business of banking in new and innovative ways should have the same opportunity to obtain a national bank charter as companies that provide banking services through more traditional means. The OCC will require these new entrants to the national banking system to adhere to the same high standards that apply to all national banks.

The OCC adopts this policy after careful consideration of the extensive stakeholder feedback and public comment received over the past two years.

1 See 12 USC 21, 26, and 27.
2 See 12 CFR 5.20.
OCC Chartering Authority

The National Bank Act gives the OCC broad authority to grant charters for national banks to carry on the “business of banking.” This authority extends to special purpose national banks. As defined in the OCC’s regulations, the “business of banking” includes any of the three core banking functions of receiving deposits, paying checks, or lending money. Section 5.20 of the OCC’s regulations provides that, to be eligible for a national bank charter, a special purpose national bank must conduct at least one of these three core banking functions. Thus, the OCC has authority to grant a national bank charter to a fintech company that engages in one or more of those core banking activities.

OCC Support for Responsible Innovation

The federal banking system must adapt to the rapid technological changes taking place in the financial services industry to remain relevant and vibrant and to meet the evolving needs of the consumers, businesses, and communities it serves. The OCC encourages all national banks and federal savings associations to develop strategies that incorporate responsible innovation to address the changing operating environment and evolving needs and preferences of their customers. The OCC has developed an agency-wide framework to support responsible innovation throughout the federal banking system and established the Office of Innovation to serve as a clearinghouse for innovation-related matters and a point of contact for OCC staff, banks, and nonbanks to facilitate innovation-related activities.

Considering applications from fintech companies for national bank charters is one important way that the OCC supports responsible innovation in the federal banking system. Companies engaged in the business of banking should have a path to become a national bank, provided they meet the rigorous standards necessary to become and succeed as a national bank.

Chartering a qualified fintech company as a national bank would also have important public policy benefits. The national bank charter provides a framework of uniform standards and robust supervision. Applying this framework to fintech companies that qualify can level the playing field with regulated institutions and help ensure that they operate in a safe and sound manner and fairly serve the needs of consumers, businesses, and communities. In addition, applying the OCC’s uniform supervision over national banks, including fintech companies, will help promote consistency in the application of laws and regulations across the country and ensure that consumers are treated fairly. More broadly, providing a path for fintech companies to become national banks promotes consumer choice, economic growth, modernization, and competition—all of which strengthen the federal banking system and support the nation’s economy.
Chartering Standards and Supervisory Expectations

The decision to consider national bank charter applications from qualifying fintech companies is consistent with the OCC’s longstanding chartering standards and supervisory expectations. The OCC will use its existing chartering standards and procedures for processing applications from fintech companies as outlined in the Comptroller’s Licensing Manual. As with all national banks, the OCC will consider whether a proposed bank has a reasonable chance of success, will be operated in a safe and sound manner, will provide fair access to financial services, will treat customers fairly, and will comply with applicable laws and regulations. The OCC will also consider whether the proposed bank can reasonably be expected to achieve and maintain profitability and whether approving the charter will foster healthy competition.

A fintech company that receives a national bank charter will be subject to the same high standards of safety and soundness and fairness that all federally chartered banks must meet. As it does for all banks under its supervision, the OCC would tailor these standards based on the bank’s size, complexity, and risk profile, consistent with applicable law. In addition, a fintech company with a national bank charter will be supervised like similarly situated national banks, including with respect to capital, liquidity, and risk management.

The OCC also expects a fintech company that receives a national bank charter to demonstrate a commitment to financial inclusion. The nature of that commitment will depend on the company’s business model and the types of products, services, and activities it plans to provide. By providing a high standard similar to the Community Reinvestment Act’s expectations for national banks that take insured deposits, the financial inclusion commitment will help ensure that all national banks provide fair access to financial services and treat customers fairly.

In addition, a fintech company approved for a national bank charter will be required to develop a contingency plan to address significant financial stress that could threaten the viability of the bank. The plan would outline strategies for restoring the bank’s financial strength and options for selling, merging, or liquidating the bank in the event the recovery strategies are not effective. The specific considerations related to supervision, capital, liquidity, financial inclusion, and contingency planning are described in the agency’s supplement to the Comptroller’s Licensing Manual, “Considering Charter Applications From Financial Technology Companies.”

While the OCC is open and receptive to charter applications from qualified fintech companies, the OCC will not approve proposals that are contrary to applicable law, regulation, policy, or safety and soundness. Exercising the OCC’s existing authority to grant special purpose charters does not alter existing barriers separating banking and commerce. Further, proposals that include financial products and services that have
predatory, unfair, or deceptive features or that pose undue risk to consumer protection, would be inconsistent with law and policy and would not be approved.

//signed//

Joseph M. Otting
Comptroller of the Currency

July 31, 2018
Date
Considering Charter Applications From Financial Technology Companies
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Introduction

Technological innovations have revolutionized the way financial products and services are delivered and have enabled the development of new products and services. Today, many financial products and services are more accessible, easier to use, and more tailored to the needs of customers than ever before. The Office of the Comptroller of the Currency (OCC) has determined that companies that offer innovative technology-driven products and services may be eligible for a national bank charter, provided they meet the chartering requirements and standards applicable to all national banks.\(^1\) Those requirements and standards are established by statute at 12 USC 21, 26, and 27, and by the OCC’s regulations at 12 CFR 5. Comprehensive, publicly available OCC guidance explains how the OCC applies these requirements and standards.

The requirements and standards that govern applications for a national bank charter do not change if the applicant’s business model incorporates new delivery channels or mechanisms using new technology to meet evolving customer needs. Financial technology—or fintech—companies may seek to comply with those requirements and standards in ways tailored to their business models, their delivery channels, and the products and services they offer. This document describes the key factors the OCC will consider in evaluating charter applications from fintech companies that have nontraditional or limited business models, do not take deposits, and rely on funding sources different from those relied on by insured banks.

This Supplement to the *Comptroller’s Licensing Manual* provides detail on how the OCC would evaluate applications for a special purpose national bank charter from fintech companies and clarifies the OCC’s expectations that companies with a fintech business model demonstrate a commitment to financial inclusion. It also explains the contingency planning each bank will be expected to undertake. Finally, the document describes the OCC’s approach to supervising newly chartered special purpose national banks.

This Supplement augments, and does not replace, the OCC’s existing chartering guidance. *The Comptroller’s Licensing Manual* comprises a series of booklets that set out the OCC’s policies on bank charters and step-by-step procedures for potential applicants for all charter types, including special purpose national banks.\(^2\) The *Comptroller’s Licensing Manual* includes the “Charters” booklet, which is a key resource for those seeking a national bank charter. The “Charters” booklet

- describes OCC policies and procedures used in the charter application process and provides detailed guidance and instructions.
- discusses the factors that the OCC considers in deciding whether to grant a charter.

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\(^1\) The requirements and standards discussed in this supplement would also apply to a group of individuals (organizing group) or an unincorporated entity. The reference to “companies” reflects the interest in and inquiries made to the OCC from established fintech companies for a special purpose national bank charter.

\(^2\) See the “Charters” and “Background Investigations” booklets of the *Comptroller’s Licensing Manual*. 
• describes the application process, including the prefiling process, filing, OCC review of the application, the decision, and the organization phase of the new bank.
• provides information about the ongoing supervision of a federally chartered bank.
• discusses issues specific to special purpose national banks.

All potential applicants for a special purpose charter should carefully read this Supplement in conjunction with the OCC chartering regulation (12 CFR 5) and the “Charters” booklet.³

As with all potential charter applicants, OCC staff stands ready to answer questions, explain the application process, and provide guidance to potential applicants. The OCC invites those contemplating a special purpose national bank charter to contact the OCC’s Office of Innovation to begin a dialogue about what it takes to become a special purpose national bank.

What Is a Special Purpose National Bank?

A special purpose national bank is a national bank that engages in a limited range of banking or fiduciary activities, targets a limited customer base, incorporates nontraditional elements, or has a narrowly targeted business plan. Special purpose national banks include those banks whose operations are limited to certain activities, such as credit card operations, fiduciary activities, community development, or cash management activities. Special purpose national banks also include national banks that engage in limited banking activities, including one or more of the core banking functions of taking deposits, paying checks, or lending money.⁴

This Supplement applies specifically to the OCC’s consideration of applications from fintech companies to charter a special purpose national bank that would engage in one or more of the core banking activities of paying checks or lending money, but would not take deposits and would not be insured by the Federal Deposit Insurance Corporation (FDIC).⁵ We refer to these banks in this Supplement as SPNBs.⁶ Fintech companies that seek a national bank

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³ The OCC’s regulation, 12 CFR 5, sets forth the OCC’s rules, policies, and procedures for the corporate activities of a national bank and a federal savings association. The specific rules that apply to organizing a national bank are set forth in 12 CFR 5.20.

⁴ Under 12 CFR 5.20(e)(1), a special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking activities: taking deposits, paying checks, or lending money. Beyond those core activities, the activities of an SPNB are limited to those that are permissible for national banks under a statute, regulation, or federal judicial precedent, or that the OCC has determined to be permissible. See e.g. 12 USC 24(Seventh); 12 CFR 7.5002; NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co., 513 U.S. 251 (1995).

⁵ The OCC views the National Bank Act as sufficiently adaptable to permit national banks to engage in traditional activities like paying checks and lending money in new ways. For example, facilitating payments electronically may be considered the modern equivalent of paying checks. Applicants proposing to engage in activities not already addressed in statute, regulation, or OCC precedent should consult the OCC with respect to the permissibility of those activities.

⁶ This Supplement does not apply to other types of special purpose banks. For example, this Supplement would not apply to a fintech company that intends to engage in fiduciary activities and otherwise meets the requirements of a trust bank.
charter and plan to take insured deposits would be required to obtain FDIC insurance and should apply for a full-service national bank charter.

As a national bank, an SPNB will be subject to the laws, rules, regulations, and federal supervision that apply to all national banks. In addition, all SPNBs will be subject to the same high standards of safety and soundness and fairness that all federally chartered banks must meet. As it does for all banks under its supervision, the OCC will tailor these standards based on the bank’s business model, size, complexity, and risks, consistent with applicable law. For example, to approve a charter as an SPNB, the OCC may need to account for differences in business models and activities, risks, and the inapplicability of certain laws resulting from the uninsured status of the bank.

To address some of these differences, companies seeking a charter as an SPNB will be expected to make a commitment to financial inclusion and develop and adhere to a contingency plan that includes options to sell, wind down, or merge with a nonbank affiliate, if necessary.

Application Process: Overview

The OCC charters national banks under the authority of the National Bank Act of 1864, as amended. In evaluating whether to approve an application to establish a national bank, the OCC must determine whether the proposed bank has complied with all statutory and regulatory requirements and has met the OCC’s chartering standards. The OCC uses its established chartering standards and procedures as the basis for processing applications for all national banks, including SPNBs.

The OCC’s application process for a national bank consists of four phases:

1. A prefiling phase, in which potential applicants engage with the OCC in formal and informal meetings to discuss the proposal, the chartering process, and application requirements.
2. The filing phase, in which the organizers submit a complete application.
3. The review phase, in which the OCC reviews and analyzes the application to assess whether the proposed bank has a reasonable chance of success, will be operated in a safe and sound manner, will provide fair access to financial services, will promote fair

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7 See 12 USC 21, 26, and 27.

8 See 12 CFR 5.20 (describing the OCC’s statutory chartering authority and the procedures and requirements governing the OCC’s review and approval of an application to establish a national bank, including a bank with a special purpose). Special purpose bank charter applicants generally must provide the information required by the OCC’s standard review process. Applicants, however, should tailor the contents of the application to be consistent with the business model of the proposed special purpose bank.

9 See 12 CFR 5.20(l)(1) (directing applicants for a special purpose charter to adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC). See also the “Charters” booklet of the Comptroller’s Licensing Manual.
4. The decision phase, in which the OCC decides whether to approve a charter application. The decision phase includes the preliminary conditional approval stage, in which the OCC imposes requirements and conditions for receiving a charter; the organization stage, in which the bank raises capital and prepares for opening; and the final approval stage.

The Supplement highlights key aspects of each phase of the application process. The “Charters” booklet of the Comptroller’s Licensing Manual includes an in-depth discussion of each of these phases. Potential applicants are encouraged to familiarize themselves with the “Charters” booklet and the requirements for a national bank charter before initiating the application process.

Prefiling Communications

The OCC finds it mutually beneficial for the applicant and the OCC to maintain an open dialogue throughout the application process. The OCC strongly encourages potential applicants to engage with the OCC well in advance of filing a charter application to better understand the application process and the OCC’s requirements and expectations.

A fintech company interested in an SPNB charter should contact the Office of Innovation, innovation@occ.treas.gov. After the initial dialogue, the Office of Innovation may arrange further discussions with appropriate OCC staff, including the Licensing Department (Licensing), to give the company an opportunity to understand the application process, explain its proposal and reasons for seeking a charter, and become acquainted with the bank regulatory environment.

If the company decides to pursue a charter, one or more additional meetings will be scheduled, as determined by Licensing. For these additional meetings, organizers should be prepared to discuss the proposed bank’s business plan, including a description of the proposed activities, the underlying marketing analysis supporting the business plan, the capital and liquidity needed to support the business plan, as well as a contingency plan to remain viable under significant financial stress. The company also should be prepared to address how it proposes to demonstrate a commitment to financial inclusion. These meetings will enable early identification of issues related to the proposed business plan, management, capital, and other requirements for a charter. The meetings will also give the OCC an opportunity to provide feedback on the proposal and discuss any legal, policy, or supervisory issues that may be relevant to the proposal and that would need to be resolved in connection with the final application. Licensing also will determine whether the organizers should submit a draft application before filing a formal application.11

10 See 12 CFR 5.20(f).

11 The OCC employs the draft application process to better understand the potential challenges inherent in unusual or complex filings and the major obstacles from a policy or risk perspective. Filing a draft application does not guarantee that the OCC will approve a formal application.
Filing a Charter Application

After the prefiling phase, organizers would file a charter application. The filing procedures for an SPNB will be substantially the same as those that would apply to any other national bank. For example, the application must be published and made available to the public for comment. For details on filing and publishing notice of an application, see 12 CFR 5 and the “Charters” booklet of the Comptroller’s Licensing Manual.

OCC Review of the Application

Key Considerations

The OCC begins the process of reviewing the application as soon as it is filed. In its review, the OCC will consider whether the proposed bank has a reasonable chance of success, will be operated in a safe and sound manner, will provide fair access to financial services, will promote fair treatment of customers, and will ensure compliance with laws and regulations. The OCC’s regulations set forth additional considerations, including whether the proposed bank can reasonably be expected to achieve and maintain profitability and whether approving its charter will foster healthy competition.

In evaluating whether the applicant has met these standards, the OCC will consider an applicant’s business model and proposed risk profile. It will also consider, among other factors, whether the proposed bank has a business plan that articulates a clear path and timeline to profitability, has adequate capital and liquidity to support the projected volume, and has organizers and management with appropriate skills and experience.

12 The applicant must publish notice of its charter application in the community in which the proposed bank will be located as soon as practicable before or after the date of the filing. See 12 CFR 5.8. Because many SPNBs will operate online and nationally, the OCC will consider and discuss with the applicant alternative locations or methods where publication of this notice would be appropriate.

13 The public comment period runs for 30 days after publication of the public notice. See 12 CFR 5.10. The OCC maintains a public file of the application and makes it available to any person requesting it; the public file is also available on the OCC’s website, and the OCC publishes notice of the application in its Weekly Bulletin. Applicants may request that confidential treatment be afforded to certain parts of the application, for example, those containing proprietary information. See 12 CFR 5.9.

14 See Comptroller’s Licensing Manual, “Charters” booklet. The OCC seeks to make a decision on a complete and accurate application within 120 days after receipt or as soon as possible thereafter. The OCC’s review of a special purpose charter application, however, may require additional time and scrutiny.

15 See 12 USC 1(a) and 12 CFR 5.20(f)(1). See also Comptroller’s Licensing Manual, “Charters” booklet.


17 The “Charters” booklet provides detailed information on each of these factors.
The charter review process is comprehensive and takes into account all aspects of the applicant’s individual business model, governance structure, and risk profile. Highlighted below are some of the key considerations the OCC will assess in determining whether to grant an SPNB charter to a fintech company.18

**Organizers, Management, and Directors**

The organizers, managers, and directors are critical to the success of an SPNB, as they are for all banks. The OCC expects them to be well qualified, with diverse experience in relevant areas.19 Although the OCC would expect some members of the organizing group, the proposed board of directors, and management to have experience in banking or broader financial services, other relevant experience will depend on the specific products or services offered by the proposed bank. In addition, the OCC will consider whether the organizers, managers, and directors have other financial and business expertise and experience in highly regulated industries, including relevant experience needed to implement the proposed bank’s business plan. Since fintech companies are technology-driven, having sufficient technical knowledge, skills, and experience will be as necessary as having sufficient banking and financial experience.

OCC regulations and licensing policies, including those outlined in the “Charters” booklet of the *Comptroller’s Licensing Manual*, provide additional guidance regarding the qualifications of organizers, managers, and directors, as well as the respective roles of each. These criteria and qualifications are generally applicable to SPNBs, although the OCC may tailor certain criteria as appropriate.

**Business Plan**

All applicants for a national bank charter must submit a comprehensive business plan to the OCC.20 Having a comprehensive plan is critical to the OCC’s decision on whether to approve a national bank charter. The OCC expects a company seeking any type of national bank charter to articulate why it is seeking a national bank charter and to provide significant detail about the proposed bank’s activities. Proposals from companies without an established business record will be subject to a higher degree of scrutiny to evaluate whether the proposed bank has a reasonable likelihood of long-term success.

The business plan is an integral part of the management and oversight of a newly chartered or de novo bank and should establish the bank’s written goals and objectives. The plan also

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18 The key considerations contained in this Supplement are based on the OCC’s extensive internal review and analysis of whether to entertain SPNB applications, as well as the comments it has received from the public and stakeholders including fintech companies, banks, community and consumer groups, and trade associations.

19 OCC regulations and licensing policy provide guidance regarding the qualifications of organizers, managers, and directors, as well as the respective roles of each. See 12 CFR 5; the “Charters” and “Background Investigations” booklets of the *Comptroller’s Licensing Manual*; and *The Director’s Book*.

20 See 12 CFR 5.20(h). This regulation details specific items that should be addressed in a business plan, including earnings prospects, management, capital, community service, and safety and soundness.
summarizes and explains how the bank will organize its resources to meet its goals and measure its progress.

The business plan also should describe the bank’s proposed activities. Questions about the permissibility of the applicant’s proposed activities should be raised by the applicant (and may also be raised by the OCC) early in the discussion of the applicant’s proposal. In a case in which the permissibility of an activity has not previously been established, OCC staff may advise the applicant to request a legal opinion from the OCC’s Chief Counsel’s Office.

In addition, the business plan should clearly define the market that the proposed bank plans to serve and the products and services it will offer. It should identify the proposed bank’s customer base and contain realistic forecasts regarding market demand, economic conditions, competition, and financial projections, under normal and stressed conditions. The basis for the applicant’s forecasts should also be included.

A key element of the applicant’s business plan is a description of the proposed bank’s risk management framework to identify, measure, monitor, and control risks. This description should include a discussion of how the board will monitor adherence to the business plan and adjust or amend the plan as appropriate to accommodate significant or material changes.

The business plan should also describe the bank’s proposed internal system of controls to monitor and mitigate risk, including management information systems. The discussion of internal controls should include a general description of the controls for ensuring customer transaction and data integrity, security, and auditability, as well as overviews of the operational architecture, security framework, and resiliency structures. Independent testing of the business activities, systems, and controls, and compliance management systems should also be addressed. Further, the business plan should address any functions or services that will be outsourced to a third party and the third-party risk management processes that are commensurate with the level of risk and complexity of those third-party relationships.

The applicant should also provide a risk assessment with the business plan. The risk assessment should demonstrate a realistic understanding of risk and describe management’s assessment of all risks inherent in the proposed business model and products and services, including risks relating to third-party service providers, cybersecurity, Bank Secrecy Act (BSA) and anti-money laundering (AML) requirements, Office of Foreign Assets Control economic sanctions obligations, consumer protection, and fair lending. The risk assessment should set out the degree of risk the bank intends to assume (its risk appetite) and how it would manage the identified risks. The risk assessment should factor in the target markets’

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21 Applicants should review 12 CFR 30, appendix B, “Interagency Guidelines Establishing Information Security Standards.” These guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information and for disposing of consumer information.

22 Such independent testing may be performed internally or may be outsourced but should be performed by someone independent of the day-to-day functions of the business activities, systems, and controls and who has the requisite skills to identify program or control weaknesses.
economic and competitive conditions, including the proposed products, services, and customers; the targeted geography (e.g., regional, nationwide); and any regulatory considerations regarding serving those markets.23

Detailed guidance regarding the business plan is available in the “Charters” booklet of the Comptroller’s Licensing Manual.24 Additional information on the OCC’s expectations regarding a bank’s risk management and corporate governance framework may be found in appendix A to this Supplement, “Supervisory Considerations.”

**Capital and Liquidity**

The OCC’s evaluation of a bank’s capital is important not only to assess the strength of an individual bank but also to maintain the safety and soundness of the entire banking system. Bank capital also helps to ensure public confidence in the stability of individual banks and the banking system; supports the volume, type, and character of the business conducted; and provides for the possibilities of loss.

For an SPNB, minimum and ongoing capital levels should be commensurate with the risk and complexity of the proposed activities. An SPNB will be subject to the minimum leverage and risk-based capital requirements in 12 CFR 3 that apply to all national banks. These requirements, however, which measure regulatory capital levels relative to an entity’s assets and off-balance-sheet exposures, set a floor and may not be sufficient for measuring capital adequacy for some SPNBs.

For example, the risks posed by an SPNB with limited on-balance-sheet assets or nontraditional strategies may not be fully captured in its reported assets and off-balance-sheet exposures. To account for this gap, organizers will be expected to propose a minimum level of capital that the bank will meet or exceed at all times. Organizers will determine this minimum level of capital through a capital adequacy assessment that considers quantitative and qualitative factors, such as the volume of off-balance-sheet activity conducted and the risks associated with the applicant’s business plan. The OCC will evaluate the applicant’s capital adequacy assessment.

Capital adequacy should be addressed in the business plan. Organizers should analyze and support the minimum capital levels the bank will adhere to until it can achieve and sustain

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23 For any SPNB that provides retail bank services, the applicant should describe a BSA/AML compliance program (12 CFR 21.21) reasonably designed to assure and monitor compliance with BSA recordkeeping and reporting requirements, and a consumer compliance program designed to ensure fair treatment of customers and to promote fair access to financial services as well as compliance with section 5 of the Federal Trade Commission Act, the Unfair, Deceptive, and Abusive Acts or Practices prohibitions of the Dodd–Frank Consumer Protection and Wall Street Reform Act of 2010, and all other applicable consumer financial protection laws and regulations.

24 The “Charters” booklet of the Comptroller’s Licensing Manual includes a link to the OCC’s Business Plan Guidelines. The Business Plan Guidelines provide information on the general elements of a business plan, including a description of the business; marketing plan; management plan; compliance management; the financial management plan; records, systems, and controls; and financial projections.
profitable operations. In addition, organizers should propose minimum capital levels the bank will adhere to after profitability that would be appropriate for its ongoing operations. Organizers also should discuss how the bank would address adverse market conditions that could deplete capital, such as broad market volatility or volatility specific to a business line. Additional factors that organizers should consider include the following:

- On- and off-balance-sheet composition, including credit risk, concentration risk, and market risk.
- Operational risk, including third-party relationships, and compliance risk associated with nontraditional products, services, or operating characteristics.
- Proposed activities and anticipated volume (new accounts, transactions) and impact on capital.
- Plans and prospects for growth, including any material action necessary to address business activity that is either below or above expectations and management’s past experience in managing growth.
- Stability or volatility of sources of funds and access to capital.25

If the OCC grants preliminary conditional approval for an SPNB charter, that approval will include a condition specifying a minimum capital level the bank must maintain or exceed at all times.26 This amount would be based on the analysis of quantitative and qualitative factors, including those described above. The OCC expects that capital in an SPNB would increase beyond the initial minimum amount as the size, complexity, and corresponding risks of the bank evolve.

In addition to capital, the organizers should address liquidity and funds management. Liquidity is a bank’s capacity to readily meet its cash and collateral obligations at a reasonable cost without adversely affecting either daily operations or the bank’s financial condition.27 Since SPNBs are uninsured and likely to rely on funding that is potentially more volatile in certain environments, organizers should describe how the SPNB can be funded and maintain sufficient liquidity under stressed conditions. The OCC will consider the proposed bank’s specific business model when evaluating the bank’s liquidity profile and

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25 For additional guidance on capital considerations, please see the “Capital and Dividends” booklet of the Comptroller’s Licensing Manual.

26 The OCC tailors capital requirements for other special purpose banks. For example, the OCC typically imposes capital requirements on trust banks in addition to the minimum requirements calculated according to 12 CFR 3. Because trust banks do not make loans or rely on deposit funding, the OCC typically requires them to hold a specific minimum amount of capital, which often exceeds the capital requirements for other types of banks.

27 For additional details regarding liquidity, applicants may refer to the “Liquidity” booklet of the Comptroller’s Handbook.
processes for monitoring and mitigating liquidity risk. Based on an analysis of the proposed SPNB’s business model, the OCC may impose requirements tailored to the bank’s funding model, structure, and risks to ensure it maintains adequate liquidity at all times and in all economic environments. Such requirements could include entering into a liquidity maintenance agreement with a parent company or maintaining a certain amount of high-quality liquid assets.

**Financial Inclusion**

Consistent with the agency’s mission to ensure fair treatment of customers and fair access to financial services, the OCC expects any entity seeking an SPNB charter to demonstrate a commitment to financial inclusion that includes providing or supporting fair access to financial services and fair treatment of customers. The nature of that commitment will depend on the proposed bank’s business model, and the types of products, services, or activities it intends to provide.

An SPNB applicant should describe the proposed bank’s commitment to financial inclusion in its application. The description should include the proposed goals, approaches, activities, milestones, commitment measures, and metrics for serving the anticipated market and community consistent with the bank’s activities, business model, and product and service offerings. For more information on the OCC’s expectations regarding financial inclusion, see appendix B to this Supplement, “Financial Inclusion Commitment Guidance.”

**Contingency Planning**

Before receiving final approval for a charter, an SPNB will be required to develop a contingency plan to address significant financial stress that could threaten the viability of the bank. The contingency plan should outline strategies for restoring the bank’s financial strength and options for selling, merging, or liquidating the bank in the event the recovery strategies are not effective. The format and content of the plan are flexible and should be tailored to the bank’s specific business and reviewed and updated as the bank’s business evolves.

As a condition for preliminary approval of a charter, an SPNB will be required to develop the contingency plan during the bank’s organization phase. The OCC’s final approval will require the bank to implement and adhere to the plan. The bank will be expected to review the contingency plan annually and update it as needed. Any significant changes to the contingency plan will require the non-objection of the appropriate supervisory office.

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28 National banks, including SPNBs, that meet certain asset thresholds are automatically subject to additional liquidity requirements under 12 CFR 50, including banks with total consolidated assets equal to $250 billion or more, and banks with total consolidated on-balance-sheet foreign exposure equal to $10 billion or more.

29 See 12 USC 1(a).

30 “OCC’s Guidelines Establishing Standards for Recovery Planning for Certain Large Insured National Banks, Insured Federal Savings Associations and Insured Federal Branches,” in 12 CFR 30, appendix E may be a useful resource for SPNBs developing strategies to restore the bank to financial viability.
Other Important Considerations

Coordination With Other Regulators

Depending on the structure of the proposed SPNB, regulators in addition to the OCC may have oversight and supervisory roles over the bank. In considering applications for SPNB charters, the OCC will coordinate as appropriate with other regulators to facilitate consideration of any applications or approvals that may be required by those regulators.

Continuation of Remedies

The OCC does not permit companies that are the subject of a corrective program or enforcement action by another regulator to avoid the consequences of that corrective program or enforcement action. A pending enforcement action with respect to a significant supervisory matter may be grounds for denial of a charter application. Otherwise, after consultation with the other regulator, the OCC will ensure that a company’s obligation to remediate or pay penalties for any violations or deficiencies cited or identified by another regulator is carried forward and enforced through conditions imposed on an approval of an SPNB charter.
The Chartering Decision

The OCC grants approval of a charter application in two steps: preliminary conditional approval and final approval. The period between the preliminary conditional approval and final approval is referred to as the organization phase. The OCC will issue a final approval once it determines that all key phases of organizing the bank have been completed, all requirements and conditions for final approval have been met, and the organizers have received any other necessary regulatory approvals.

The OCC imposes certain conditions in connection with the approval of all new national bank charters, including special purpose national banks. The conditions may address a variety of issues, such as guaranteeing maintenance of minimum capital levels commensurate with the prospective risk of the bank’s business plan. Other conditions include ensuring that the bank does not significantly deviate from the business model proposed in its application without obtaining the OCC’s prior non-objection.

The OCC also will impose conditions that are specific to SPNBs or unique to an individual SPNB. For example, because SPNBs are uninsured, the OCC will require the bank to develop a contingency plan that includes options to sell itself, wind down, or merge with a nonbank affiliate, if necessary. In addition, the OCC may impose conditions similar to requirements in statutes that apply by their terms only to insured banks, for instance a condition requiring the bank to demonstrate a commitment to financial inclusion.

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31 Following review of the application, the OCC determines whether to grant preliminary conditional approval or deny the application. A preliminary conditional approval determination indicates the OCC’s permission to proceed with the organization of the bank according to the business plan set forth in the application and specifies the conditions for approval. Granting preliminary conditional approval provides the organizers of the bank with assurances that the application has passed the first phase of OCC review before the organizers expend additional funds to raise capital, hire officers and employees, and fully develop policies and procedures. It is not an assurance that the OCC will grant final approval for a new bank charter.

32 For additional information on the organization phase, see the “Charters” booklet of the Comptroller’s Licensing Manual.

33 The OCC also imposes a number of requirements on a bank when it grants preliminary conditional approval. Examples of such requirements include establishing appropriate policies and procedures and adopting an internal audit system appropriate to the size, nature, and scope of the bank’s activities. The organizers must satisfy these requirements before the OCC grants final approval. These requirements are discussed in the “Charters” booklet of the Comptroller’s Licensing Manual.

34 See the “Charters” booklet of the Comptroller’s Licensing Manual for a discussion of conditions that may be imposed in connection with a charter application. The condition regarding a significant deviation from the business plan is discussed in appendix F, “Significant Deviations After Opening.”

35 Certain provisions in the Federal Deposit Insurance Act, such as section 1831p-1 (safety and soundness standards) and section 1829b (retention of records), only apply to insured depository institutions. When a law does not apply directly, the OCC may, through a charter condition, work with the bank to achieve the goals of a particular statute or regulation, taking into account relevant differences between a full-service bank and a special purpose bank.
In addition, the OCC will impose assessments on an SPNB as a condition of approval. The OCC is funded through assessments and fees charged to the banks it supervises, and SPNBs will be subject to periodic assessments, just as other national banks are. The OCC has modified the assessments it charges to other special purpose national banks to account for the banks’ activities and the assets they hold. The OCC would determine assessments for an SPNB based on similar factors tailored to the business model of the SPNB.

These charter conditions are enforceable and generally will remain in place until removed or modified by the OCC. Compliance with these conditions will be reviewed by the OCC during the examination process.

Supervision of Approved SPNBs

After the OCC issues final approval and the bank opens for business, the OCC will supervise the SPNB, as it does all other national banks, under a scheduled supervisory cycle, including on-site examination and periodic off-site monitoring. The OCC sets high expectations for the entities it supervises. Like all de novo institutions, newly chartered SPNBs will be subject to rigorous ongoing oversight to ensure that the bank’s management and the board of directors are properly executing their business strategy and the bank is meeting its performance goals.

Key supervisory considerations for SPNBs are highlighted in appendix A to this Supplement. For additional information on specific areas of bank supervision such as internal controls and corporate and risk governance, applicants should refer to the booklets of the Comptroller’s Handbook.

36 See 12 USC 16 and 481; and 12 CFR 8.

37 Additional assessments are required of certain national banks. See, e.g., 12 CFR 8.2(c) and 8.6(c) (additional assessments imposed on independent credit card banks and independent trust banks). As it gains experience, the OCC may amend its rules to address assessments for SPNBs.

38 Conditions imposed in connection with a charter are considered “conditions imposed in writing” and are enforceable under 12 USC 1818.

39 These conditions may be imposed in the preliminary approval letter and the final approval letter (together, conditional approval letters). The OCC also may require that the applicant enter into an operating agreement with the OCC. The OCC publishes all conditional approval letters on its website on a monthly basis. The OCC does not generally publish operating agreements. A conditional approval letter, however, will disclose the existence of an operating agreement. The special purpose charters section of the “Charters” booklet of the Comptroller’s Licensing Manual has additional information on operating agreements and other documents used for some special purpose national trust banks.
Appendixes

Appendix A: Supervisory Considerations

OCC Supervisory Framework

The supervisory framework for SPNBs will incorporate core elements already in place for all national banks. These elements include an assigned supervisory office, an assigned portfolio manager, a supervisory strategy tailored to the bank’s business model, and a blend of on-site and off-site supervisory activities conducted by an experienced, knowledgeable examination team. In addition to the statutory examination requirements and consistent with longstanding OCC de novo supervision policy, newly chartered SPNBs will be subject to more frequent and intensive supervision in their early years of operation. The scope of supervision activities will follow a risk-based approach commensurate with the size and complexity of the institution, focusing on any elevated risks and unique supervisory challenges presented by a given SPNB. SPNB examination and supervision activities will also include frequent contact with the board of directors and bank management.

OCC executive management will assess the OCC’s ability and willingness to supervise an eligible SPNB based on the OCC’s risk appetite, resources, and skill sets needed. The executives will collaborate with the Office of Innovation, Legal, and Licensing staff in making their decisions on proposed SPNB charters. Similar to the OCC’s supervision framework for existing special purpose banks, the OCC will identify the appropriate supervisory office for ongoing supervision. In addition, each bank will have an assigned portfolio manager who will serve as the primary point of contact and examiner-in-charge for the institution. The portfolio manager and the examination team will have subject matter expertise appropriate for the bank’s business model. In addition, licensing and risk specialists, legal staff, and other subject matter experts will be assigned to each bank, as appropriate.

Rating Framework

SPNBs will be subject to the same ratings framework, including applicable specialty ratings, as other national banks. As outlined in the “Bank Supervision Process” booklet of the Comptroller’s Handbook, national banks are assessed in accordance with the Uniform Financial Institutions Rating System. Composite ratings are based on an evaluation of an institution’s managerial, operational, financial, risk management, and compliance performance.

Under this uniform rating system, the OCC ensures that all national banks are evaluated in a comprehensive and uniform manner and that supervisory attention is focused appropriately on those banks that exhibit financial and operational weaknesses or adverse trends. The rating system, commonly referred to as CAMELS, assesses components of a bank’s

40 As national banks, SPNBs will be subject to the statutory examination cycle prescribed by 12 USC 1820(d).
performance including capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk, as well as specialty areas such as information technology, trust (if applicable), and consumer compliance.

Risk Management Framework

The OCC expects every national bank to have an appropriate risk management framework to address all relevant risks to the bank.41 The structure, sophistication, and oversight of these systems should be commensurate with the complexity and amount of risk a bank assumes. Regardless of the bank’s size or complexity, a sound risk management framework should do the following:

- **Identify risk:** Banks must recognize and understand existing risks and risks that may arise from new business initiatives, including risks posed by third-party relationships, by external market forces, or by regulatory or statutory changes. Risk identification should be a continuing process and occur at both the transaction and portfolio levels.
- **Measure risk:** Banks must have effective risk management systems that measure risks accurately and in a timely manner. A bank that does not have an effective risk measurement system has limited ability to control or monitor risk levels.
- **Monitor risk:** Banks must monitor risk levels to ensure timely review of risk positions and exceptions to risk limits. Monitoring reports must be timely, accurate, and relevant, and should be distributed to appropriate individuals to ensure action, when needed.
- **Control risk:** Banks must establish and communicate risk limits through policies, standards, and procedures that define responsibilities and authority. These limits serve as a means to control exposures to the various risks associated with the bank’s activities.

The OCC employs a risk-based supervisory philosophy focused on evaluating risk, identifying material and emerging problems, and ensuring that individual banks take corrective action before problems compromise their safety and soundness or result in the unfair treatment of customers. This supervision-by-risk approach provides a consistent definition of risk and a system for assessing risks (known as the Risk Assessment System or RAS), and it integrates risk assessment into the supervisory process. The RAS is applicable to all risks identified across a bank and can include (although it is not limited to) credit risk, information technology systems and controls, operational risk, cybersecurity risk, liquidity and funds management, compliance risk, and strategic and reputation risks. Following risk evaluations, the supervisory office tailors and conducts supervisory activities based on the risks identified, and periodic testing is completed in order to validate a bank’s risk assessment.

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41 For additional information on the risk management framework, see the “Corporate and Risk Governance” booklet of the Comptroller’s Handbook.
Corporate Governance Framework

As with all national banks, the OCC expects the governance structure for any proposed SPNB to be commensurate with the risk and complexity of its proposed products, services, and activities. The OCC expects national banks to have expertise, financial acumen, and a risk management framework that includes governance and well-defined roles among the bank’s business units, support functions, and the internal audit function.42

The board of directors must have a prominent role in the overall governance structure by participating on key committees and guiding the bank’s overall strategy and risk management framework. Board members also must actively oversee management, provide credible challenge, and exercise independent judgment.

Ongoing Communication

The OCC is committed to ongoing communication with the banks it supervises and with other banking regulators. This includes formal and informal conversations, meetings, examination reports, and other written communications. At a minimum, the OCC must provide a bank’s board of directors a report of examination (ROE) at least once each supervisory cycle. The ROE conveys the bank’s overall condition, ratings, and risk assessment summary. It also summarizes examination activities and findings identified during the supervisory cycle.43

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42 Internal audit (including co-sourcing and outsourced arrangements) must be an independent function and report directly to the audit committee of the board of directors. For additional information on the audit function, see the “Internal and External Audits” booklet of the Comptroller’s Handbook.

43 Additional information about communications can be found in the “Bank Supervision Process” booklet of the Comptroller’s Handbook.
Appendix B: Financial Inclusion Commitment Guidance

Financial Inclusion Commitment

Consistent with the agency’s mission to ensure fair treatment of customers and fair access to financial services, the OCC expects any entity seeking an SPNB charter to demonstrate a commitment to financial inclusion that includes providing or supporting fair access to financial services and fair treatment of customers. The nature of that commitment will depend on the proposed bank’s business model, and the types of products, services, or activities it intends to provide.

Considerations

Initial Description

In completing the charter application, each SPNB applicant should identify the financial services needs of underserved markets that could be met by the SPNB’s products, services, and activities. An applicant should include a description of its financial inclusion commitment that addresses the proposed bank’s

- products, services, and activities.
- anticipated markets and communities, including underserved populations or communities, including low- and moderate-income customers.
- goals, milestones, commitment measures (e.g., the applicant’s loan origination volumes for lenders, average pooled account balances and transaction volumes for payment entities), and metrics (e.g., the measure as a percentage of activity in anticipated markets and communities, such as the share of lending to low- and moderate-income borrowers).

Policies and Procedures

During the organization phase, following preliminary conditional approval, the SPNB will develop policies and procedures that address the SPNB’s implementation of its financial inclusion commitment.

Before final approval, the OCC will review and evaluate the SPNB’s policies and procedures related to the financial inclusion commitment and will consider the following:

- The SPNB’s ability, efforts, and commitment to meet various community credit and other financial service needs, including those of underserved populations or communities, based on the applicant’s projected financial condition and size, economic conditions in the anticipated markets and communities, and other factors.
- Investments, partnerships, ongoing outreach, and collaboration strategies, or expected participation in governmentally insured, guaranteed, or subsidized loan programs that the SPNB will use to achieve its financial inclusion objectives.
• Other factors that reasonably bear upon the extent to which the SPNB will help meet the credit and other financial services needs of the anticipated market and community, including underserved populations or communities.
• The SPNB’s process to meet the needs of the anticipated market and community on a continual basis, including its process to update or modify its financial inclusion commitment in appropriate circumstances, and material changes to the products or services offered or the markets and communities served.

The SPNB’s commitment to financial inclusion is ongoing through the life of the charter. Financial inclusion commitment-related conditions imposed as part of any final approval will remain in place and will be reviewed for compliance during the examination process.