FEDERAL DEPOSIT INSURANCE CORPORATION

CONSUMER FINANCIAL PROTECTION BUREAU

WASHINGTON, D.C.

In the Matter of AMERICAN EXPRESS CENTURION BANK SALT LAKE CITY, UTAH (INSURED STATE NONMEMBER BANK)	)	JOINT CONSENT ORDER, JOINT ORDER FOR RESTITUTION, AND JOINT ORDER TO PAY CIVIL MONEY PENALTY FDIC-12-315b FDIC-12-316k 2012 -CFPB-0002

The Federal Deposit Insurance Corporation ("FDIC") has jurisdiction over American Express Centurion Bank, Salt Lake City, Utah ("Bank" or "AECB") under section 3(q) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1813(q). The Consumer Financial Protection Bureau ("CFPB") has jurisdiction over the Bank pursuant to section 1002(6), 1025 and 1053(b) of the Consumer Financial Protection Act ("CFP Act"), 12 U.S.C. §§ 5481(6), 5515 and 5563(b). The term "AECB" or "Bank" shall include all institution-affiliated parties, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

I. OVERVIEW

The FDIC and CFPB find that the Bank has engaged in violations of various Federal consumer financial laws, including violations of:

(1) Section 5 of the Federal Trade Commission Act ("Section 5"), 15 U.S.C. § 45(a)(1), and sections 1031 and 1036 of the CFP Act ("Sections 1031 and 1036"), 12 U.S.C. §§ 5531, 5536 for deceptive debt collection practices;

(2) Section 5 and Sections 1031 and 1036 in connection with the Bank's use of deceptive solicitations for the Bank's Blue Sky credit card program ("Blue Sky");

(3) The Truth in Lending Act ("TILA"), as amended by the Credit CARD Act of 2009, 15 U.S.C. §§ 1601 et seq., and section 1026.52(b)(1) of Regulation Z, 12 C.F.R. § 1026.52(b)(1),[1] for charging unlawful late fees on certain hybrid charge cards;

(4) The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq., for failing to report certain consumer disputes to consumer reporting agencies ("CRAs"); and

(5) The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691 et seq., and section 1002.6 of Regulation B, 12 C.F.R. §1002.6, in connection with the Bank's credit scoring model for new account approvals.

The FDIC and CFPB further find, as to matters within their respective jurisdictions, that the Bank has failed to manage its compliance with Federal consumer financial laws and regulations adequately and has engaged in unsafe and unsound banking practices relating to the Bank's Compliance Management System ("CMS") and the Bank's oversight of affiliate and third-party service providers ("Service Providers").

FINDINGS OF FACT

Based on the joint FDIC/Utah Department of Financial Institutions Compliance Report of Examination ("Compliance ROE") dated February 22, 2011, with which the CFPB concurred, and based on the information collected through the examination, the FDIC and CFPB find the following facts:

[1] Effective December 30, 2011, the Consumer Financial Protection Bureau republished some of the existing regulations implementing Federal consumer financial laws, including Regulation Z, Regulation V and Regulation B, in Chapter X of Title 12 of the Code of Federal Regulations. All citations to these regulations will refer to the republished regulations for ease of reference.

(1) *Deceptive Debt Collection Practices.* In connection with the collection of consumer debt:

(a) Unreported Debt shall mean consumer debt that has been in collections or charged off and is no longer being reported by the Bank to CRAs. AECB misrepresented to certain customers that settlement of Unreported Debt would be reflected on the consumers' credit report and that payment could improve the consumers' credit score; and

(b) Certain debt settlement letters that stated that after settlement, the consumers' remaining debt would be "waived" or "forgiven" were misleading because the Bank failed to prominently disclose that the consumer must pay the full debt balance before the Bank would process any future credit or charge card application.

(2) *Deceptive Blue Sky Credit Card Marketing.* In direct mail solicitations, the offer letter included a shaded box listing the benefits. The first benefit listed was a "$300 Bonus Offer." The solicitations prominently displayed "22,500 bonus points—receive a bonus $300;" or "22,500 bonus points—earn a bonus $300;" on the first page. In fact, consumers meeting the bonus qualification requirements received only the points but did not receive the $300 bonus advertised.

(3) *Excessive Hybrid Card Late Fees.* AECB offered consumers the option of having a hybrid account for a charge card with revolving credit features that allowed the consumers to pay a portion of their outstanding balances over time ("Hybrid Card"). Under section 1026.52(b)(1) of Regulation Z, AECB is permitted to charge consumers with these accounts a late fee based on costs or based on a safe harbor provided in the regulation. Instead of basing the fees on cost or charging fees of a specified dollar amount as permitted by the safe harbor, AECB unlawfully charged consumers 2.99% of a portion of their delinquent balance.

(4) *Discrimination on the Basis of Age.* Between February and October 2010, AECB used a partially implemented age-split score card that functioned as an improper second look for card applicants age 35 years old and under in violation of ECOA and Regulation B ("Staged Age-Split Scorecard").

(5) *Reporting of Credit Disputes.* FCRA requires a creditor to report to CRAs if a consumer disputes information it reported to the CRAs. AECB created a system that failed to report to the CRAs when a consumer disputed information. Depending on AECB's investigation of the dispute, AECB either asked the CRAs to delete the information, or AECB reported the information to the CRAs without indicating the dispute in violation of FCRA.

(6) *Board and Management Oversight.* The Bank's Board of Directors ("Board") and senior management exercised ineffective oversight and control over the compliance function, particularly the oversight of AECB Service Providers.

(7) *Compliance Program.* The Bank's CMS is deficient, with problems in the implementation and compliance with policies and procedures. The Bank failed to implement an effective employee training program for applicable consumer protection laws and implementing rules and regulations, regulatory guidance and statements of policy ("Consumer Protection Laws"). The failure was particularly evident in the training provided to the Bank's marketing staff regarding laws prohibiting deceptive acts and practices. In addition, the Bank has failed to adequately monitor consumer complaints and inquiries.

(8) *Compliance Staffing.* The position of Chief Compliance Officer has turned over frequently, which adversely affects the Bank's compliance with Consumer Protection Laws. Staffing for compliance monitoring is inadequate.

(9) *Oversight of Service Provider Agreements and Services.* Most of the Bank's consumer operations are performed or directed by affiliates and service providers. All violations identified in the Compliance ROE, with the exception of the ECOA violation, are attributed to deficient management oversight of the Bank's Service Providers.

(10) *Audit.* The audit program, which is performed by the parent company American Express Travel Related Services ("AETRS"), is not adequately independent, comprehensive, or effective in scope.

(11) *Consumer Harm.* Approximately a quarter million consumers were adversely impacted by the Bank's actions and at least $75,000,000 was collected or retained by the Bank in violation of applicable Consumer Protection Laws.

STIPULATION

The Bank, by and through its duly elected and currently acting Board, has executed a Stipulation to the Issuance of a Joint Consent Order, Joint Order for Restitution, and Joint Order to Pay Civil Money Penalty ("Stipulation"), dated September 21, 2012, that is accepted by the FDIC and CFPB. With the Stipulation, the Bank has consented, without admitting or denying any findings of fact, violations of laws or regulations or any unsafe or unsound banking practices, to the issuance of the Joint Consent Order, Joint Order for Restitution, and Joint Order to Pay Civil Money Penalty (collectively "Joint Orders") by the FDIC and CFPB.

Having determined that the requirements for issuance of an order under section 8(b) and 8(i) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i), and section 1053(b) of the CFP Act, 12 U.S.C. § 5553(b), have been satisfied, the FDIC and CFPB, therefore, jointly accept the Stipulation and issue the following orders:

II. JOINT CONSENT ORDER

CORRECTIONS OF VIOLATIONS OF LAWS

IT IS HEREBY ORDERED that the Bank, its officers, agents, servants and employees immediately cease and desist and the Bank ensure that its Service Providers or other agents immediately cease and desist from engaging in unsafe or unsound banking practices and violations of law and/or regulations, as more fully set forth in the Compliance ROE, and it is further ordered that the Bank take affirmative actions as of the date of issuance of the Joint Orders ("Effective Date"), unless otherwise specified, as follows:

1. The Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described below, and shall implement procedures to prevent their recurrence. The Bank's actions as required by this paragraph shall be satisfactory to the Regional Director of the FDIC's San Francisco Regional Office ("FDIC Regional Director") and the Regional Director, West Region, of the CFPB ("CFPB Regional Director") as determined at subsequent examinations and/or visitations.

Deceptive Acts and Practices

2. The Bank shall take all action necessary to eliminate all violations of Section 5 and Sections 1031 and 1036. In addition, the Bank shall take all necessary steps to effect and maintain future compliance with Section 5 and Sections 1031 and 1036 as described more particularly herein.

Debt Collection Practices

3. The Bank shall continue to provide disclosures concerning the expiration of the Bank's litigation rights when collecting debt that is barred by applicable state statutes of limitations and shall take all action necessary to ensure the revision of any and all solicitations

and any other oral, written or electronic communications used in connection with the collection of consumer debts to remove all deceptive statements and to disclose clearly and prominently:

(a) All material conditions, benefits and restrictions concerning any offer of settlement; and,

(b) When collecting on Unreported Debt, the following language:

> The law limits how long a debt can be reported to a consumer reporting agency. Because of the age of your debt, we cannot report it to a consumer reporting agency. Payment or non-payment of this debt will not affect your credit score.

4. For purposes of the Joint Consent Order, "clearly and prominently" shall mean:

(a) As to written information, written in a type size and location sufficient for an ordinary consumer to read and comprehend it, and disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure appears on the first page; and

(b) As to information presented orally, spoken and disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.

5. The Bank shall not make any representation or statement, or take any other action that interferes with, detracts from, contradicts, or otherwise obscures the disclosures required in paragraph 3.

6. The Bank shall maintain accurate and complete information on each consumer debt that the Bank collects or attempts to collect. Such information shall include, at a minimum:

(a) consumer agreements and any subsequent amendments and

(b) documentation evidencing the debt and each transaction or activity on the debt. The Bank shall make such information and/or documentation available upon request to a consumer inquiring about his/her debt.

For debts incurred prior to the Effective Date, the Bank may collect or attempt to collect such debts if the Bank has evidence to verify the debt, but must immediately cease such collection efforts if the consumer disputes the debt and the Bank is unable to provide the documentation in subparagraphs 6(a) and (b) above.

7. The Bank shall provide a copy of the Joint Consent Order to any person to whom the Bank sells, transfers, or assigns any debt which would require the disclosures in paragraph 3 and/or be subject to the provisions of paragraph 6 and shall require in all contracts to sell, transfer, or assign such debt a provision that contains a clear and prominent notification to the buyer, transferee, or assignee that the Bank is expressly requiring that the disclosures in paragraph 3 be given by any person collecting such debt and requiring that the provisions of paragraph 6 apply to the debt.

8. For any Unreported Debt, the Bank shall not in the future report any activity to the CRAs.

Blue Sky Credit Card Marketing

9. The Bank shall take all action necessary to ensure the revision of any and all solicitations and any other oral, written or electronic communications used in connection with the marketing of Blue Sky credit cards, or any other card with a "rebate" or "points" feature, to disclose clearly and prominently all material conditions, benefits and restrictions concerning any offer.

10. The Bank shall remove all deceptive statements from all solicitations for Blue Sky credit cards, or any other card with a "rebate" or "points" feature, including, but not limited to, removing from certain solicitations language indicating a $300 bonus or any credit equivalent in the benefit box on the solicitation if there is not an actual cash bonus or credit equivalent being offered.

Truth in Lending

11. The Bank shall take all action necessary to eliminate all violations of TILA and Regulation Z. In addition, the Bank shall take all necessary steps to effect and maintain future compliance with TILA and Regulation Z as described more particularly herein.

Hybrid Card Late Fees

12. The Bank shall take all action necessary to ensure that it is complying with the limitations on late fees set forth in Regulation Z section 1026.52(b)(1) for any charge card account that also contains a revolving credit feature.

Equal Credit Opportunity Act

Age-Split Scorecard

13. The Bank shall take all action necessary to eliminate all violations of ECOA and Regulation B.

14. Within 30 days from the Effective Date, the Bank shall take all action necessary to ensure that all credit scoring models applied to card applicants are:

(a) Fully compliant with ECOA and Regulation B;

(b) Empirically derived, demonstrably and statistically sound as defined in Regulation B's section 1002.2(p), to the extent required by section 1002.6(b); and

(c) Otherwise compliant with the specific requirements set forth in section 1002.6(b) of Regulation B.

15. The Bank shall take all necessary steps to effect and maintain future compliance with ECOA and Regulation B as described more particularly herein.

16. Within 30 days from the Effective Date, the Bank shall develop and implement procedures to ensure compliance with ECOA and Regulation B governing the evaluation of credit and charge card applications ("ECOA Procedures"). Particular attention should be paid to compliance with section 1002.6(b) of Regulation B, including model validations. The ECOA Procedures shall include, at a minimum:

(a) Procedures that ensure compliance with section 1002.6(b) of Regulation B;

(b) Procedures that ensure that any purportedly empirically derived, demonstrably and statistically sound credit scoring systems are in compliance with section 1002.2(p) of Regulation B;

(c) Procedures that set forth and ensure compliance with document and data retention requirements regarding compliance with these provisions, including specific documentation of all validation, analysis, and testing; and

(d) Procedures that ensure the prohibition of the staged implementation of any age-split credit scoring models, as required by Regulation B.

Remediation Plan for Age-Split Scorecard

17. Within 30 days from the Effective Date, the Bank shall provide the CFPB Regional Director with a detailed, formal certification of the remedial efforts the Bank has taken to date as to eligible consumers ("Age-Split Scorecard Eligible Consumer") regarding the Staged

Age-Split Scorecard. Age-Split Scorecard Eligible Consumer is defined as a card applicant over 35 years old who was denied credit under the Staged Age-Split Scorecard, who would have been approved for credit under the age-split scorecard that was fully implemented in October 2010. This includes but is not limited to certifying the following:

(a) The procedures used to identify the Age-Split Scorecard Eligible Consumers; the number of Age-Split Scorecard Eligible Consumers; and that each Age-Split Scorecard Eligible Consumer was sent an invitation to reapply;

(b) The number of Age-Split Scorecard Eligible Consumers who responded to the Bank's invitation to reapply and that each such Age-Split Scorecard Eligible Consumer was reevaluated for credit;

(c) The number of Age-Split Scorecard Eligible Consumers who qualified for credit on reapplication and that each such Age-Split Scorecard Eligible Consumer was offered credit on reapplication; and

(d) The number of Age-Split Scorecard Eligible Consumers who were denied credit on reapplication and the specific reasons for each such denial.

18. Within 30 days from the Effective Date, the Bank shall confirm withdrawal and removal of all credit inquiries by the Bank to Age-Split Scorecard Eligible Consumers' credit profiles as a result of the Staged Age-Split Scorecard. The Bank shall include in its formal certification of remedial efforts pursuant to paragraph 17 that it has withdrawn all such inquiries and shall describe with detail the process used to complete the withdrawal.

Fair Credit Reporting Act

Reporting of Credit Disputes

19. The Bank shall take all action necessary to eliminate all violations of FCRA and to maintain future compliance with FCRA.

20. The Bank shall take all action necessary to ensure that consumer disputed information is not furnished to consumer reporting agencies without a notice of the dispute to ensure compliance with section 623(a) of FCRA.

Remediation Plan for Reporting of Credit Disputes

21. The Bank shall provide every consumer card holder who has an open account, who has a closed account with a balance that the Bank reports to a CRA, or who has a closed account with no balance but for whom the Bank reported negative information to a CRA within the past seven years with an advisement of rights under FCRA in a form that is acceptable to the FDIC Regional Director and the CFPB Regional Director. This advisement of rights should be mailed or transmitted to consumers within three complete billing cycles or three months of its approval by the FDIC Regional Director and the CFPB Regional Director and shall inform consumers that they have a right to dispute inaccurate information on their credit reports, and should they dispute the information to the Bank, the Bank will report the dispute to the CRAs, as required by law.

COMPLIANCE MANAGEMENT SYSTEM

IT IS FURTHER ORDERED that the Bank take additional affirmative actions as follows:

Compliance Program

22. Within 60 days from the Effective Date, the Bank shall review, revise, develop and/or implement, as necessary, a sound risk-based Compliance Management System ("CMS") including a comprehensive written compliance program ("Compliance Program") to ensure that the marketing of, qualification for, sale of and operation of products and debt collection activities comply with Section 5 and Sections 1031 and 1036 and otherwise ensure compliance with all Consumer Protection Laws to which the Bank is subject. At a minimum, the Compliance Program shall provide for and include:

(a) Comprehensive, written policies and procedures designed to prevent violations of Consumer Protection Laws and prevent associated risks of harm to consumers;

(b) An effective training program that includes regular, specific, comprehensive training in Consumer Protection Laws commensurate with individual job functions and duties for appropriate Bank personnel, including all individuals having responsibilities that relate to Consumer Protection Laws, senior management and the Board;

(c) An enhanced and well-documented internal CMS monitoring process incorporated into the daily work of Bank personnel that is designed to detect and promptly correct compliance weaknesses within the Bank and Service Providers, particularly weaknesses that impact consumer accounts;

(d) An effective consumer complaint monitoring process, including the maintenance of adequate records of all written, oral, or electronic complaints or inquiries, formal

or informal, received by the Bank and all Service Providers and the resolution of the complaints and inquiries; and

(e) Effective independent audit coverage of the Compliance Program and the Bank's compliance with all Consumer Protection Laws and internal policies and procedures.

23. The Bank shall implement and comply with the written Compliance Program and/or any subsequent modification thereto upon approval of the Compliance Program by the Board.

24. Within 15 days from the Effective Date, the Bank shall retain an independent third party ("Compliance Program Consultant"), acceptable to the FDIC Regional Director and the CFPB Regional Director, to assist in the development, revision, review and implementation of the Bank's Compliance Program. The Compliance Program Consultant shall provide a detailed written report of the Bank's adherence to the Compliance Program to the Board ("Compliance Program Report") on a monthly basis. The Board of Directors shall conduct a full and complete review of the Compliance Program Report within 30 days of receipt. This review shall be recorded and noted in the Board minutes.

25. Within 30 days from the Effective Date, the Bank shall retain an independent third party ("Compliance Staffing Consultant"), acceptable to the FDIC Regional Director and the CFPB Regional Director, who possesses the appropriate expertise and qualifications to review, analyze and assess the Bank's compliance staffing, and determine if additional personnel are needed. The Compliance Staffing Consultant shall provide to the Board a detailed written report containing its analysis, assessments, and recommendations ("Staffing Report"). The Board of Directors shall conduct a full and complete review of the Staffing Report within 30 days of receipt. This review shall be recorded and noted in the Board minutes.

Board Oversight

Compliance Management System

26. The Board shall participate fully in the oversight of the Bank's CMS and shall be responsible for the approval of sound policies and objectives and for the supervision of all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services.

27. Prior to implementation, the Board shall review the written Compliance Program and/or any subsequent modification thereto. If the Board determines that the Compliance Program and/or any subsequent modification thereto is acceptable, the Board shall approve it and record the approval in the Board minutes.

Compliance Committee & Staffing

28. Within 30 days from the Effective Date, the Board shall maintain a compliance committee comprised of at least three directors, who are not officers of the Bank, and at least one member of senior management, plus the Chief Compliance Officer ("Compliance Committee").

(a) The Compliance Committee shall meet monthly and, at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Chief Compliance Officer reports, Compliance Program audit reports, Compliance Program policies, and progress reports concerning compliance with the Joint Consent Order.

(b) The Compliance Committee shall report its discussions to the Board at each regularly scheduled Board meeting, and the Board minutes shall document the review and approval of all items before the Board, including the names of any dissenting directors. Nothing

shall diminish the responsibility of the entire Board to ensure compliance with the provisions of the Joint Consent Order.

(c) The Board, in conjunction with the Compliance Committee, shall allocate resources that are commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate CMS, as described in the FDIC's Compliance Examination Manual, Section II-2.1 to 2.4, and as described in the CFPB Supervision and Examination Manual Part II and shall include specific procedures to ensure the Bank's compliance with all Consumer Protection Laws. The allocated resources shall be sufficient to ensure the Bank's timely compliance with the Joint Consent Order.

(d) The Board, in conjunction with the Compliance Committee, shall:

(i) Ensure that the Bank has a qualified Chief Compliance Officer who possesses the requisite knowledge and experience to administer an effective CMS for a large bank, as defined in 12 U.S.C § 5515(a)(1);

(ii) Within 30 days from the Effective Date, identify a designated Fair Lending Compliance Officer who possesses the requisite knowledge and experience to implement and review policies and procedures consistent with the Joint Consent Order, ECOA and Regulation B;

(iii) Ensure that the duties and responsibilities of the Chief Compliance Officer and the Fair Lending Compliance Officer are clearly defined and provide the Chief Compliance Officer and the Fair Lending Compliance Officer access to both the Board and the Compliance Committee;

(iv) Ensure that the Chief Compliance Officer and the Fair Lending Compliance Officer have and retain sufficient authority and independence to implement policies

related to Consumer Protection Laws and to institute corrective action as needed. This authority shall include the ability to cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies;

(v) Ensure that the Chief Compliance Officer, the Fair Lending Compliance Officer and all individuals with compliance oversight responsibilities receive ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS;

(vi) Require the Chief Compliance Officer, in consultation with the Fair Lending Compliance Officer, to provide to the Compliance Committee monthly written reports, including, but not limited to, reports related to the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer Protection Laws, training performed, monitoring and compliance audits performed, corrective action taken, and compliance with the Joint Consent Order;

(vii) Ensure proper and timely follow-up and resolution to audit and examination findings indicating the need for corrective action(s); and

(viii) Develop and implement an internal monitoring system of employees' performance to ensure that compliance policies, procedures and regulatory requirements are adequately followed and hold employees accountable for following adopted policies, procedures and regulatory requirements.

Oversight of Service Provider Agreements And Services

29. Within 60 days from the Effective Date, the Bank shall develop policies to maintain effective monitoring, training, record-keeping and audit procedures to review each aspect of the Bank's agreements with its Service Providers and the services performed for the

Bank pursuant to these agreements ("Service Provider Agreements and Services"). The policies and procedures shall, at a minimum, provide for:

(a) Bank prior review and approval of copies of (i) all Bank marketing and solicitation materials, including direct mail or internet solicitations, promotional materials, advertising, telemarketing scripts ("Marketing and Solicitation Materials"), and (ii) other materials provided by the Bank to consumers generated in connection with the administration and servicing of the Service Provider Agreements and Services;

(b) Maintenance of records of all Service Provider agreements ("Service Provider Agreements") and approved Marketing and Solicitation Materials, including any changes or amendments with respect to such materials;

(c) Monitoring the performance of marketing and solicitation programs for new accounts;

(d) Prompt notification to the Bank by any Service Provider of all regulatory agencies' inquiries, customer complaint/inquiry correspondence, and/or legal action received by any Service Provider with respect to charge and credit card programs (other than routine requests such as requests to cease and desist collection contact), and maintenance by the Bank of all such documents;

(e) Procedures for promptly addressing and resolving consumer complaints and inquiries, regardless of the source;

(f) Procedures for monitoring and auditing of collection activities and customer service call centers;

(g) Bank review of all Service Provider charge and credit card program partners' credit, fraud, and risk management materials, including policy manuals and procedures, to determine compliance with all Consumer Protection Laws; and

(h) An effective training program that includes regular, specific, and comprehensive training in Consumer Protection Laws for all employees of Service Providers having responsibilities that relate to Consumer Protection Laws, including senior management, commensurate with their individual job functions and duties.

30. The Bank's Compliance Committee shall, on a quarterly basis, submit a written report to the Board detailing whether Service Providers are in compliance with Service Provider Agreements. The written report shall include potential violations, deficiencies, customer complaints and inquiries, or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report and for assuring that a sound annual review of compliance-related Service Provider Agreements is performed.

Management and Management Study

31. The Bank shall have and retain qualified management. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities within the Bank. The Board shall provide each member of management the appropriate written authority to implement the provisions of the Joint Orders.

32. The qualifications of individual members of management shall be assessed on each individual's ability to:

(a) Comply with the requirements of the Joint Orders;

(b) Operate the Bank in a safe and sound manner; and,

(c) Effectuate the Bank's compliance with applicable laws, rules and regulations.

33. Within 30 days from the Effective Date, the Board shall retain an independent third party ("Management Consultant"), acceptable to the FDIC Regional Director and the CFPB Regional Director, to provide a detailed study of the Bank ("Management Study") to determine whether existing Bank management has the resources, skills and experience to return the Bank to a satisfactory compliance position. The Management Study shall include, at a minimum, a review of the duties, responsibilities, qualifications, and remuneration of the Bank's senior officers. The Management Study shall also review the authority of management to make necessary compliance changes vis-a-vis Service Providers.

34. Within 30 days of receiving the Management Study, the Board shall adopt a plan to implement any recommendations of the Management Study or shall explain in writing signed by all Board members why a particular recommendation is not being implemented.

Independent Audit Program

35. Within 30 days from the effective date of the Joint Consent Order, the Bank shall schedule independent audits to be conducted at least annually to ensure compliance with Consumer Protection Laws. The audits shall be conducted by qualified personnel with experience in conducting independent audits of compliance programs of banks of comparable size. The audits identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall:

(a) Define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;

(b) Identify the number of transactions sampled by category or product type;

(c) Identify deficiencies;

(d) Provide descriptions of or suggestions for corrective actions and timeframes for correction; and

(e) Establish follow-up procedures to verify that corrective actions are implemented and effective.

36. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Board and Audit Committee within 15 days after completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Board and fully documented in the Board's minutes.

37. Within 45 days from receipt of the independent auditor's written report, the Board shall ensure that management takes action to address the audit's findings and develop and implement a plan to: (i) correct any deficiencies noted; and (ii) implement any recommendations or explain in writing signed by all Board members why a particular recommendation is not being implemented.

III. JOINT ORDER FOR RESTITUTION

RESERVE ACCOUNT AND PAYMENT FLOOR

38. Within 10 days from the effective date of the Joint Order for Restitution ("Restitution Order"), the Bank shall reserve or deposit into a segregated deposit account an amount not less than $75,000,000 ("Payment Floor") for the purpose of providing restitution as required by the Restitution Order.

39. The Bank shall make all restitution payments required by the Restitution Order, regardless of whether the total of such payments exceeds the Payment Floor. If the total of

payments is less than the Payment Floor, the excess shall be returned to the Bank's general funds.

RESTITUTION PLAN FOR COLLECTION OF UNREPORTED DEBT

40. Within 30 days from the Effective Date, the Bank shall prepare a comprehensive Restitution and Other Relief Plan ("Unreported Debt Restitution Plan") for all Unreported Debt Eligible Consumers. Unreported Debt Eligible Consumers are defined as all individuals who made payment on an Unreported Debt at any time following the receipt of a Debt Forgiveness Solicitation or an Unreported Debt Solicitation. A Debt Forgiveness Solicitation is a settlement solicitation on or after January 1, 2003 that includes: (a) the use of the words "waive," "forgiveness," or "save;" and (b) language substantially similar to a sentence stating, "No attempts will be made to collect the remaining balance which would need to be paid before American Express processes any future applications that you may choose to submit for an American Express account(s) or that an employer may submit on your behalf for an American Express Corporate Card." An Unreported Debt Solicitation shall mean a solicitation on or after January 1, 2003 that includes language substantially similar to a sentence stating, "We will report your settlement agreement to credit bureau agencies." Reimbursement shall be calculated through June 30, 2012 ("Unreported Debt Cut-Off Date"). The Bank shall submit the Unreported Debt Restitution Plan, including samples of letters to consumers, to the FDIC Regional Director and CFPB Regional Director for their review, comment and non-objection prior to implementation.

41. The Unreported Debt Restitution Plan shall, at a minimum, require the Bank to reimburse payments made by Unreported Debt Eligible Consumers from the date the Unreported

Debt Solicitation was mailed to the Unreported Debt Eligible Consumer until the Unreported Debt Cut-Off Date plus 1.3% interest.

42. Within 90 days of receipt of non-objection from the FDIC Regional Director and the CFPB Regional Director, the Bank shall implement the Unreported Debt Restitution Plan. Any required cash restitution amount shall be provided to each of the Unreported Debt Eligible Consumers in the form of a certified or bank check. Restitution provided by the Bank shall not limit consumers' rights in any way.

43. The Bank shall retain for seven years all records pertaining to the Unreported Debt Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Unreported Debt Eligible Consumers; the names, contact, and account information of the Unreported Debt Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

44. After providing restitution on any Unreported Debt pursuant to paragraph 40 of the Joint Consent Order the Bank may resume non-deceptive collection efforts to recover such Unreported Debt in a manner compliant with this Order.

45. Providing restitution under this plan shall not create any new collection, consumer reporting or litigation rights on behalf of the Bank.

RESTITUTION PLAN FOR DEBT FORGIVENESS SOLICITATIONS

46. Within 30 days from the Effective Date, the Bank shall prepare a comprehensive Restitution and Other Relief Plan ("Debt Forgiveness Restitution Plan") for all Debt Forgiveness Eligible Consumers. Debt Forgiveness Eligible Consumers are defined as all individuals who made payment on a consumer debt at any time following the receipt of a Debt Forgiveness Solicitation. The Bank shall submit the Debt Forgiveness Restitution Plan, including samples of

letters to consumers, to the FDIC Regional Director and CFPB Regional Director for their review, comment and non-objection prior to implementation.

47. The Debt Forgiveness Restitution Plan shall, at a minimum, require the following elements:

(a) For Debt Forgiveness Eligible Consumers who settled their accounts and did not apply for a new credit or charge card, the Bank shall not deny future applications for credit because only the Settlement Amount was paid.

(b) For Debt Forgiveness Eligible Consumers who settled their accounts, applied for and, according to Bank records, were denied a new credit or charge card, the Bank shall:

(i) Pay $100;

(ii) Not deny future applications for credit because only the Settlement Amount was paid; and

(iii) Make a pre-approved offer for a new credit card with terms acceptable to the FDIC Regional Director and the CFPB Regional Director.

(c) For Debt Forgiveness Eligible Consumers who settled their accounts and made payments in excess of the Settlement Amount, applied for and, according to Bank records, were denied a new credit or charge card, the Bank shall:

(i) Pay $100;

(ii) Not deny future applications for credit because only the Settlement Amount was paid;

(iii) Make a pre-approved offer for a new credit card with terms acceptable to the FDIC Regional Director and the CFPB Regional Director; and

(iv) Reimburse all payments made in excess of the Settlement Amount plus 1.3% interest.

(d) For Debt Forgiveness Eligible Consumers who settled their accounts and were subsequently issued an American Express card, the Bank shall reimburse all payments made in excess of the Settlement Amount plus 1.3% interest.

48. Within 90 days of receipt of non-objection from the FDIC Regional Director and the CFPB Regional Director, the Bank shall implement the Debt Forgiveness Restitution Plan. Any required cash restitution amount shall be provided to each of the Debt Forgiveness Eligible Consumers in the form of a certified or bank check. Restitution provided by the Bank shall not limit consumers' rights in any way.

49. The Bank shall retain for seven years all records pertaining to the Debt Forgiveness Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Debt Forgiveness Eligible Consumers; the names, contact, and account information of the Debt Forgiveness Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

RESTITUTION PLAN FOR BLUE SKY

50. Within 30 days from the Effective Date, the Bank shall prepare a comprehensive Restitution and Other Relief Plan ("Blue Sky Restitution Plan") for all eligible consumers ("Blue Sky Eligible Consumers"). Blue Sky Eligible Consumers are defined as all individuals who opened a Blue Sky credit card account with the Bank following receipt of a Blue Sky Solicitation and met the applicable requirements to earn the advertised bonus. A Blue Sky Solicitation shall mean a Blue Sky credit card solicitation letter that includes both the language "22,500 bonus points—receive a bonus $300;" or "22,500 bonus points—earn a bonus $300;" and a box entitled

"Benefits" and the words "$300 bonus offer" in the box. The Bank shall submit the Blue Sky Restitution Plan, including samples of letters to consumers, to the FDIC Regional Director and the CFPB Regional Director for their review, comment and non-objection prior to implementation.

51. The Blue Sky Restitution Plan shall require the Bank to make a payment of $300 to Blue Sky Eligible Consumers.

52. Within 90 days of receipt of non-objection from the FDIC Regional Director and the CFPB Regional Director, the Bank shall implement the Blue Sky Restitution Plan. Any required cash restitution amount shall be provided to each of the Blue Sky Eligible Consumers in the form of a statement credit if the account remains open or a certified or bank check if the account is closed. Restitution provided by the Bank shall not limit consumers' rights in any way.

53. The Bank shall retain for seven years all records pertaining to the Blue Sky Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Blue Sky Eligible Consumers; the names, contact, and account information of the Blue Sky Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

RESTITUTION PLAN FOR HYBRID CARD LATE FEES

54. Within 30 days from the Effective Date, the Bank shall prepare a comprehensive Restitution and Other Relief Plan ("Hybrid Card Late Fees Restitution Plan") for all eligible consumers ("Hybrid Card Late Fees Eligible Consumers"). Hybrid Card Late Fees Consumers are defined as all individuals who paid a 2.99% late fee on a Hybrid Card. Reimbursement shall be calculated through December 10, 2011 ("Hybrid Card Late Fees Cut-Off Date"). The Bank shall submit the Hybrid Card Late Fees Restitution Plan, including samples of letters to

consumers, to the FDIC Regional Director and CFPB Regional Director for their review, comment and non-objection prior to implementation.

55. The Hybrid Card Late Fees Restitution Plan shall, at a minimum, require the Bank to reimburse to Hybrid Card Late Fees Eligible Consumers payments from August 22, 2010 to December 10, 2011 of late fees in excess of $35 per late fee plus 1.3% interest calculated from the date the fee was charged until the date of reimbursement.

56. Within 90 days of receipt of non-objection from the FDIC Regional Director and CFPB Regional Director, the Bank shall implement the Hybrid Card Late Fees Restitution Plan. Any required cash restitution amount shall be provided to each of the Hybrid Card Late Fees Eligible Consumers in the form of an account credit up to the amount of the account's outstanding balance, and a certified or bank check for any restitution that exceeds the outstanding balance. Restitution provided by the Bank shall not limit consumers' rights in any way.

57. The Bank shall retain for seven years all records pertaining to the Hybrid Card Late Fees Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Hybrid Card Late Fees Eligible Consumers; the names, contact, and account information of the Hybrid Card Late Fees Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

REVIEW OF RESTITUTION PLANS

58. Prior to submission to the FDIC Regional Director and the CFPB Regional Director, the Unreported Debt Restitution Plan, Debt Forgiveness Restitution Plan, and the Hybrid Card Late Fees Restitution Plan (collectively, "Restitution Plans") shall be reviewed by the Compliance Program Consultant retained in paragraph 24 of the Joint Consent Order.

MAILING REFUNDS

59. Within 30 days from the effective date of the Restitution Order, the Bank shall submit to the FDIC Regional Director and the CFPB Regional Director for review a plan for mailing refunds, including the proposed text of letters that shall be sent to Eligible Consumers regarding restitution checks or account credits. Such letters shall include satisfactory language explaining the reason the Bank is sending a restitution check or crediting an account, including that the Bank is sending the check or crediting an account as the result of an enforcement action by the FDIC and CFPB. The letters shall also include reference to and the web addresses for any FDIC and CFPB press releases related to the Restitution Order. The Bank shall then address any comments of the FDIC Regional Director and the CFPB Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the FDIC Regional Director and the CFPB Regional Director, shall be sent by mail to all Eligible Consumers entitled to receive restitution checks and/or credits to their accounts in accordance with the Restitution Order.

60. When the Bank makes cash restitution by certified or bank check made payable to any consumer receiving restitution under the Restitution Order ("Eligible Consumer"), AECB shall send the certified or bank check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer's last address as maintained by the Bank's records. The Bank shall make reasonable attempts to obtain a current address for any Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any eligible consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing

address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such Eligible Consumer for a period of three-hundred sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time these monies will be disposed of in accordance with the applicable Restitution Plan in the Restitution Order.

INDEPENDENT CERTIFIED ACCOUNTING FIRM

Engagement of Firm

61. Within 45 days from the Effective Date, the Bank shall retain, at its expense, an independent certified accounting firm ("Firm") acceptable to the FDIC Regional Director and the CFPB Regional Director to determine compliance with the Restitution Plans. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

62. Prior to the engagement of the Firm, and no later than 30 days from the issuance of the Restitution Order, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the FDIC Regional Director and the CFPB Regional Director for non-objection.

63. The engagement letter between the Bank and the Firm shall grant the FDIC and CFPB access to the Firm's staff, work-papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by the Restitution Order.

64. To be acceptable to the FDIC Regional Director and the CFPB Regional Director, the Firm must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy.

65. Within 15 days after submission of the Firm's name, the FDIC Regional Director and the CFPB Regional Director shall notify the Bank in writing of the FDIC's and CFPB's objection or non-objection thereto.

66. The Firm shall submit the reports called for in paragraphs 67 to 75 to the FDIC Regional Director and the CFPB Regional Director for review, comment, and non-objection within 30 days after the Bank completed implementation of each restitution plan.

Report on Unreported Debt Restitution

67. The Firm shall review and verify that the Bank accurately identified the Unreported Debt Eligible Consumers and correctly made cash refunds to the appropriate Unreported Debt Eligible Consumers.

68. The Firm shall prepare a detailed written report of its assessment of the Bank's compliance with the Unreported Debt Restitution Plan ("Unreported Debt Restitution Report"). The Unreported Debt Restitution Report shall also include the following:

(i) The processes and procedures by which the Bank determined the restitution amounts described in paragraph 40;

(ii) The total number of Unreported Debt Eligible Consumers; and

(iii) The total amount of restitution made under the Unreported Debt Restitution Plan.

Report on Debt Forgiveness Restitution

69. The Firm shall review and verify that the Bank accurately identified the Debt Forgiveness Eligible Consumers and correctly made cash refunds to the appropriate Debt Forgiveness Eligible Consumers.

70. The Firm shall prepare a detailed written report of its assessment of the Bank's compliance with the Debt Forgiveness Restitution Plan ("Debt Forgiveness Restitution Report").

71. The Debt Forgiveness Restitution Report shall also include the following:

(i) The processes and procedures by which the Bank determined the restitution amounts described in paragraph 46;

(ii) The total number of Debt Forgiveness Eligible Consumers; and

(iii) The total amount of restitution made under the Debt Forgiveness Restitution Plan.

Report on Blue Sky Restitution

72. The Firm shall review and verify that the Bank accurately identified the Blue Sky Eligible Consumers and correctly credited the accounts of or made cash refunds to the appropriate Blue Sky Eligible Consumers.

73. The Firm shall prepare a detailed written report of its assessment of the Bank's compliance with the Blue Sky Restitution Plan ("Blue Sky Restitution Report"). The Blue Sky Restitution Report shall also include the following:

(i) The processes and procedures by which the Bank determined the restitution amounts described in paragraph 50;

(ii) The total number of Blue Sky Eligible Consumers; and

(iii) The total amount of restitution made under the Blue Sky Restitution Plan.

Report on Hybrid Card Late Fees Restitution

74. The Firm shall review and verify that the Bank accurately identified the Hybrid Card Late Fees Eligible Consumers and correctly made cash refunds to the appropriate Hybrid Card Late Fees Eligible Consumers.

75. The Firm shall prepare a detailed written report of its assessment of the Bank's compliance with the Hybrid Card late Fees Restitution Plan ("Hybrid Card Late Fees Restitution Report"). The Hybrid Card Late Fees Restitution Report shall also include the following:

(i) The processes and procedures by which the Bank determined the restitution amounts described in paragraph 54;

(ii) The total number of Hybrid Card Late Fees Eligible Consumers;

(iii) The total amount of restitution made under the Hybrid Card Late Fees Restitution Plan; and

(iv) The total amount of interest paid.

IV. JOINT ORDER TO PAY CIVIL MONEY PENALTY

76. **IT IS FURTHER ORDERED** that by reason of the alleged violations of law and/or regulations as set forth in the Findings of Fact, and after taking into account the Stipulation, the appropriateness of the penalty with respect to the financial resources and good faith of the Bank, the gravity of the conduct by the Bank, the severity of the risks to and losses of consumers, the history of previous conduct by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), and section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c): The Bank shall pay a total civil money penalty of $7,800,000. The Bank shall pay civil money penalties of $3,900,000 to the Treasury of the United States, as directed by the FDIC, and civil money penalties of $3,900,000 to the CFPB, in accordance with section 1017(d) of the CFP Act, 12 U.S.C. § 5497(d), as directed by the CFPB. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

V. NOTIFICATION AND REPORTING REQUIREMENTS

PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE

77. Within 30 days from the end of each calendar quarter following the Effective Date, the Bank shall provide a written progress report addressing each provision of the Joint Orders and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the Joint Orders to the FDIC Regional Director and the CFPB Regional Director. All progress reports and other written responses to the Joint Orders shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance shall include the following:

(a) A statement confirming that the Bank is in compliance with all provisions of the Joint Orders; or

(b) If the Bank is not in compliance with all provisions of the Joint Orders, the Bank must provide:

(i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and

(ii) A statement as to when the Bank will be in full compliance with the Joint Orders.

SHAREHOLDERS

78. The Bank shall either provide a copy of the Joint Orders to its shareholder AETRS or otherwise furnish a description of the Order in conjunction with the next board of directors meeting of AETRS, in which case such description shall fully describe the Joint Orders

in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429 and to the CFPB, Office of Enforcement, 1700 G Street, N.W., Washington, D.C. 20552, for non-objection or comment prior to dissemination to shareholders. Any changes requested to be made by the FDIC or CFPB shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC and CFPB provide the Bank with either non-objection of or comments about the description.

VI. SAVINGS CLAUSE AND EFFECTIVE DATE OF THE JOINT ORDERS

The provisions of the Joint Orders shall not bar, estop or otherwise prevent the FDIC, the CFPB, or any other federal or state agency or department from taking any other action against the Bank.

The Joint Orders shall be effective on the date of issuance.

Calculation of time limitations for compliance with the terms of the Joint Orders shall be based on calendar days, unless otherwise noted.

The provisions of the Joint Orders shall be binding on the Bank, its officers, agents, servants, employees, other institution-affiliated parties, and any successors and assigns thereof.

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

Any violation of the Joint Orders may result in the imposition by the FDIC or the CFPB of the maximum amount of civil money penalties allowed under section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), or section 1055(c) of the CFP Act, 12 U.S.C. §5565(c), respectively.

The provisions of the Joint Orders shall be enforceable by either the FDIC or the CFPB.

Issued pursuant to delegated authority this 1st day of October, 2012.

Sylvia H. Plunkett
Senior Deputy Director
Division of Depositor and Consumer Protection

Issued this 1st day of October, 2012.

Richard Cordray
Director
Consumer Financial Protection Bureau