APPLYING FOR DEPOSIT INSURANCE

A Handbook for Organizers of De Novo Institutions

Division of Risk Management Supervision | December 2019

FDIC

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

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INTRODUCTION

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

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

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

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

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

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

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

Overview of the Application Process

Section 5 of the Federal Deposit Insurance Act (FDI Act) requires any proposed depository institution[2] seeking federal deposit insurance to file an application with the FDIC. The FDIC Rules and Regulations describe the application requirements in detail.[3] Proposed new depository institutions apply for federal deposit insurance by filing an Interagency Charter and Federal Deposit Insurance Application (Application Form) with the appropriate FDIC regional office.

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

Preparing the Application

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

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

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

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

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

[5] 12 U.S.C. § 1816.

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

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

Evaluating the Application

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

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

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

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

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

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

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

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

SECTION I: PRE-FILING ACTIVITIES

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

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

Organizers

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

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

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

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

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

Assembling the Board of Directors and Management Team

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

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

Assembling the Board of Directors

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

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

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

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

Other Considerations Regarding Director Selection

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

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

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

MORE TO KNOW: Director Litigation Involving Failed Banks

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

Assembling the Management Team

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

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

Evaluating Management, including the Board of Directors

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

As part of the application filing, each organizer,[9] proposed director, senior executive officer,[10] and 10-percent-or-more shareholder submits an *Interagency Biographical and Financial Report* (IBFR) and fingerprints.[11] 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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[9] 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.
[10] 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.
[11] As announced in Financial Institution Letter (FIL)-21-2018, the FDIC implemented electronic fingerprinting to facilitate background checks performed in connection with applications.

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

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

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

MORE TO KNOW: Additional Considerations in Board/Management Selections

Board Member Independence

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

Individuals with Substantial Influence

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

Management Succession Planning and Talent Development

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

Setting Business Goals and Objectives

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

- Provide depository and credit services in local or other defined markets;

- Attain profitable banking operations that augment shareholder equity; and
- Foster community development through banking products, services, or programs.

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

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

Charter, Ownership Structure, and Tax Election

In order for an institution to obtain deposit insurance from the FDIC, it must have a charter to conduct its proposed business activities. Institutions may obtain either a bank or savings association[12] charter from the appropriate state banking authority or the OCC.

In addition to traditional bank and savings association charters, the OCC and some states offer limited or special purpose charters. These charter types may include, for example, insured and uninsured limited purpose trust company charters, and charters for institutions whose operations are limited to credit card operations. The OCC and some states also offer charters that envision business models that are narrower in scope than traditional institutions. For example, charters may be granted to institutions that are primarily focused on community development or cash management activities, or that may operate as bankers' banks. Chartering agencies have also granted "shelf" charters,[13] 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.[14] Organizers should engage in early discussions with the FDIC and the chartering agency regarding charter selection, particularly if the organizers contemplate a distinctive charter type. Importantly, regardless of charter type, each applicant must meet the same statutory requirements to be granted deposit insurance.

[12] 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.
[13] 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.
[14] Certain limited or special purpose banks and industrial loan companies may not be considered "banks" for purposes of the BHCA.

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.[15]

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.

Exhibit 1: Federal Banking Agency and State Banking Authority Roles

Agency	Primary Roles
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.

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

Agency	Primary Roles
OCC	• Charters and serves as PFR for national banks and federal savings associations.
State Banking Authorities[16]	• Charters state banks and savings associations, regardless of whether the institution is a member of the FRS. • Together with the respective PFR, supervises state-chartered institutions and certain holding companies.

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

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.[17]

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.

[16] 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.

[17] 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.

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

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

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

Defining the Institution's Market and Identifying Office Locations

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

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

The specific address of the proposed institution's main office location does not need to be determined at the time an application is filed.[18] In such circumstances, the application (including the public and confidential portions) and the published notice should include a reasonable description of the anticipated location of the main office. A reasonable description may be based on street boundaries within a neighborhood or city block. Alternatively, a broader area may be presented if supported by additional information, such as a quadrant within a census tract, zip code, or municipal boundaries.

The description should be sufficient to provide an understanding of the general location and geographic market of the proposed institution, such that the FDIC may evaluate the application pursuant to the statutory factors and regulations for which the institution's location is relevant, including consumer protection and community reinvestment laws and rules. The information provided should also be sufficient to enable the general public to reasonably comment on the application. In reviewing the reasonableness of the described location, the FDIC may consider issues such as the nature of the area (e.g., urban, suburban, or rural), population, physical boundaries, historic preservation or environmental issues, and political subdivisions, metropolitan statistical areas, or census tracts.[19]

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

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

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[18] The FDIC will continue to require an address for purposes of corresponding with the organizing group.
[19] The FDIC will advise an applicant if additional information is necessary regarding the physical location of the main office and whether re-publication is required.

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

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

Developing the Business Plan

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

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

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

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

Business Plan Content

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

Description of the Business

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

Marketing Plan

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

Management Plan

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

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

Records, Systems, and Controls

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

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

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

Cyber threats and other operational issues can disrupt, degrade, or compromise an institution's operations thereby affecting capital and liquidity, or harm the institution's customers. Organizers should develop strategies to protect the institution from ongoing and emerging threats. These strategies should address operational resilience, including back-up and disaster recovery, incident response, cyber threat intelligence, governance, skills, testing of plans, and independent review of controls. Non-standard conditions regarding technology strategies may be imposed on a case-by-case basis. The regulatory agencies have provided guidance on third-party relationships and outsourcing, information security and business continuity planning, and cybersecurity.[20]

Financial Management Plan

This section discusses the institution's capital goals; earnings goals; plans for raising capital; dividend policy; funding plans, including how the institution will identify and measure liquidity risk; and types of investment securities to be held. This section also discusses the institution's objectives, strategies, and risk tolerance for interest rate risk, including how the institution will identify and measure interest rate risk. Further, this section addresses the loan review program, including how the institution will identify and measure credit risk, and its methodology for determining the allowance for loan and lease losses (ALLL).[21]

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.

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

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

Financial Projections

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

Additional Considerations Regarding Business Plans

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

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

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

During the first three years of operation, a newly insured institution will be required to operate within the parameters of its business plan and provide prior notice[22] to the FDIC or its PFR, if not the FDIC, for any material change to, or major deviation from, the business plan. The board should regularly monitor actual performance in relation to the business plan projections, budgets, and other benchmarks. Any significant deviations in balance sheet composition, financial performance, or other key metrics should be promptly identified, and remedial strategies should be developed to bring the institution into conformance with the approved business plan.

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

In limited instances, a *de novo* institution's circumstances may necessitate a change to its business plan. Major deviations or material changes from the plan could involve adjustments to the target geographic market, additional branching or expansion plans, new products or services, new activities or third-party relationships, growth that significantly exceeds or falls short of projections, and other unexpected outcomes that could influence the institution's risk profile. *De novo* institutions contemplating business plan changes should contact the appropriate FDIC regional office and other relevant agencies, including the institution's chartering authority, to discuss potential changes.[23]

Planning for Organizational Expenses

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

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

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

Determining the Initial Amount of Capital

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

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

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

The FDIC expects the initial capital of each *de novo* institution to be sufficient to provide a tier 1 capital to assets leverage ratio[24] of not less than 8 percent throughout the first three years of operation.[25] In addition, the institution must maintain an adequate ALLL. The business plan should not assume, for the first three years of operation, any new or additional capital raises beyond the initial capital contributions made during the institution's organization phase. During the first three years of operation, any cash dividends should be paid only from net operating income, and should not be paid until an appropriate ALLL has been established and overall capital is adequate. Organizers should not assume that the institution will make any dividend payments during this time frame.

See the SOP for additional details regarding capital.

Pre-Filing Meetings

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

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

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

[24] As defined in the appropriate capital regulation of the institution's PFR.

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

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

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

Draft Proposals

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

SECTION II: THE APPLICATION PROCESS

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

The Application Form may be used to apply for deposit insurance from the FDIC, as well as a charter from either the OCC or the applicable state authority.[26]

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

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

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

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

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

- In most cases, within 30 days of receipt of the application, the FDIC will provide a letter to the applicant noting either that the application is substantially complete and accepted for processing, or that additional information is needed.[27] If additional information is needed, the letter will include specific questions and requests, and will include a date by which the information should be submitted. Applicants are normally provided up to 30 days to respond to such requests.

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

- Following the field investigation process, the FDIC will complete the review process, notify the applicant in writing of any proposed non-standard conditions, seek the applicant's written concurrence to the non-standard conditions, and finalize the recommendation for action. This process should be completed within 30 days of the FDIC's prior communication.

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

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

Application Requirements

Part 303 of the FDIC Rules and Regulations describes the FDIC's application requirements in detail.[28] The Application Form, which should be filed with the appropriate FDIC regional office,[29] 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,[30] offering materials, and corporate documents.

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

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

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

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

[28] 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).
[29] 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.
[30] Related applications may include holding company filings, as well as institution-specific filings. Institution-specific filings may include, for example, applications to establish branches or offer fiduciary services upon opening, each of which would be subject to separate application and publication requirements.

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

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

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

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

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

Public vs. Confidential Information

Certain portions of the application will be available for public review and comment. The FDIC may receive requests for copies of a deposit insurance application from individuals, organizations, the media, or other interested parties. Pursuant to Section 303.8 of the FDIC Rules and Regulations, any person may inspect or request a copy of the non-confidential portions of the application until 180 days following the final disposition of the filing. Following the 180-day period, non-confidential portions of an application file will be made available upon request in accordance with the Freedom of Information Act (FOIA).[31]

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.

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

MORE TO KNOW: Examples of Public vs. Confidential Information

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

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

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

Evaluating the Statutory Factors

The FDIC considers the statutory factors enumerated in Section 6 of the FDI Act when evaluating any deposit insurance application.[32] 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.

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

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

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

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

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

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

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

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

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

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

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

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

FDIC Staff Involvement and Field Investigations

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

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

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

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

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

Depending on the application characteristics and the findings with regard to the statutory factors, the application may be acted on at the regional level, at the divisional level (at the FDIC's Washington Office), or by the FDIC Board of Directors.[33]

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

Approval Conditions

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

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

The most common non-standard conditions address business plan changes, employment agreements and stock options plans, bank policies, and additional directors or officers.[34] Non-standard conditions may also address corporate relationships, management authority and independence, and other areas, as appropriate. Most non-standard conditions do not exceed the three-year *de novo* period. However, certain conditions may be imposed for any length of time deemed necessary to mitigate risk.

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

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

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

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

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

SECTION III: PRE-OPENING ACTIVITIES

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

Satisfying Pre-Opening Conditions

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

Completing the Capital Raise

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

Other Pre-Opening Considerations

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

- Finalize policies and procedures for all key business areas (*e.g.*, loans, investments, liquidity, interest rate risk, BSA/AML, compliance, IT, code of ethics, *etc.*);
- Develop documents for delivering loan, deposit, and other banking products or services;
- Hire and train staff;
- Formalize all service/vendor relationships;
- Ensure all physical office space is ready for occupancy;
- Ensure IT systems will operate as planned;
- Develop strategies to remain aware of physical and cybersecurity threats;[35] and
- Institute appropriate security procedures and meet with local law enforcement.

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

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

CONCLUSION

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

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

RESOURCES

Agency Contact Information and Websites

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

Application Form and Related Documents[36]

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

[36] Application and IBFR forms are also available in Word format at FDIC: Forms

Laws and Regulations

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

Supervisory Guidance

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

Other Resources

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

Appendix 1: FDIC Regional Office Contact Information

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

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

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

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

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

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

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

Appendix 2: Frequently Imposed Conditions

Sample Conditions Included in an FDIC Deposit Insurance Order

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

15. During the first three years of operation, the institution shall notify the appropriate Regional Director of any plans to establish a loan production office at least 60 days prior to opening the facility.

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

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

18. Until the FDIC's conditional commitment becomes effective, the FDIC retains the right to alter, suspend, or withdraw its commitment if warranted.

Appendix 3: Examples of Prudential Conditions

1. Prior to the effective date of deposit insurance, the institution will have appointed and will thereafter maintain a board of directors that is acceptable to the FDIC. The majority of the board must consist of independent directors, and each director must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe, sound, and independent manner. An independent director is a director that is (a) not a principal, member, officer, or employee of the institution, and (b) not a principal, member, director, officer, or employee of any affiliate or principal shareholder.

2. Prior to the effective date of deposit insurance, the institution will have appointed and will thereafter retain a team of senior executive officers that is acceptable to the FDIC. Each senior executive officer, as defined in 12 C.F.R. 303.101, must possess the knowledge, experience, and capability to carry out the responsibilities of the position in a safe and sound manner, independently of the activities of [applicant's top tier parent] and its affiliated entities.

3. Absent the prior written non-objection of the appropriate FDIC Regional Director, each senior executive officer, as defined in 12 C.F.R. 303.101, must have his or her permanent place of work physically located at the institution's main office located in [city, state], such that the individuals will be capable of providing ongoing and direct oversight of the institution's activities.

4. The institution will develop and continue to maintain a current written business plan, adopted at least annually by the institution's board of directors. The business plan must be appropriate to the nature and complexity of the institution's activities, and must be separate from the business plans of [applicant's top tier parent] and its affiliated entities. Further, the institution's board of directors will ensure that the senior executive officers are delegated reasonable authority to implement the institution's business plan independently of [applicant's top tier parent] and its affiliated entities, and that the institution's management, staff, and other resources are adequate to carry out the business plan in a safe and sound manner, independent of the activities of [applicant's top tier parent] and its affiliated entities.

5. The institution will conduct business pursuant to operating policies that are appropriate to its business plan, independent from those of [applicant's top tier parent] and its affiliated entities, and approved by the institution's board of directors. The board of directors will also adopt risk management practices and internal control programs reasonably designed to ensure compliance with such policies. Further, the board of directors will ensure that the senior executive officers are delegated reasonable authority to implement the policies independently of [applicant's top tier parent] and its affiliated entities. At a minimum, the operating policies and procedures will include the institution's [lending, investment, liquidity, asset-liability management, trust, risk management and internal controls, information technology] activities.

6. The institution will adhere to U.S. GAAP and maintain separate accounting and other business records (including customer account records and data) from [applicant's top tier parent] and its affiliated entities. The institution's records and data will be maintained under the control and direction of authorized officials of the institution and available for review by the FDIC at the institution's main office. Further, the institution's records and data will be sufficiently detailed and maintained in a manner that provides the institution's board of directors and senior executive officers with the objective and transparent information necessary to administer the institution's affairs.

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

Appendix 4: Important Considerations Regarding Compensation and Related Plans

Compensation

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

Stock Benefit Plans or Arrangements (Plans)

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

Severance Packages

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

Employment Agreements

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

<u>Stock Benefits Framework – Based on Role in an Institution's Organization or Operation</u>

Role	Benefits
Incorporator – no other role	• Incorporators not continuing as directors or officers should not receive stock benefits based only on "incorporator" status.
Incorporator – that is also a proposed director or senior executive officer	• 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

Role	Benefits
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.

FDIC