



# **DEPOSIT INSURANCE APPLICATIONS**

## ***Procedures Manual Supplement***

***Applications from Non-Bank and Non-Community Bank Applicants***

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## Section I: Introduction

This Supplement expands upon certain topics covered in the FDIC’s [Deposit Insurance Applications Procedures Manual](#) (DI Applications Manual). Specifically, it addresses issues that case managers must consider when processing federal deposit insurance (FDI) applications from non-bank and other non-community bank applicants whose business plans present non-traditional elements. Staff should use this Supplement in conjunction with the [DI Applications Manual](#) and the overview portion of the [Applications Procedures Manual](#),<sup>1</sup> which is generally applicable to all filing types.

This Supplement is also intended to increase transparency to the industry and other interested parties, clarify expectations for potential non-bank/non-community bank applicants, and promote efficiency in the FDI application process. Users of this Supplement should review all applicable statutes, rules, regulations, and policies for formal application requirements, including those issued by the chartering authority, the primary federal regulator (PFR), and the FDIC if it is not the PFR. Refer to the FDIC’s website for [resources specific to FDI applications](#).

The FDIC welcomes FDI applications from all types of proposed insured depository institutions (IDIs), and each application will be evaluated in the same manner. In all cases, the FDIC must consider the statutory factors enumerated in [Section 6 of the Federal Deposit Insurance Act](#) (FDI Act).<sup>2</sup>

### A. Definitions: Non-Bank and Non-Community Bank

Most commonly, the FDIC receives applications to insure traditional community banks.<sup>3</sup> 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.<sup>4</sup> The FDIC also receives applications to insure proposed institutions that are not traditional community banks and that may present added complexities or less frequently encountered elements with regard to the business model, affiliate or third-party relationships, ownership or capital structure, funding sources, balance sheet composition, revenue sources, or other strategic or operational aspects.

For purposes of this Supplement, proposed institutions that are not traditional community banks are categorized according to the following general definitions:

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<sup>1</sup> Refer to Sections 1.1 through 1.11 of the [Applications Procedures Manual](#).

<sup>2</sup> The statutory factors are the institution’s financial history and condition; the adequacy of its capital structure; its future earnings prospects; the general character and fitness of its management; the risk presented by the institution to the Deposit Insurance Fund; 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.

<sup>3</sup> References to “banks” or “institutions” in this Supplement include savings associations, unless otherwise noted.

<sup>4</sup> Minority depository institutions (as defined in the [FDIC Policy Statement Regarding Minority Depository Institutions](#)) and other institutions that are focused on serving a particular customer demographic based on race, heritage, or other similar customer attributes often operate as traditional community banks. Therefore, such institutions should be considered traditional community banks unless one or more characteristics of a non-community bank are identified.

- **Non-Bank:** an IDI that is a “bank” for purposes of the FDI Act, but is not a “bank” for purposes of the [Bank Holding Company Act](#) (BHCA).<sup>5</sup> These include industrial banks and industrial loan companies (ILCs), trust and credit card banks organized under the [Competitive Equality Banking Act](#) (CEBA), and potentially other institutions (including, for example, municipal deposit banks). Non-banks may be owned by parent companies that are not subject to the [BHCA](#); therefore, the parent companies are not regulated or supervised by the Federal Reserve Board (FRB).
- **Non-Community Bank:** an IDI that may, in contrast to a traditional community bank, (1) focus on products, services, activities, market segments, funding, or delivery channels other than local lending and deposit taking; (2) pursue a broad geographic footprint (such as operating nationwide from a limited number of offices); (3) pursue a monoline, limited, or specialty business model;<sup>6</sup> or (4) operate within an organizational structure that involves significant affiliate or other third-party relationships (other than common relationships such as those providing audit, human resources, or core information technology processing services). A non-community bank may or may not operate under a non-bank charter.

Refer to [Appendix 1](#) for additional details regarding the various types of proposed IDIs that may be considered non-banks or non-community banks depending on their characteristics.

## **B. Objectives in Identifying Non-Banks and Non-Community Banks**

Early in the FDI application process, the case manager should identify whether the applicant is a proposed non-bank or non-community bank. Due to their nature and complexity, such proposals may necessitate more in-depth application review and investigation processes, and require action at the Washington Office (WO) level, consistent with the FDIC’s delegations of authority.<sup>7</sup>

Further, the case manager should determine whether the application involves a *de novo* institution with no existing operations, or a new institution that would be created from the conversion of all or part of an existing operating non-insured entity. If the institution is established through the full or partial conversion of an operating entity, the FDIC’s evaluation of the statutory factors will consider the historical and current activities, operations, performance, condition, stability, and risk profile of the entity. If applicable, these items will also be considered with respect to the entity’s parent company and any other significant affiliates.

The FDIC generally imposes non-standard conditions specific to the unique nature of these institutions in approving an application for a proposed non-bank or non-community bank. The non-standard conditions may, among other items, require the execution of written agreements. Refer to Section II of this Supplement for further details regarding [approval conditions](#) and [written agreements](#).

<sup>5</sup> Existing insured non-banks include institutions that are controlled by parent organizations engaged in a variety of commercial activities, including manufacturing and retail activities.

<sup>6</sup> Specialty (sometimes referred to as “niche”) proposals are less-diversified and usually considered “non-community” in nature given the anticipated concentrated business focus or emphasis on specialized activities.

<sup>7</sup> The FDIC’s delegations of authority for FDI applications and other filings are included in a [Matrix](#) on the FDIC’s public website and in [Board Resolution 071098](#), dated December 3, 2002.

As necessary, the case manager should promptly seek analytical or technical support from specialists within the Division of Risk Management Supervision (RMS), the Division of Depositor and Consumer Protection (DCP), and the Legal Division (Legal). Other FDIC divisions or offices may also be consulted as circumstances warrant.<sup>8</sup> The use of specialists may be particularly helpful in assisting with the review of business or asset valuations, legal opinions, servicing contracts, employment agreements, stock benefit plans, Community Reinvestment Act (CRA) plans, information technology (IT) strategies, Bank Secrecy Act (BSA)/anti-money laundering (AML) programs, accounting matters, or other relevant items.

### C. Draft Deposit Insurance Proposals

During pre-filing discussions, the case manager should inform the organizers of a non-bank or non-community bank of the FDIC's [process for reviewing draft deposit insurance proposals](#). This voluntary process, which is expected to be particularly beneficial for business models that present novel, unusual, or complex aspects, allows prospective organizers the option to request FDIC review of a draft deposit insurance proposal prior to filing an official application. The draft review process is meant to identify any obstacles or potential challenges that may require further supporting detail or considerations before the organizers file a formal application.

## Section II: Application Processing

### A. Application Review

The application materials for a proposed non-bank or non-community bank, including the business plan, may require more detailed descriptive information, support, and analysis (when compared to a proposed community bank) given the contemplated strategies and the potential for significant parent or affiliate transactions/influences. In cases involving an operating non-insured entity, the FDIC will review and assess current and historical information regarding the entity and, if applicable, the parent company and any other significant affiliates.

In reviewing a non-bank or non-community bank proposal, the case manager should:

- Develop an understanding of any unusual complexities, the types and degree of risks presented, and any mitigating information.
- Ensure that sufficient information has been provided to evaluate each of the statutory factors (as well as the considerations required by the [National Historic Preservation Act](#) and the [National Environmental Protection Act](#)) and to commence the field investigation.<sup>9</sup>
- Confirm that sufficient information has been provided regarding the structure, corporate governance, operations, condition, and performance of the parent organization as a whole. This would include organizational charts depicting all legal entities and affiliations,

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<sup>8</sup> For example, the Division of Insurance and Research or the Division of Resolutions and Receiverships may be contacted to obtain research or historical data, or to provide input on specific elements of a proposal.

<sup>9</sup> The FDIC will issue a letter to the applicant within 30 to 45 days of application receipt to communicate whether the application is substantially complete and accepted for processing, or whether additional information is necessary. The letter for a non-bank or non-community bank proposal may take up to 45 days to issue depending on the matters presented. Unless otherwise limited by the delegations of authority, the Regional Office may deem an FDI application substantially complete.

descriptive and financial information regarding each entity within the control framework, and sufficient documentation regarding service providers and third party vendors.<sup>10</sup>

- Verify that, as appropriate, the business plan includes alternative scenarios that provide meaningful stress tests of earnings and capital projections.
- Ascertain whether the application provides adequate support (including a feasibility study, if requested) to demonstrate that the proposed institution has a reasonable chance of success considering the economic environment, competitive landscape, and other relevant internal and external aspects.<sup>11</sup>

Refer to [Appendix 2](#) for a detailed list of questions that the case manager should consider during the application review process. Due to the unique characteristics and the various items that may require more in-depth review, the overall processing time for an FDI application from a proposed non-bank or non-community bank is expected to exceed the FDIC's 120-day processing goal.

## **B. Field Investigations**

The field investigation for a non-bank or non-community bank should be specifically tailored to the unique aspects of the proposal.<sup>12</sup> Field investigations for proposed non-banks and non-community banks that have existing operations will be similar to an examination, and as appropriate, will include sampling of existing loan or investment files, review of credit scoring and underwriting models, a comprehensive evaluation of the existing IT framework and infrastructure, transaction testing, review of parent or affiliate operations, and targeted reviews of specialized business lines or functions.

## **C. Statutory Factors**

Based on the review of the application and the results of the field investigation, the case manager must determine whether each statutory factor is found to be favorable; favorable, subject to conditions; or unfavorable. These determinations will be documented in a Summary of Investigation (SOI), which will also convey a recommended action on the application.<sup>13</sup> The case manager should refer to the [Statement of Policy on Applications for Deposit Insurance \(SOP-ADI\)](#) for detailed information with regard to each statutory factor. In addition, the following items should be considered when assessing the statutory factors for FDI applications from proposed non-banks or non-community banks.

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<sup>10</sup> The documentation should be sufficient to allow the FDIC to assess conformance with [Section 23A](#) and [Section 23B](#) of the Federal Reserve Act, [Regulation W](#), and [Section 106 of the BHCA](#) (anti-tying provisions).

<sup>11</sup> Narrowly focused or novel proposals should include clearly defined strategic alternatives for redirecting efforts, which may include self-liquidation, if the business plan proves unsuccessful.

<sup>12</sup> Field investigations are generally conducted for all FDI applications except those involving an interim institution, a federal savings association proposing to convert into more than one insured institution, a state-chartered bank proposing to continue its insured status upon withdrawal from the Federal Reserve System, or an application subject to expedited processing. Waivers of the field investigation for any other type of FDI application should be rare. Field investigations are to be completed within 60 days of the application being deemed substantially complete.

<sup>13</sup> Refer to Section 1.2 of the [Applications Procedures Manual](#) for instruction on completing the SOI.



## ***Financial History and Condition***

If the proposed non-bank or non-community bank is an operating non-insured entity, the FDIC will consider the entity's operational activities and performance record when evaluating the financial history and condition statutory factor. Generally, the financial and other background information on the entity should cover at least three years unless the operating history is shorter. The information usually will include audited financial statements and provide details regarding any deferred tax assets or liabilities, intangible assets, contingent liabilities, and any recent or pending legal or regulatory actions.<sup>14</sup> The case manager should request such information if it is not provided within the application and develop appropriate follow-up questions if the information discloses potential issues or concerns from a safety and soundness or consumer protection perspective. Refer to the [Capital Adequacy](#) section below for discussion regarding valuations on operating non-insured entities.

The review of financial and other background information on the parent organization (including any significant affiliates) is also an important consideration when assessing the ability of the proponents to provide financial support to the proposed institution. The parent organization is required as a matter of law to serve as a source of financial strength to any subsidiary IDI.<sup>15</sup> As such, the case manager should consider whether any identified issues regarding the parent's financial condition, performance, compliance/regulatory history, or other pertinent matters could raise concerns with regard to the ability to find favorably on this statutory requirement, other statutory factors such as risk to the Deposit Insurance Fund (DIF), or the parent's ability to enter into (and whenever necessary, perform under) any required written agreements.

## ***Capital Adequacy***

Proposed non-banks and non-community banks must provide initial capital commensurate with the risk inherent in the type of business to be conducted and the planned business growth. Consistent with the [SOP-ADI](#), the case manager is to determine whether initial capital (for any proposed institution) is sufficient to provide a tier 1 capital-to-assets leverage (T1C) ratio of at least 8 percent throughout the first three years of operation, and reflect an adequate allowance for loan and lease losses (ALLL).<sup>16</sup> Institutions with higher risk profiles may be required to maintain a T1C ratio greater than 8 percent. As appropriate, and depending on the institution's

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<sup>14</sup> Unless waived in writing by the FDIC, the operating entity shall have a full scope audit conducted by an independent public accountant prior to submitting an application and shall submit a copy of the auditor's report as part of the application.

<sup>15</sup> Refer to [Section 38A of the FDI Act](#).

<sup>16</sup> In June 2016, the Financial Accounting Standards Board issued Accounting Standards Update No. 2016-13, Topic 326, Financial Instruments—Credit Losses (ASU No. 2016-13), which revises the accounting for credit losses under U.S. generally accepted accounting principles (U.S. GAAP). ASU No. 2016-13 introduces the current expected credit losses (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 allowances for loan and lease losses 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 Supplement, 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.

risk profile, the FDIC may establish additional capital requirements based on common equity, tier 1 risk-based, and/or total risk-based capital.<sup>17</sup>

For certain proposed non-banks and non-community banks, the aforementioned (traditional) capital ratios may not fully reflect the proposed institution's inherent risks given balance sheet concentrations, significant off-balance sheet activities, or other risks not accounted for in traditional capital measures. In such cases, the case manager should request that the applicant provide an analysis or methodology supporting how the appropriateness of the proposed capital levels was determined, and how the applicant would monitor capital adequacy once insured. The analysis/methodology should consider all significant on- and off-balance sheet risks, any concentration exposure, and any other significant risk elements.

The case manager should verify that each non-bank or non-community bank proposal presents a transparent equity structure with no features that could adversely impact the institution or future capital raising efforts. Further, the case manager should confirm that each class of stock will be sold at the same price and with the same voting rights, that all capital for the *de novo* period (first three years) will be raised through stock sales prior to commencing operations (i.e., there will be no follow-on or pay-as-you grow capital raises), and that any cash dividends reflected in the *pro forma* financial statements will be paid only from cumulative net operating income and only if overall capital and the ALLL are adequate.

The parent company (or companies) and/or control parties of a non-bank or non-community bank may be required to enter written agreements that include specific capital provisions to mitigate structural or operational risks not posed by traditional community banks. Refer to the section on [Written Agreements](#) for additional details.

If the proposed institution is an operating non-insured entity, a significant portion of the initial capitalization may be based on the value of that entity. Consequently, the case manager should request that the applicant provide at least two independent appraisals of the company's fair market value. The appraisals should be no more than six months old and should be based on recognized valuation methods in accordance with U.S. GAAP. If the application involves the transfer of assets (but not the full business) to a proposed institution, the case manager should confirm that the value of the assets (e.g., real estate, fixed assets, loans, and/or leases) is supported by an independent appraisal or market valuation. Any material discrepancies or differences in value between the book and market value of equity or assets should be communicated to, and appropriately reconciled and resolved by, the applicant.

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<sup>17</sup> 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. Proposed institutions that seek to use the CBLR framework should discuss the matter with FDIC staff during the pre-filing process.



## ***Future Earnings Prospects***

All FDI applications should demonstrate that the institution has a reasonable chance to achieve and sustain adequate profitability within a reasonable time period (normally three years).

The case manager should consider whether future earnings prospects are highly reliant on relationships with the parent company or any affiliates, and whether the applicant has developed adequate plans to address any potential interruptions in such relationships. The case manager should also assess whether any income sources may be non-recurring, cyclical in nature, or vulnerable to economic cycles or other pressures due to a lack of diversification. Examples include concentrated businesses that could be vulnerable to recession or competition, such as credit card banks, subprime lenders, payment systems specialists, and taxi medallion lenders. Sensitivity analysis of the financial projections may be particularly useful in the review of non-bank/non-community proposals as they allow the case manager to assess effects of competitive forces; adverse changes in interest rates; changes in the asset/liability mix; or higher than expected operating expenses, marketing costs, and/or growth rates.

## ***General Character and Fitness of Management***

As with any proposed institution, the director and officer candidates must be fit to serve in their respective roles. The case manager should assess whether each senior executive officer has experience commensurate with their assigned duties and the proposed business model. While certain individuals may not have banking experience, each proposed individual should have a relevant business background or prior experience in a comparable position in a regulated operating environment.

In addition to identifying a proposed full-time chief executive officer (CEO) and certain other traditional key executive officers (such as a chief financial officer, chief lending officer, chief operating officer, et al.), applicants pursuing non-bank or non-community bank business models often establish additional customized management positions (e.g., officers that may oversee specific risk management, operational, or technological functions relative to the business model and the anticipated products and services, markets, and activities).<sup>18</sup>

As noted in the FDIC's publication, [\*Applying for Deposit Insurance, A Handbook for Organizers of De Novo Institutions\*](#) (DI Handbook), the FDIC typically requires the majority of the board of directors to consist of independent directors. An independent director is generally defined as 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.

For any application that contemplates individuals serving in dual roles at the proposed institution and the parent company (or other affiliates), the case manager should confirm that the application specifically indicates which individuals would perform in dual capacities and the percentages of time that would be devoted to responsibilities inside and outside the institution. These relationships should be governed by written agreements, and appropriate policies and

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<sup>18</sup> The CEO must be identified in the application; other senior officers may be identified at the time of filing the application or shortly thereafter (prior to the FDIC commencing the field investigation).

procedures. The case manager should assess whether each proposed director and officer will be sufficiently independent, and will be able to devote appropriate time and attention to fulfill their anticipated duties given the broader business activities of the parent organization and the potential conflicts of interest in serving in dual roles.

The review of this statutory factor must also consider whether the risk management framework is adequate given the non-bank or non-community bank business model. This includes considering, among other items, the adequacy of the following: the overall corporate governance and staffing structure; BSA/AML, compliance, CRA, and IT programs; operating policies (including the established risk tolerance limits); affiliate relationships; vendor/third-party management; compensation arrangements; fidelity insurance; and audit coverage.

### ***Risk to the Deposit Insurance Fund***

The FDIC interprets risk to the DIF broadly. In evaluating this factor, the case manager should consider any available information regarding the proposed non-bank or non-community bank, including its business plan and financial projections. Any items that raise significant concerns regarding the institution's anticipated risk profile will unfavorably impact the finding for this factor. Business plans that rely on high-risk lending, a special purpose market, significant funding from sources other than core deposits, or that otherwise diverge from conventional banking services typically require detailed supporting documentation and more in-depth analysis to determine the risk inherent in the proposed institution's activities, as well as any mitigating information or circumstances.

Risk to the DIF increases as the degree of dependence on the parent company or affiliates expands, particularly with respect to the primary business functions of the proposed institution. Further, parent company and affiliate relationships may present additional risks beyond those considered in the financial history and condition factor, particularly in situations where the proposed institution does not present a viable business model on a standalone basis. The proposed non-bank or non-community bank is expected to possess a sufficiently independent board and management team, and have a sustainable financial structure. The case manager should consider the following items in assessing the overall impact of the parent organization:

- The organization's business purpose for establishing the proposed institution.
- The history of regulatory and consumer compliance, including the status of any significant pending or outstanding enforcement actions, investigations, administrative matters, or contingent liabilities.
- The supervisory record of any existing entities regulated by the federal banking agencies.
- The duration/seasoning of the organization's business, and the extent to which new or innovative processes are being implemented or utilized.
- The accessibility of information, including the books and records of any affiliated domestic or foreign entities.
- Any mechanisms, plans, or processes that mitigate risks presented by the organization.

Concerns identified with respect to any of the other statutory factors may also be incorporated into the assessment of the risk to the DIF factor. Further, the case manager may consider any element of the proposal that poses risk but is not specifically associated with another factor. For

example, issues or concerns regarding liquidity, the composition or stability of the deposit base, or funding characteristics may be addressed within the assessment of the risk to the DIF factor.

### ***Convenience and Needs of the Community to Be Served***

All proposed non-banks and non-community banks, regardless of their specific business model, must meet CRA requirements and serve the financial needs of their community. Applications may propose that the institution be evaluated based on one of several methods that consider the institution's asset size<sup>19</sup> or business model. The recognized methods derived from asset size include small bank, intermediate small bank, or large bank. The business model methods include a wholesale or limited purpose designation or the option to be evaluated based on a CRA strategic plan.<sup>20</sup> In order for the FDIC to assess this factor, the case manager should confirm that the applicant has clearly defined the community the institution intends to serve, provided sufficient information on that community,<sup>21</sup> and described the institution's anticipated services in relation to the needs of the community to be served.

The case manager will rely on input from DCP in evaluating this factor. DCP will review the application, the proposed institution's CRA plan, and other relevant information (including the proposed primary trade area and pertinent economic, demographic, and competitive data) to evaluate this factor and determine if the proposed business strategy, assessment area(s), products and services, policies, and other related elements of the proposal fulfill the institution's obligations and requirements as provided through the CRA and relevant regulations. The proposed institution's CRA documentation, including any applicable public file information, must be prepared in accordance with the requirements of the PFR.

### ***Consistency of Corporate Powers***

The FDIC will evaluate whether the proposed institution's corporate powers are consistent with the purposes of the FDI Act. Pursuant to [Section 24 of the FDI Act](#), no insured state bank may engage as principal in any type of activity that is not permissible for a national bank,<sup>22</sup> unless the FDIC has determined that the activity would pose no significant risk to the DIF and the state bank is, and continues to be, in compliance with applicable capital standards prescribed by its PFR. [Section 28 of the FDI Act](#) provides similar requirements for state-chartered savings associations.

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<sup>19</sup> The Federal Financial Institutions Examination Council (FFIEC) releases adjusted asset thresholds annually. This information is available at [www.ffiec.gov](http://www.ffiec.gov).

<sup>20</sup> An institution may be designated as wholesale/limited purpose following submission of a written request to, and approval from, its PFR. The regulations permit any institution to develop and submit a strategic plan (Plan) for addressing its responsibilities with respect to CRA. A Plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints. The required contents of the Plan and the FDIC's evaluation criteria are set forth in [Part 345.27 of the FDIC Rules and Regulations](#).

<sup>21</sup> The primary considerations with regard to this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in the proposed location, and the willingness and ability of the applicant to serve those financial needs.

<sup>22</sup> Corporate powers of national banks are set forth in [Section 24 of Title 12 of the U.S. Code](#), and the powers of federal savings associations are set forth in [Section 1464 of Title 12 of the U.S. Code](#).

[Part 362 of the FDIC Rules and Regulations](#) further discusses the activities of insured state banks and savings associations.<sup>23</sup> In addition, proposed institutions intending to exercise trust powers must obtain approval from the chartering authority and prior consent from the FDIC under [Part 303 of the FDIC Rules and Regulations](#) (as part of the FDI application).<sup>24</sup>

In order to favorably resolve this factor, it must be determined that the proposed non-bank or non-community bank does not plan to engage as principal in any impermissible activity without the FDIC's prior approval under [Section 24](#) or [Section 28 of the FDI Act](#). The case manager should review the relevant portions of the application and the business plan, including the articles of incorporation, bylaws, and other applicable organizational documents, to determine the extent of the proposed institution's anticipated corporate powers and activities.

If questions or potential concerns exist regarding the permissibility of the proposed activities, the case manager should inform Regional Office (RO) management and discuss the matter with Legal. As necessary, the FDIC may request that the applicant provide a formal legal opinion.

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

The FDIC imposes certain conditions on all institutions that are granted deposit insurance. Refer to Appendix 2 of the [DI Handbook](#) for a list of conditions frequently included in FDI Orders. In addition to standard conditions, the FDIC may impose non-standard conditions on a case-by-case basis. Non-standard conditions are used when the FDIC determines that additional controls are appropriate or necessary to mitigate risks unique to the proposal. The FDIC may also impose non-standard conditions to ensure that actions or activities in process at the time of approval are completed before deposit insurance becomes effective. Unlike standard conditions, which may be imposed unilaterally without seeking the applicant's written agreement, non-standard conditions must be agreed to in writing by the applicant.<sup>25</sup>

When evaluating a non-bank or non-community bank proposal, the case manager should consider whether any non-standard conditions are appropriate. The non-standard conditions may address any relevant aspects including, but not limited to, corporate relationships, notification of business plan changes, operational or office expansion, capital levels, management authority and independence, directors or officer selection or approval, employment agreements and stock options plans, CRA plans, and other applicable matters. Most non-standard conditions do not exceed the three-year *de novo* period. However, certain conditions may be imposed for any length of time deemed necessary to mitigate risk. Any contemplated non-standard conditions, including those involving written agreements, should be discussed with RO management and RO Legal, and as applicable, the WO and other division representatives.

Historically, the FDIC has imposed a set of prudential conditions in conjunction with approving certain non-bank or non-community bank proposals. These proposals include FDI applications

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<sup>23</sup> As part of the certifications made in the [Application Form](#), applicants certify that the proposed institution will not engage in any impermissible activities after FDI has been granted absent FDIC approval.

<sup>24</sup> In the context of an FDI application, the FDIC considers whether to consent to the exercise of trust powers as part of its evaluation of the statutory factors enumerated in [Section 6 of the FDI Act](#).

<sup>25</sup> If non-standard conditions are warranted and not agreed to by the applicant, the application must be forwarded to the WO for final disposition by the FDIC Board of Directors.

for an IDI that would be owned by a commercial or financial company (often applicable to non-banks), would be significantly involved in transactions or relationships with the parent company or any affiliates, or would present other unique characteristics warranting prudential conditions beyond those routinely imposed in approving community bank proposals. Refer to [Appendix 3](#) of this Supplement for a current list of possible prudential conditions.

## **E. Written Agreements**

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 provide a supplemental tool that may address specific risks or supervisory matters with regard to a proposed institution, and have been used in conjunction with approving FDI applications and certain other types of filings.<sup>26</sup> Written agreements may include parent company agreements, Capital and Liquidity Maintenance Agreements (CALMAs), operating agreements, and passivity agreements.

Generally, parent company agreements and CALMAs have been used in cases in which the organizational structure includes parent companies not subject to FRB supervision (i.e., parents of non-bank banks). The agreements are intended to address the risks that may be present due to the lack of bank or savings and loan holding company supervision by the FRB, the potentially wide scope of parent company or affiliate operations (which may include commercial activities), the inter-dependence on affiliated entities for key business functions or processes, and dual roles within the organization. Parent company agreements and CALMAs generally include provisions under which the FDIC may pursue formal enforcement action under [Section 8 of the FDI Act](#) if a party fails to comply with provisions of an agreement. These agreements are generally executed by the FDIC, the institution, and the parent company (or companies).<sup>27</sup>

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

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

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<sup>26</sup> Written agreements are assumed to be perpetual. The FDIC, at its discretion, may consider requests to modify or terminate a written agreement if material changes in circumstances occur, such as the sale of the institution or the sale of an investor's interest in the institution.

<sup>27</sup> The RMS Director will typically execute written agreements on behalf of the FDIC.

Operating agreements have been used in limited cases to address certain risks or concerns regarding a proposed business model, primarily with respect to a proposed niche institution. The intent of an operating agreement is to ensure that the institution's risk profile, growth, activities, and business relationships (including any relationships with affiliates) remain within the parameters established in an otherwise acceptable business plan. Operating agreements are generally executed by the institution and the FDIC.

Passivity agreements have been entered into with investors seeking to rebut the presumption of control under [Section 303.82 \(Subpart E\) of the FDIC Rules and Regulations](#). Generally, such investors seek to control, directly or indirectly, the power to vote at least 10 percent, but less than 25 percent, of the institution's outstanding shares. In cases involving parent companies not supervised by the FRB, the FDIC will evaluate the extent of control at the parent company level. Passivity agreements may address matters such as business transactions and relationships between the investor and the insured institution, as well as the investor's use of the control position to influence the institution's management or policies. Passivity agreements are generally executed by the FDIC and the subject investor.

The case manager should consider whether the organizational structure, parental or affiliate relationships, nature or complexity of the business model, or circumstances involving certain investors warrant the use of one or more written agreements. If a written agreement is contemplated, the case manager should discuss the matter with RO management and RO Legal, and as appropriate, consult with the WO. Notwithstanding the historical use of certain types of agreements, the FDIC may deem any type of agreement as appropriate depending on the risk attributes of the non-bank or non-community bank. Nevertheless, agreements are not a substitute for comprehensive investigation of the parent organization, and should not be used as a means to favorably resolve statutory factors or circumstances that are otherwise unfavorable. The authority to enforce any written agreement is vested in the PFR.



## *Appendix 1: Types of Non-Banks and Non-Community Banks<sup>28</sup>*

**Non-Bank:** an IDI that is a “bank” for purposes of the FDI Act, but is not a “bank” for purposes of the [BHCA](#). Existing insured non-banks include institutions that are controlled by parent organizations engaged in a variety of commercial activities, including manufacturing and retail activities. Non-banks may be owned by parent companies that are not subject to the [BHCA](#); therefore, the parent companies are not regulated or supervised by the FRB.

<i>Types of Non-Banks</i>	<i>Key Features</i>
ILCs	<ul style="list-style-type: none"> <li>• ILCs operate under state charters with the FDIC as PFR. There are a limited number of states that charter ILCs.<sup>29</sup></li> <li>• ILCs typically conduct business nationwide with offices in multiple states. Product and service offerings often have a niche element (see niche item below) and may involve affiliate relationships.</li> <li>• Demand deposits may not be accepted if the ILC has greater than \$100 million in total assets (subject to applicable state law).</li> </ul>
Trust Banks <sup>30</sup>	<ul style="list-style-type: none"> <li>• May operate under a national or state charter.</li> <li>• Trust banks have operations that are primarily limited to those of a fiduciary nature with the bank acting as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in other related fiduciary or trust capacities.</li> <li>• A trust bank is not considered a bank for purposes of the <a href="#">BHCA</a> if it meets the conditions set forth in <a href="#">Section 2(c)(2)(D) of the BHCA</a>.</li> <li>• Trust banks do not make commercial loans or accept demand deposits.</li> </ul>
Credit Card Banks	<ul style="list-style-type: none"> <li>• May operate under a national or state charter.</li> <li>• Credit card banks have operations that are primarily limited to the issuance of credit cards, the generation of credit card receivables, and other related products, services, or activities.</li> <li>• A credit card bank is not considered a bank for purposes of the <a href="#">BHCA</a> if it meets the conditions set forth in <a href="#">Section 2(c)(2)(F) of the BHCA</a>.</li> <li>• Credit card banks do not make commercial loans or accept demand deposits, and are subject to other deposit taking limitations.</li> </ul>
Municipal Deposit Banks	<ul style="list-style-type: none"> <li>• Operate under a state charter.</li> <li>• Municipal deposit banks are wholly owned by thrifts or savings banks, and their banking activities are limited.</li> <li>• Commercial or consumer loans are not offered.</li> <li>• Funding is typically restricted to acceptance of deposits from thrift or savings banks, deposits arising out of the corporate business of their owners, and municipal deposits.</li> </ul>

**Non-Community Bank:** an IDI that may, in contrast to a traditional community bank, (1) focus on products, services, activities, market segments, funding, or delivery channels other than local lending and deposit taking; (2) pursue a broad geographic footprint (such as operating nationwide from a limited number of offices); (3) pursue a monoline, limited, or specialty business model; or (4) operate within an organizational structure that involves significant affiliate or other third-party relationships (other than

<sup>28</sup> Refer to the FDIC’s delegations of authority, which are included in a [Matrix](#) on the FDIC’s public website and in [Board Resolution 071098](#), dated December 3, 2002, for information regarding the authority to act on specific types of FDI applications.

<sup>29</sup> The case manager should consult with Legal on any questions regarding the chartering of an ILC.

<sup>30</sup> Trust banks and credit card banks are organized under the [CEBA](#).

common relationships such as those providing audit, human resources, or core information technology processing services). Specialty (sometimes referred to as “niche”) proposals, which cover a broad range of business models, are usually considered “non-community” in nature given the anticipated concentrated business focus or emphasis on specialized activities. A non-community bank may or may not operate under a non-bank charter.

<i>Types of Non-Community Banks</i>	<i>Key Features</i>
Specialty (or Niche) Institutions	<ul style="list-style-type: none"> <li>• Specialty (or niche) proposals generally involve institutions that present a concentrated business focus, significant specialized activities, or other unique characteristics. Such institutions may reflect a lack of diversification in assets or funding; a large proportion of income derived from limited or non-traditional products, services, or activities; or an emphasis on non-traditional delivery channels or customized products or services aimed at a relatively narrow demographic group.<sup>31</sup></li> <li>• The following elements have historically been considered specialized in nature given the potential impact on the proposed institution’s overall risk profile: <ul style="list-style-type: none"> <li>○ Lending - subprime, credit card, auto financing, and lending based on enterprise value.</li> <li>○ Funding - stored value, brokered or internet deposits, wholesale funding, loan originations and sales, and securitizations.</li> <li>○ Services/Activities - wealth management and trust operations, payment system or transaction processing, cash management or sweep services, and significant reliance on fee income.</li> <li>○ Customer Base - limited or narrow customer markets, including proposals intended to derive the customer base from affiliate relationships or directly support the sales of affiliates.</li> <li>○ Delivery Channels - internet only, production offices, and money desk operations with no teller windows.</li> <li>○ Geographic Footprint - a broad geographic footprint (e.g., operating nationwide with a limited number of offices).</li> <li>○ Other - proposals that emphasize the use and capabilities of emerging technologies, growth through acquisitions, and other proposals with unique attributes.</li> </ul> </li> <li>• Specialty institutions include those seeking a wholesale or limited purpose designation under the CRA, and may include institutions whose activities involve material off-balance sheet activities or are significantly dependent on affiliate or third-party relationships.</li> <li>• Proposed community development banks and bankers’ banks will also normally be considered specialty institutions.</li> </ul>
Publicly Owned Institutions	<ul style="list-style-type: none"> <li>• Public ownership refers to institutions to be owned or controlled by domestic governmental entities (e.g., a state, county, or municipality).</li> <li>• Establishment of such institutions is rare because they present concerns regarding the institution’s ability to operate independently of the political process; a potential lack of continuity in the institution’s</li> </ul>

<sup>31</sup> Given the potential lack of diversification within their business models, the financial condition of these institutions could be disproportionately affected by a single or localized event, such as changes in economic or market conditions; loss of a key customer, business, or funding relationship; changing customer needs or preferences; or other relevant circumstances.

<i>Types of Non-Community Banks</i>	<i>Key Features</i>
	<p>policies, management, and oversight, which could result from changes in the governmental entity’s leadership; and the institution’s ability to raise capital.</p> <ul style="list-style-type: none"> <li>• Institutions that are to be owned or controlled by Native American tribes or bands may not present the same concerns as other publicly owned institutions given provisions of federal law that allow Native American-owned institutions to function as both governmental and economic for-profit entities.<sup>32</sup></li> </ul>
Foreign Owned Institutions	<ul style="list-style-type: none"> <li>• Foreign ownership refers to institutions to be owned (25 percent or more of voting shares) or controlled by a foreign non-banking entity, a foreign bank, or a person who is not a citizen of the U.S.</li> </ul> <p><i>Agreements and conditions</i></p> <ul style="list-style-type: none"> <li>• It is FDIC policy to require controlling groups, persons, or entities to execute an agreement to consent to the jurisdiction of the U.S. courts and the appropriate federal banking agency (as defined in <a href="#">Section 3(q) of the FDI Act</a>), and an agreement to appoint an agent in the U.S. for service of process for domestic banking law matters.</li> <li>• These requirements will be included in the non-standard conditions and must be agreed to in writing. The foreign owner or controlling party will also be required to ensure that the FDIC receives updated information as circumstances warrant.</li> <li>• Model agreements, which will be provided by Legal, are to be signed before forwarding the case documents to the WO for final action.<sup>33</sup></li> </ul> <p><i>Part 347 (FDI Applications for a U.S. Depository Institution Subsidiary of a Foreign Bank )</i></p> <ul style="list-style-type: none"> <li>• <a href="#">Section 347.204 of the FDIC Rules and Regulations</a> contains specific requirements for FDI applications for a U.S. depository institution subsidiary of a foreign bank that has been determined to be subject to comprehensive consolidated supervision (CCS) by the appropriate federal banking agency.</li> <li>• The foreign bank is required to provide certain binding written commitments including, but not limited to, making available information about the foreign bank and its affiliates outside the U.S. and allowing for the examination of any U.S. office of the foreign bank. The FDIC will not process an FDI application without the written commitments.</li> </ul>
Institutions in a Parallel Banking Organization	<ul style="list-style-type: none"> <li>• A Parallel Banking Organization (PBO) is created when at least one U.S. depository institution and one foreign bank are controlled outside of a traditional holding company structure either directly or indirectly</li> </ul>

<sup>32</sup> A proposed institution would not be considered a non-community bank solely due to Native American ownership; rather, the categorization would depend on whether the business plan presented any unique or specialized elements.

<sup>33</sup> The RO, in consultation with Legal, should confirm that the agreements are properly executed. If an agreement is signed outside the U.S., the foreign person or official authorized to execute the agreement on behalf of the foreign entity (signor) must have appeared in person at a U.S. Embassy or Consulate, signed the agreement in the presence of the consular official, and obtained the consular official’s authentication of execution. If the agreement is signed in the U.S., the signor must be properly notarized under state law.

<i>Types of Non-Community Banks</i>	<i>Key Features</i>
	<p>by the same person or entity, or group of persons or entities, without any CCS of the organization.<sup>34</sup></p> <ul style="list-style-type: none"> <li>• The lack of a single regulator to comprehensively supervise the domestic and foreign banks on a consolidated basis poses unique risks.</li> <li>• While PBOs often involve foreign ownership, PBOs are not exclusive to foreign ownership.</li> <li>• Refer to <a href="#">FIL 35-2002, Joint Agency Statement on Parallel-Owned Banking Organizations</a> for additional information.</li> </ul>
Institutions formed to Acquire a Failed Bank	<ul style="list-style-type: none"> <li>• As described in the <a href="#">SOP-ADI</a>, the FDIC may apply modified application processes for proposed institutions formed for the purpose of acquiring assets and assuming liabilities of an insured institution in default. In such cases, the FDIC will consider abbreviated information submissions and applications, and may issue conditional FDI approval.</li> <li>• Investors that are interested in acquiring the deposits of failing institutions must have conditional approval for a charter from the applicable authority and meet the FDIC’s bid criteria. In certain cases, it may also be necessary to obtain conditional approval from the FRB to establish a holding company.</li> <li>• While the statutory factors per <a href="#">Section 6 of the FDI Act</a> must be met, the primary considerations under the modified process include an acceptable business plan, readily available capital, and a satisfactory management team. It may also be necessary to take into account the <a href="#">Statement of Policy on Qualifications for Failed Bank Acquisitions</a>.</li> </ul>
Other Types of Operating Non-Insured Entities Seeking FDI	<ul style="list-style-type: none"> <li>• Other types of operating non-insured entities (not described elsewhere in this appendix) that have applied for FDI include companies focused on mortgage lending, loan servicing, financing, and payment services.</li> <li>• Credit unions that are in the process of converting to a community bank business model are not considered non-community banks.</li> </ul>

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<sup>34</sup> A PBO does not include structures in which one depository institution is a subsidiary of the other, or the organization is controlled by a company subject to the [BHCA](#).

**Appendix 2: Review Considerations for Non-Bank or Non-Community Bank Proposals<sup>[1]</sup>**

<b>Overall</b>
<ol style="list-style-type: none"> <li>1. Is the proposed institution a non-bank?</li> <li>2. Does the application involve a <i>de novo</i> institution or an operating non-insured entity?</li> <li>3. What non-community bank elements (including any specialty or niche characteristics) are present in the application/business plan?</li> <li>4. Are there any proposed activities, financial or operational matters that are unique, complex, or present unusual risks?</li> <li>5. Are there any unique issues or elements of the proposal relative to accounting, BSA/AML, trust, capital markets, consumer compliance, CRA, or IT that present prospective concerns?</li> <li>6. Is sufficient mitigating information or compensating controls provided for any areas where significant risks or concerns exist?</li> <li>7. Are there any aspects of the proposal that would establish or change existing FDIC policy, could attract unusual attention or publicity, or would involve an issue of first impression?</li> <li>8. Have any companion applications been filed with the FDIC or other banking agencies? If so, what is the status of those applications?</li> </ol>
<b>Parent/Organizational Structure and Impact</b>
<ol style="list-style-type: none"> <li>1. Does the application indicate that there will be any transactions or relationships with the parent company, other affiliates, or insiders? If so, what is the extent of the relationships, will they be arms-length and on terms comparable to those with non-affiliate or non-insider transactions/relationships, and will they comply with relevant regulations?</li> <li>2. Does the organizational or ownership structure of the proposed institution or the parent company reflect any unique elements (e.g., equity structure, corporate governance aspects, conflicts of interest, etc.) that present elevated risks/concerns?</li> <li>3. Have the organizers expressed a willingness to enter into any written agreements or formal commitments with regard to the proposed institution?</li> <li>4. If the parent organization or the proposed institution is an existing, operating entity/company, are there any issues or concerns regarding its history, performance, condition, business prospects, or the ability to serve as a source of strength and support?</li> <li>5. Has appropriate due diligence been performed on any proposed vendors or other third-party relationships/servicers that are integral to implementing the business plan?</li> </ol>
<b>Business Plan and Proposed Activities/Operations</b>
<ol style="list-style-type: none"> <li>1. Are any proposed products, services, or activities non-community bank in nature?</li> <li>2. If so, what are the related risks, and is the risk management framework sufficient to identify, measure, monitor, and control the risks?</li> <li>3. Does the business plan reflect well supported and realistic financial projections (including underlying assumptions)? Are the projections consistent with the unique risks and the nature of the non-bank or non-community bank proposal?</li> <li>4. If appropriate, have the financial statements and projections been appropriately stress tested?</li> <li>5. Do the financial statements reflect any significant one-time or non-recurring events that present additional risk?</li> <li>6. Does the business plan reflect clearly defined strategic alternatives for redirecting efforts (which may include self-liquidation) if the business plan proves unsuccessful?</li> <li>7. Are there any unique aspects or features of the proposed equity structure that would inhibit (or preclude) the sale of additional stock?</li> </ol>

<sup>[1]</sup> This list is not all-encompassing. Items may vary depending on the business model of the proposed institution.

8. Are there any projected asset, funding, or revenue source concentrations that would necessitate additional capital beyond what has been committed and projected?
9. Are any noncash capital contributions contemplated? If so, is the value fully supported with independent appraisals or other appropriate valuation methods and does it comply with governing regulations?
10. If the proposed institution is an operating non-insured entity, are there any deferred tax assets or liabilities, intangible assets, contingent liabilities, or recent or pending legal or regulatory actions that may have a significant impact and warrant further review?
11. Are any other significant issues or concerns noted in any areas of the application other than those captured in the items above (e.g., with regard to funding plans, historical preservation or the environment pursuant to the [National Historic Preservation Act](#) or the [National Environmental Protection Act](#), any anticipated corporate powers or activities that are inconsistent with the purposes of the FDI Act, etc.)?

**Board/Management**

1. Do the board and management composition, and the corporate governance structure address the unique elements and complexities of the proposal?
2. Are there any concerns regarding the independence of the proposed directors or officers?
3. Does the application reflect any individuals performing in a dual capacity? If so, are appropriate policies, procedures, and agreements in place?



### *Appendix 3: 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.