

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Chris J. Conanan, et al., )  
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 Plaintiffs, )  
 )  
 v. ) Civil Action No. 00-CV-3091 (ESH)  
 )  
 Donna Tanoue, Chairperson, )  
 Federal Deposit Insurance )  
 Corporation, )  
 )  
 Defendant. )  

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**CONSENT DECREE**

## I. INTRODUCTION

On November 8, 1993, Chris J. Conanan and Willitta Gordon Hawkins<sup>1</sup> (who, together with Leonard C. Glenn, are hereinafter collectively referred to as “Class Representatives”), acting as class agents, filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, *et seq.* (“Title VII”), a formal administrative class complaint (the “Administrative Class Complaint”) alleging discrimination on the basis of race by their employer, the Federal Deposit Insurance Corporation (the “FDIC”). In the Administrative Class Complaint, Mr. Conanan and Ms. Hawkins alleged that a class of African-American FDIC employees had been denied promotional opportunities<sup>2</sup> on the basis of race as a result of a number of the FDIC’s employment policies and practices. Mr. Conanan and Ms. Hawkins sought declaratory, injunctive, and monetary relief on behalf of themselves and the putative class for claims arising on or after May 13, 1992.<sup>3</sup>

The FDIC forwarded the complaint to the Equal Employment Opportunity Commission (“EEOC”) on December 8, 1993. After a recommended decision by an EEOC administrative judge on December 14, 1994, and a Final Agency Decision (“FAD”) by the FDIC on January 17, 1995, the EEOC’s Office of Federal Operations (“OFO”) issued a decision on January 13, 1998, ordering

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1 Marvin G. Gordon, a former FDIC employee, was also a named class agent in the Administrative Class Complaint filed in 1993. Mr. Gordon is not, however, a named plaintiff in this action filed in the District Court (although he is a Class Member as defined herein).

2 The Administrative Class Complaint sought to challenge a number of other issues, such as hiring and discipline, on behalf of both applicants and employees, but the Equal Employment Opportunity Commission subsequently ruled that the Administrative Class Complaint should be limited to promotion claims of employees.

3 Mr. Conanan, the sole class agent in the Administrative Class Complaint who had sought EEO counseling, had done so on June 12, 1992. Thus, the claims covered by the Administrative Class Complaint were those arising on or after May 13, 1992, which was the date 30 days before Mr. Conanan sought class EEO counseling.

certification of a class and requiring the FDIC to continue processing the remanded Administrative Class Complaint. On March 3, 1998, the FDIC sent out a Notice of Acceptance of Class Complaint.<sup>4</sup>

The wording of the Notice of Acceptance of Class Complaint led to a dispute between the parties concerning the scope of the class definition. The class agents sought to resolve that dispute by filing a second appeal with OFO on March 23, 1998, which the FDIC contested. On February 4, 1999, OFO closed the appeal matter and advised the parties that any disagreement regarding the class definition should be presented to the administrative judge assigned to the Administrative Class Complaint for a ruling. The parties completed briefing the issue of the appropriate scope of the class in May 1999. As of December 1999, however, the EEOC administrative judge had not issued a ruling on the class definition issue.

In January 2000 the parties began voluntary mediation sessions<sup>5</sup> before Linda Singer, Esq., of ADR Associates, which ultimately led to an agreement in principle on terms for settlement.<sup>6</sup> On December 22, 2000, the Class Representatives filed a new class complaint (the “Class Complaint”)

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4 Class Counsel contended that the class defined in the Notice was narrower than the class certified by OFO, and that additional African-American employees were included in the class definition and should have been sent copies of the Notice.

5 Although Class Representative Leonard C. Glenn was not a class agent in the original Administrative Class Complaint, he had an individual complaint alleging discrimination in promotions pending before the EEOC at the time mediation began in this case. He participated in those mediation sessions to broaden the representation of the interests of Class Members, and subsequently became a named plaintiff when the Class Complaint was filed in this action in the District Court.

6 In 1993, after Class Representative Chris Conanan sought informal EEO counseling, the parties conducted more than six months of mediation before then-mediator (now federal circuit court judge) David Tatel in an attempt to resolve their differences. Although that mediation prompted the FDIC to implement certain equitable reforms to address the concerns raised by the putative class, the mediation was ultimately unsuccessful in providing a complete resolution of all issues, and was therefore followed by the filing of the Administrative Class Complaint.

regarding the FDIC's Employment Practices (as defined herein) in the United States District Court for the District of Columbia (the "Court"), and on March 6, 2001, the parties voluntarily sought dismissal of the Administrative Class Complaint pending before the EEOC. Pursuant to such requests, on March 8, 2001, the Administrative Class Complaint was dismissed.<sup>7</sup>

In the interest of ensuring equality of employment opportunity and respect for civil rights, and avoiding the expense, delay, and inconvenience of further litigation of the issues raised in this action, and in reliance upon the representations, mutual promises, covenants, and obligations set out in this Consent Decree, and for good and valuable consideration also set out in this Decree, plaintiffs and the FDIC, through their undersigned counsel of record, hereby stipulate and agree as follows:

## **II. GENERAL PROVISIONS**

### **A. DEFINITIONS**

The following terms, as they are used in this Consent Decree, shall have the meanings defined below:

#### **1. "Administrative Class Complaint"**

The formal administrative class complaint of discrimination filed with the FDIC by Chris J. Conanan, Willitta Gordon Hawkins and Marvin Gordon on November 8, 1993.

#### **2. "Class Claim"**

Any individual or class-wide actual or potential race or color discrimination or reprisal claim, administrative charge, demand, complaint, right, or cause of action of any kind, known or unknown, for

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<sup>7</sup> Individual administrative claims of the Class Representatives pending with the EEOC will be voluntarily

monetary or equitable relief or for attorneys' fees or any other type of relief whatsoever, that was or could have been brought by any current or former African-American employee of the FDIC with respect to Employment Practices (as defined below), arising from any events, acts, omissions, policies, practices, procedures, conditions, or occurrences concerning employment with the FDIC at any time on or after May 13, 1992, but no later than March 31, 2001.

### **3. "Class Complaint"**

The class complaint of discrimination that Chris J. Conanan, Willitta Gordon Hawkins, and Leonard C. Glenn filed in this action on December 22, 2000 in the United States District Court for the District of Columbia on behalf of the Plaintiff Class.

### **4. "Class Counsel"**

All counsel of record, singly or collectively, who are signatories to this Consent Decree on behalf of the Class. They are as follows: Washington Lawyers' Committee for Civil Rights & Urban Affairs, 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036, and Cohen, Milstein, Hausfeld & Toll, P.L.L.C., 1100 New York Avenue, N.W., Suite 500, West Tower, Washington, D.C. 20005.

### **5. "Class Member(s)", "Class" and/or "Plaintiff Class"**

All African-Americans (including the Class Representatives) employed by the FDIC in any capacity (whether permanent, temporary, or term appointments, including all General/Corporate Grade, Liquidation Grade and Wage Grade/Prevailing Rate employees, but excluding any persons to the extent that their employment at the FDIC is or was solely in the capacity of student intern) at any time from

May 13, 1992, to March 31, 2001. The parties intend to exclude from the class definition any claim brought by a current or former employee of the FDIC arising from Employment Practices of the Resolution Trust Corporation (“RTC”), or commenced against the FDIC solely in its capacity as successor to the RTC.

**6. "Class Representatives"**

Chris J. Conanan, Willitta Gordon Hawkins, and Leonard C. Glenn.

**7. “Confidential Information”**

Information of any type, kind or character and in any form that has been or will be obtained by one party to This Case or its counsel or agents from the other party to This Case or its counsel or agents that is not generally known to the public. The term includes, without limitation, all PERHIS and VATS information or other data that has been or will be provided by the FDIC; all statistical analyses of such data; all internal memoranda, personnel plans, programs, policies and procedures, and computerized data; information regarding the FDIC’s past, present, or future employees, including, but not limited to, home addresses and telephone numbers, social security numbers, wage or earnings records, benefits, performance evaluations, disciplinary records, or family information; the FDIC’s confidential evaluations of business or personnel information; statistical data evaluating the FDIC’s workforce; all information produced pursuant to, or covered by, any Confidentiality Agreement (as defined herein); and all discussions, communication, information, correspondence and negotiations regarding This Case. Confidential Information does not include information which is a matter of public record. Confidential Information does not include the disclosure by one party of discussions, communications, information, correspondence or negotiations regarding This Case taking place

exclusively between or among that party and its own counsel or agents; provided, however, that Confidential Information received by one party or its counsel or agents from the other party or its counsel or agents shall not lose its status as Confidential Information regardless of any action taken with respect to such Confidential Information by the party receiving it. The prohibition on disclosure of Confidential Information is not intended to bar Class Counsel from making statements to Class Members which in general terms discuss the settlement process.

#### **8. "Confidentiality Agreement"**

Collectively, the agreement to mediate dated February 2000 (the "Agreement to Mediate"), and previously executed by the parties in connection with the most recent mediation of This Case, a copy of which is attached hereto as Exhibit 1, as well as all additional agreements to mediate to be executed by the parties pursuant to Section V.C.4(b) of this Decree in connection with each mediation conducted pursuant to this Consent Decree.

#### **9. "Consent Decree" or "Decree"**

This document, which is entitled Consent Decree and has been signed by counsel of record for the parties, as well as the following attached exhibits:

1. Agreement to Mediate;
2. Notice of Pendency of Class Action and Proposed Consent Decree;
3. Claim Form;
4. Notice of Individual Monetary Award Under Proposed Consent Decree;
5. Notice of Fairness Hearing;
6. Notice of Monetary Distribution Formula Under Proposed Consent

Decree

**10. "Court" or "District Court"**

The United States District Court for the District of Columbia.

**11. "Effective Date"**

The date, after Final Approval, and after any appeal has been finally resolved (including any appellate review, requests for rehearing, rehearing *en banc*, and petitions for writs of *certiorari*), or the time for appeal has run without any appeal, at which time the parties become bound to perform the obligations, and become bound by the terms, set out in this Consent Decree.

**12. "Employment Practices"**

Competitive or noncompetitive promotions or selections for a position (whether temporary, term, or permanent, merit promotions/selections, career ladder promotions, accretion of duties or reclassification determinations, details, transfers, temporary appointments, temporary promotions/selections, and reassignments).

**13. "FDIC"**

The Federal Deposit Insurance Corporation and the Chairman of the FDIC in his or her official capacity.

**14. "Final Approval"**

The entry of the Court's Order granting final approval of this Consent Decree as fair, reasonable, and adequate to the Class as a whole, and thus binding on the FDIC, the Class and each of the Class Members.

**15. “Mandatory Joinder Claim”**

Any claim arising out of the same occurrence, event, or nucleus of facts as any Class Claim.

**16. “Neutral Expert”**

Dr. Wayne Cascio, an industrial organizational psychologist (or any substitute mutually agreed upon in writing by the parties) who shall be jointly retained by the parties as a neutral expert to provide services as provided in Sections III.B.1, B.2 and B.3 of this Decree.

**17. "ODEO"**

The FDIC’s Office of Diversity and Economic Opportunity or any successor entity.

**18. “Claims Administrator”**

The firm named Settlement Services, Inc. (or any substitute mutually agreed upon in writing by the parties), which Class Counsel has retained, as provided in Section III.A of this Decree, to assist in the administration and distribution of monetary awards to be made pursuant to this Decree.

**19. “Plaintiffs’ Expert”**

The company named Econsult, plaintiffs’ statistical expert which has performed and will perform services for the Plaintiff Class relating to calculation of monetary awards to be made pursuant to this Decree and monitoring compliance with this Decree as provided in Sections III.A and III.B.3(f) of this Decree.

**20. "Preliminary Approval"**

The entry of the Court’s Order granting preliminary approval of this Consent Decree.

**21. “PSB”**

The FDIC’s Personnel Services Branch or any successor entity.

**22. "Reasonable Attorneys' Fees, Expenses, and Costs"**

The amount of fees, expenses, and costs to be paid consistent with the standards governing the payment of attorneys' fees, expenses, and costs under Section 706(k) of Title VII, 42 U.S.C. § 2000e-16, 28 U.S.C. § 1920, or any successor statute(s), regulation(s), and/or rule(s), and any relevant decisional law and which, with respect to the past reasonable attorneys' fees and expenses provided for in Section IV.A. of this Decree, shall be in accord with the terms of the retainer agreement executed by the Class Representatives and Class Counsel.

**23. "Settlement-Only Class"**

The Plaintiff Class that the Court will certify in this action pursuant to Federal Rule of Civil Procedure 23(b) as provided in Section II.D.1(a) of this Decree, upon final approval of this Consent Decree. The parties agree that this class shall be certified solely for the purpose of settlement. Such certification shall be null and void in the event that there is no Final Approval of this Consent Decree or this Consent Decree does not become effective or is deemed null and void for any other reason (including, without limitation, any election by the FDIC to withdraw from the Consent Decree as allowed in Section II.D.1(b) due to excessive opt-outs).

**24. "This Case"**

Refers to all proceedings relating to or arising from both the Administrative Class Complaint and the Class Complaint, including, without limitation, any related informal administrative proceedings and mediation efforts that pre-dated the filing of the Administrative Class Complaint.

**B. JURISDICTION OF THE COURT**

The Court shall retain jurisdiction over this Consent Decree for three (3) years from the

Effective Date of this Consent Decree solely for the purpose of adjudicating (subject to the terms set forth in Section V of this Decree regarding Enforcement) the following claims: (a) any claim of a material breach of this Decree that may be presented to the Court pursuant to Section V.D. of this Decree in the event that the parties cannot first reach agreement in accordance with the good faith exercise of the alternative dispute resolution procedures set forth in Sections V.A, B, and C of this Decree; and (b) any claim concerning the payment of future reasonable attorneys' fees, expenses, or costs that may be presented to the Court pursuant to Sections IV. B, C, and D of this Decree in the event that the parties cannot first reach agreement in accordance with the good faith exercise of the alternative dispute resolution procedures set forth in Sections V.A, B and C of this Decree. This Decree is not intended to confer jurisdiction in any court or administrative forum other than the District Court where the Class Complaint was filed.

**C. TERM OF DECREE**

This Consent Decree shall be effective and binding on the parties for a period of three (3) years from the Effective Date of this Decree, at which time it shall (except as noted below with respect to releases/bars and the Confidentiality Agreement) expire and be without force and effect. This Consent Decree may not be extended or modified without the prior written consent of all parties, subject to Court approval. Notwithstanding anything to the contrary contained herein, (i) the releases/bars on Class Claims and Mandatory Joinder Claims provided for in Section II.D.2 of this Decree; and (ii) the obligations of all signatories to the Confidentiality Agreement, shall survive the expiration of this Consent Decree.

## **D. SCOPE OF THE CONSENT DECREE**

### **1. Persons Covered By Decree**

#### **(a) Certification of Settlement-Only Class**

Pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), the parties stipulate to the certification, for settlement purposes only, of the following Settlement-Only Class:

All African-Americans employed by the FDIC in any capacity (whether permanent, temporary, or term, including, without limitation, all General/Corporate Grade, Liquidation Grade and Wage Grade/Prevailing Rate employees, but excluding any persons to the extent that their employment at the FDIC is or was solely in the capacity of student intern) at any time from May 13, 1992, to March 31, 2001.

#### **(b) Opt Out Rights**

If this Consent Decree is approved by the Court, all persons within the Class are bound by its terms, except those Class Members who effectively exercise a right to opt out of the Class and the settlement. Class Members who elect to opt out must do so in writing no later than the date specified in the notice attached as Exhibit 2. Elections to opt out must be submitted pursuant to the procedure set forth in the notice attached as Exhibit 2.

If the number of Class Members who opt out of the Class in the manner provided in the attached notice exceeds the number filed with the Court under seal concurrently with this Consent Decree, then the FDIC, at its option, shall have the right to withdraw from this Decree, which shall be deemed null and void. The FDIC must exercise its right to withdraw not later than forty-five (45) days after the date by which the Court requires Class Members to file their opt-out notices with the Court.

### **2. Release/Bar of Claims**

In consideration of the promises contained in, and the benefits provided or to be provided

hereunder, this Consent Decree shall resolve, extinguish, and finally and forever bar, and the Class Representatives and other Class Members (other than persons who have effectively exercised a right to opt out of this Decree) hereby release, any and all Class Claims and Mandatory Joinder Claims (as defined in Sections II.A.2 and 15, respectively), in law or in equity, which any of them, their representatives, agents, heirs, executors, administrators, successors, or assigns, may have, may have had, or in the future may have against the FDIC (including, without limitation, any “continuing violation” allegations made after March 31, 2001, that rely upon evidence of violations occurring before March 31, 2001) arising from or relating to events that occurred prior to March 31, 2001.

Upon the Effective Date, the doctrines of *res judicata* and collateral estoppel shall bind all Class Representatives and other Class Members (except those who have effectively opted out under the provisions of this Consent Decree) with respect to all Class Claims and Mandatory Joinder Claims which are known or unknown, actual or potential. Plaintiffs relinquish all rights to reopen this action and to seek further or different individual or class relief, including, without limitation, judicial or administrative relief in any pending judicial or administrative proceedings alleging race or color discrimination or reprisal in any Employment Practices of the FDIC with respect to claims arising before March 31, 2001. This Consent Decree may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by this Decree.

The Class Complaint filed in this action against the FDIC shall be dismissed in its entirety, with prejudice, on the Effective Date, pursuant to a Joint Stipulation of Dismissal.

## **E. DENIAL OF LIABILITY**

The FDIC expressly denies any wrongdoing or liability. This Consent Decree represents the compromise of disputed claims. It reflects the parties' recognition that litigation of these claims would severely burden all concerned and would require a massive commitment of time, resources, and money.

The Consent Decree does not constitute, is not intended to constitute, and shall not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in This Case. Neither the District Court nor any other court or administrative tribunal has made any findings or expressed any opinion concerning the merits, validity, or accuracy of any of the allegations or claims alleged in This Case. The sole rulings made in This Case, which were made by the EEOC in connection with the Administrative Class Complaint, related to the procedural issue of whether a class should be certified by the EEOC; no ruling was ever made on the merits of the claims or allegations in This Case.

Nothing in or related to this Consent Decree, including any action taken to implement it or any statements, discussions, or communications made, or any materials prepared or issued during the course of the mediation or negotiations leading up to the Consent Decree and produced by one party to the other may be introduced or used or admitted in any way by anyone other than the party who took such action, issued such statements, or prepared such materials in any judicial, arbitral, administrative, investigative, or other proceeding of any kind or nature whatsoever as evidence of discrimination, retaliation, or any violation of Title VII, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. Documents, data, and information prepared for negotiations and/or mediation and exchanged

by the parties in connection with This Case may not be used for any purpose or in any manner by anyone other than the party who created such documents, data or information, in this or in any other case, except that documents or information specifically relating to the intent of the parties in crafting a particular provision in this Decree may be used solely with respect to enforcement of that provision if the Court determines that such use is necessary to resolve a fundamental dispute regarding the meaning of such provision. Notwithstanding anything to the contrary contained herein, no action or inaction by a party or its counsel or agents shall cause Confidential Information received from the other party or its counsel or agents to lose its status as Confidential Information, or authorize its direct or indirect disclosure by the party receiving such Confidential Information or its counsel or agents.

In the event that Final Approval of this Consent Decree is not obtained or this Decree does not become effective or is deemed null and void for any other reason (including, without limitation, any election by the FDIC to withdraw from the Decree as allowed in Section II.D.1(b) hereof due to excessive opt-outs), nothing herein shall be deemed to waive any of plaintiffs' claims or the FDIC's objections and defenses (including, without limitation, objections to class certification), and neither this Decree nor the Court's Preliminary Approval or Final Approval hereof shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject of This Case.

#### **F. CONFLICTS**

Due to Class Counsel's continuing representation of the Class, their receipt of Confidential Information regarding the FDIC during This Case, and their continuing receipt of such Confidential Information during the term of this Decree, Class Counsel agree not to undertake any representation (i) during the term of the Decree that would create a conflict of interest; or (ii) at any time that would

involve the use of the FDIC's Confidential Information for purposes unrelated to the enforcement of this Decree.

Class Counsel further agree that during the term of this Decree they shall not represent any Class Member who opts out of the provisions of this Decree in any litigation against the FDIC which arises out of, or is related to, Class Claims asserted in This Case prior to the expiration of this Decree, if such representation would create a conflict of interest. Nothing contained herein is intended to preclude Class Counsel from seeking to enforce on behalf of the Class the equitable provisions of this Decree merely because a Class Member who opted out of this Decree may have alleged a violation of those equitable provisions.

**G. CONFIDENTIALITY AND RETURN OF DOCUMENTS**

Class Counsel acknowledge that during the course of This Case they have received, and may hereafter receive in connection with the monitoring of this Decree, Confidential Information regarding the FDIC and its personnel, including, without limitation, internal memoranda, personnel plans, programs, policies and procedures, computerized data, and other information. The parties, their retained experts, their consultants and attorneys (and all other signatories), and the agents of each of them, shall continue to be bound by the terms of the Confidentiality Agreement throughout the term of this Decree and thereafter. The Class Representatives, Class Counsel, their experts and consultants and others retained by them, as well as the agents of each of them, hereby agree not to disclose any Confidential Information that may have been or may hereafter be received from the FDIC in connection with the litigation, mediation, or settlement of This Case, including, without limitation, all information provided pursuant to the terms of this Decree. Class Counsel shall be responsible for advising their experts,

outside consultants, and any other individual acting for, on behalf of, or at the request or direction of Class Counsel (including, without limitation, the Claims Administrator described in Section II.A.18), of the confidentiality provisions of this Decree and shall require that each such individual sign a confidentiality agreement substantially in the form of Exhibit 1, and shall provide a copy of such signed agreement to counsel for the FDIC.

Counsel of record for each party shall, not later than thirty (30) days after the expiration of the three-year term of this Decree, make available to counsel for the other party or destroy all documents (and copies of documents) and computer discs or data (and copies thereof) that were produced by the other party in the course of the litigation, mediation or settlement of This Case or the implementation of this Decree, including all copies thereof that have been provided to or are in the possession of the party's expert(s) or consultant(s). Counsel for the parties are permitted to retain such information during the term of this Decree solely for the purposes of claims administration, allocation of monetary relief to be paid from the Backpay Fund and the Damages Fund, and implementation and monitoring of compliance with this Decree.

#### **H. APPROVAL OF CONSENT DECREE AS WRITTEN**

It is an express condition of this Consent Decree that the Class described in Section II.A.5 be certified and be bound by this Decree, and that this Decree be approved by the Court as written. The parties have bargained for the terms in this Consent Decree. No section or subsection of this Consent Decree may be modified or stricken. If the Court does not approve this Consent Decree as written, either party may, at its election, declare the entire Consent Decree null and void.

## **I. INTERPRETATION OF CONSENT DECREE**

### **1. Nature of Agreement**

This Consent Decree is a contract and shall, upon approval by the Court, also constitute an order of the Court, and all of its provisions shall be enforceable by the parties and as an order of the Court (subject to the terms set forth in Section V of this Decree regarding Enforcement).

### **2. No Preferences**

No provision of this Consent Decree is intended as, or is properly interpreted as, constituting a quota or timetable. Nothing contained in this Decree shall obligate, require, authorize or permit the FDIC to grant to any person a preference in promotion, selection, or any other Employment Practice on the basis of race. Similarly, nothing contained in this Decree shall obligate the FDIC to create new positions, to fill any particular position, or to promote, select, or non-competitively assign any particular person or class of persons.

### **3. No Modification of Title VII Requirements**

Nothing in this Decree may be taken as modifying either the statutory or regulatory procedures pertaining to initiating and maintaining administrative and judicial proceedings under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-16 *et seq.*, the federal civil service laws, or the requirement to exhaust administrative remedies prior to initiating suit under those statutes.

### **4. Payments for Fees, Costs and Expenses**

Whenever this Consent Decree provides for FDIC payment of any costs, fees or expenses (including, without limitation, attorneys', experts' and administrators' fees, costs, and expenses, but excluding the past attorneys' fees and expenses to be paid from the Damages Fund as provided in

Section III.A.1 of this Decree), such payments shall be subject to the following terms and conditions:

**(a) Detailed Invoice Required**

Prior to any such payment, the FDIC shall be provided with a signed statement for such work, which statement shall describe in reasonable detail the work performed, the identity of the person(s) who performed such work, the time expended, and the expenses incurred; provided, however, that nothing contained herein shall require the disclosure of information subject to the attorney-client privilege or any other legally recognized privilege.

**(b) No Entitlement to Unspent Funds**

The purpose of FDIC payment of fees, costs, and expenses is to compensate Class Counsel for work performed and to reimburse Class Counsel for certain specific, actual out-of-pocket expenditures that Class Counsel makes or would be required to make if the FDIC had not agreed to pay such fees, costs, and expenses. The dollar amounts specified in provisions of this Decree authorizing such FDIC payments are intended to establish an absolute, outside limit on the FDIC's obligation to pay fees, costs, and expenses, even if the actual amounts of such fees, costs, and expenses incurred are greater than the amount of the dollar cap specified. In the event that the amounts of fees, costs, and expenses actually incurred for a particular purpose are less than the maximum amount specified for that purpose for a particular year or for the term of the Decree, any "unspent funds" for that purpose in one year shall not carry forward to the next year, nor may any "unspent funds" for that purpose be used to pay any other fees, costs, or expenses.

**J. SIGNATURES OF ALL CLASS COUNSEL REQUIRED**

All counsel of record for the Class must sign any motion alleging a material breach of the terms

of this Consent Decree or to take any other action that the terms of this Consent Decree authorize Class Counsel to take.

### **III. RELIEF**

#### **A. MONETARY RELIEF**

##### **1. FDIC Payment to Class**

The FDIC shall pay to the Plaintiff Class the total sum of fourteen million dollars (\$14,000,000) (plus interest in the limited circumstances specified in the next paragraph), less deductions specified below, in full, complete, and final satisfaction of all claims for economic or non-economic monetary damages of any kind, including, without limitation, claims for back pay, front pay, employment benefits (including retirement, life insurance, and 401(k) savings plan benefits, and the monetary equivalent of various forms of leave), and/or interest (including both pre-judgment interest and post-judgment interest), and compensatory damages, as well as all class service awards and all attorneys' fees and costs through Final Approval of this Consent Decree. This sum shall be allocated as follows: seven million one hundred eighty seven thousand five hundred dollars (\$7,187,500) to a fund in satisfaction of all monetary liability for back pay, front pay, employment benefits and/or interest (the "Backpay Fund"); and the sum of six million eight hundred twelve thousand five hundred dollars (\$6,812,500) to a fund (the "Damages Fund") in satisfaction of: (1) all claims for compensatory damages due to emotional distress, mental anguish, pain and suffering, or any other cause (\$4,312,500); (2) all attorneys' fees and costs through the date of Final Approval of this Consent Decree (\$2,000,000); and (3) all class service awards to the Class Representatives and Marvin Gordon, Jacqueline K. Taylor and Charles Thompson (\$500,000).<sup>8</sup> Thus, a total of eleven million, five hundred thousand dollars (\$11,500,000) --

\$7,187,500 from the Backpay Fund and \$4,312,500 from the Damages Fund – is available for distribution to Class Members in accordance with the Monetary Distribution Formula set forth in Exhibit 6.

The FDIC shall pay interest on the principal fourteen million dollar (\$14,000,000) sum only if the pendency of an appeal regarding this Consent Decree delays the Effective Date of this Decree beyond the date which is sixty (60) days after the date of Final Approval of this Decree. If interest is payable pursuant to the preceding sentence, such interest shall be calculated as follows. Commencing on the date which is sixty (60) days after the date of Final Approval of this Decree until the date that payment is made to Class Counsel as provided herein, the FDIC shall invest the fourteen million dollar (\$14,000,000) sum at the Bureau of Public Debt as part of its normal daily investment procedures for the Bank Insurance Fund in one-day repurchase certificates that mature the next business day and earn interest at the daily Federal Reserve repurchase agreement rate. Although the fourteen million dollar (\$14,000,000) sum will not be segregated from other Bank Insurance Fund investments, the FDIC will provide Class Counsel with such books and records as necessary to verify the amount and rates of interest earned on the fourteen million dollars (\$14,000,000) during the holding period. If interest is paid on the fourteen million dollars (\$14,000,000) pursuant to the terms of this paragraph, such interest shall be allocated to the Backpay Fund and the Damages Fund in proportion to the percentage of the

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8 Marvin Gordon, a former liquidation specialist with the Division of Liquidation, served as a named class agent in the Administrative Class Complaint filed in 1993. Jacqueline K. Taylor, a former Senior Attorney with the Legal Division, participated actively in the first mediation of the class complaint and counseled numerous African-American employees about their rights under the EEO laws. Charles Thompson, a current FDIC employee who has served primarily as an Audit Specialist in the Office of the Inspector General, also participated actively in the first mediation and has been actively involved in advancing the interests of the class and communicating with Class Members about the litigation and the settlement negotiations.

fourteen millions dollars (\$14,000,000), which is to be deposited into each such fund.

Not later than forty-five (45) days after the Effective Date, the FDIC shall deliver to Class Counsel via electronic funds transfer the sum specified above. The electronic funds transfer shall be made into an interest-bearing, federally insured trust account to be established by Cohen, Milstein, Hausfeld & Toll, P.L.L.C., as Trustee for the Benefit of the Class.

## **2. Calculation of Monetary Awards to Class Members**

Class Counsel shall arrange for allocation of these sums as described in Exhibit 6, and in accordance with the distribution methodologies set forth therein. All interest earned on the Backpay Fund and the Damages Fund shall be credited to the fund on which the interest was earned. Each Class Member who has not opted out and has timely submitted a Claim Form pursuant to the procedure set forth in Exhibit 3, shall receive the amounts calculated according to the distribution formula set forth in the Notice of Monetary Distribution Formula, attached as Exhibit 6 (less the deductions specified below in the case of payments from the Backpay Fund).

All decisions concerning monetary awards to Class Members from the Backpay Fund and the Damages Fund are the sole responsibility of Class Counsel and the Class Representatives, after consultation with the Plaintiffs' Expert, subject to the provisions of this Consent Decree. They shall identify the Class Members to receive monetary relief. The Claims Administrator shall be responsible for distributing the monetary relief, pursuant to the distribution formula described in Exhibit 6, subject to approval of the Court.

Calculation of the amounts due each Class Member according to the formula set forth in Exhibit

6<sup>9</sup> shall be performed by the Plaintiffs' Expert. The FDIC shall provide the Plaintiffs' Expert with information regarding the date(s) of employment with the FDIC and, where appropriate, the date(s) of separation, for each Class Member and, to the extent available and permitted by law, such other information requested by Plaintiffs' Expert in writing as may be necessary to perform the requisite calculations, to the extent the FDIC has not previously provided such information; all such information shall be made available to Plaintiffs' Expert and/or Class Counsel under the Confidentiality Agreement.

### **3. Distribution of Monetary Awards to Class Members**

Except with respect to calculation of the amounts due each Class Member (to be calculated by Plaintiffs' Expert), the administration and distribution of monetary awards shall be handled by the Claims Administrator, which Class Counsel has retained to, *inter alia*: (i) locate Class Members who are no longer employed by the FDIC; (ii) provide a first notice to Class Members describing this Consent Decree and the right to opt-out of the settlement, attached as Exhibit 2; (iii) handle distribution of claim forms to and receipt from Class Members, attached as Exhibit 3; (iv) answer procedural questions from Class Members about the claims process under this Consent Decree through the use of a toll-free telephone number; (v) create a database of Class Members; (vi) provide a second notice to Class Members, which shall include the proposed amount of any monetary award (whether from the Backpay Fund or the Damages Fund or both) to be paid to that Class Member as determined by Plaintiffs' Expert, attached as Exhibit 4, and the Notice of the Fairness Hearing, attached as Exhibit 5 and provide a notice to all current FDIC employees of the Fairness Hearing, attached as Exhibit 5; (vii) provide

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<sup>9</sup> The FDIC played no role in determining the formulas in Exhibit 6 for distributing the monetary awards provided for in this Consent Decree.

final notice of the payment due each Class Member and the amounts to be withheld from that payment as determined by Plaintiffs' Expert; and (viii) prepare and distribute funds and W-2 and 1099-MISC tax forms to Class Members.

If a Class Member who is entitled to be provided monetary relief under this Consent Decree is deceased at the time of such distribution hereunder, the amount payable to such deceased Class Member shall be paid to his or her estate. If the Claims Administrator determines that there is insufficient information or proof regarding the deceased person's estate to permit such payment, the deceased person's share shall be distributed to the remaining Class Members on a *pro rata* basis.

#### **4. Tax Consequences of Monetary Relief**

Any required employee deductions for federal, state, and local taxes, employee retirement account contributions, Medicare taxes, and any other routine payroll deduction required by law, as determined by the Claims Administrator, shall be deducted from any amounts paid to Class Members from the Backpay Fund.<sup>10</sup> Amounts paid from the Damages - whether to Class Representatives, to any other Class Members, to Class Counsel or otherwise - shall not have any such deductions taken therefrom. The FDIC makes no representation nor expresses any opinion as to the taxability of the lump sum paid into the Backpay or Damages Funds or of any Backpay or Damages Fund payments made to the Class Representatives, any other Class Members, Class Counsel, or any other recipient. Each recipient of a Backpay or Damages Fund payment shall be solely responsible for making payment to the appropriate taxing authorities, federal, state, and local, if any, (a) for all tax liability on Damages

Fund Payments, and (b) in the case of Backpay Fund payments, for tax liability resulting from any underpayment of taxes from the calculations performed by the Claims Administrator. Each recipient of a Backpay or Damages Fund payment shall indemnify and hold harmless the FDIC from any liability it may incur from any taxing authority or other authority or judicial or administrative tribunal arising out of any failure to pay, or underpayment of, any taxes due and owing on any Backpay or Damages Fund payment made to such recipient pursuant to this Consent Decree.

### **5. Other Monetary Payments**

The fourteen million dollar (\$14,000,000) payment provided for above shall be the sole payment that the FDIC shall be required to make to settle This Case and the Class Claims except (on the specified terms and subject to any applicable caps) with respect to: (1) fees and expenses previously incurred by Plaintiffs' Expert through August 1, 2000, in an amount not to exceed one hundred thousand dollars (\$100,000); (2) fees and expenses of Plaintiffs' Expert for its work on the administration and distribution of the monetary relief provided for in Section III.A.2 and 3 of this Consent Decree, up to a maximum amount of ten thousand dollars (\$10,000); (3) fees and expenses of the Claims Administrator, in an amount not to exceed one hundred thousand dollars (\$100,000); (4) attorneys' fees and expenses for appeals, if any, in an amount not to exceed fifty thousand dollars (\$50,000) (Section IV.B.1); (5) attorneys' fees and expenses for work (if necessary) defending this Decree before the Supreme Court (Section IV.B.2); (6) fees and expenses of Plaintiffs' Expert for monitoring and compliance, in an amount not to exceed fifteen thousand dollars (\$15,000) per year

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10 The FDIC shall be responsible for the payment of the employer's portion of taxes required by law to be made with respect to awards from the Backpay Fund.

(Section IV.C.1(a)); (7) fees and expenses of the Neutral Expert, in an amount not to exceed one hundred thousand dollars (\$100,000) (Section IV.C.1(b)); (8) attorneys' fees and expenses for monitoring and compliance, in an amount not to exceed fifty thousand dollars (\$50,000) per year (Section IV.C.2); (9) attorneys' fees and expenses for mediation, in an amount not to exceed forty-five thousand dollars (\$45,000) (Section IV.D); (10) attorneys' fees for enforcement proceedings before the Court as provided in Title VII (Section IV.E); (11) costs of the mediator in amounts not to exceed thirty thousand dollars (\$30,000) for the first year, twenty-five thousand dollars (\$25,000) for the second year, and twenty thousand dollars (\$20,000) for the third year (Section V.C.2(c)); and (12) employer taxes on payments from the Backpay Fund.

## **B.     EQUITABLE RELIEF**

The FDIC is committed to equal employment opportunities in all aspects of employment. The purpose of these equitable measures is to provide all FDIC employees, including Class Members, with advancement opportunities that are, to the greatest extent possible, based on merit.

### **1.     Personnel and Management Practices and Procedures**

#### **(a)     Joint Neutral Expert**

The FDIC and the Class agree to jointly retain Dr. Wayne Cascio as a neutral expert (the "Neutral Expert") to provide the following services:

- (i)**     Work with FDIC personnel to re-work existing job family structures, cluster FDIC jobs into job families, and develop descriptions at the job family level.

- (ii) Train FDIC personnel staff to perform cluster job analyses and oversee FDIC personnel efforts to perform cluster job analyses for major FDIC job families by six (6) months from the Effective Date and, where necessary, for single incumbency positions by one (1) year from the Effective Date.
- (iii) Randomly monitor the results of the cluster job analyses.
- (iv) Develop checklists and practices to ensure that vacancy announcements, position descriptions, and crediting plans are consistent with the cluster job analyses.
- (v) Randomly monitor position descriptions, vacancy announcements, and crediting plans to ensure consistency with the cluster job analyses and to ensure there is no tailoring or unnecessary modification made for purposes of pre-selection.

The FDIC agrees to conduct the cluster job analyses provided for in subparagraphs (i) and (ii) in accordance with procedures devised by Dr. Cascio, and in accordance with the time periods specified in subparagraph (ii). In addition, prior to posting vacancy announcements for any newly created jobs or jobs that are so substantially and materially modified as to require a new job description during the term of this Decree, the FDIC will conduct a similar cluster job analysis to determine the cluster job family in which such jobs should be included.

**(b) Competitive Promotions**

This sub-section applies to selections for competitive promotion made pursuant to the FDIC's Merit Promotion Plan, FDIC Circular 2110.2.

**(i) Minimum Qualification Determinations**

If the FDIC determines that an employee has failed to submit a complete application or otherwise fails to meet the minimum eligibility requirements for a competitive promotion for which he or she has applied, the FDIC shall provide notice to the employee of the reasons for the non-qualification determination. The notice shall be provided to the employee prior to the beginning of the ranking process for the relevant position and shall provide the employee with five (5) workdays within which additional documentation may be submitted.

**(ii) Merit Promotion Panels**

When a Merit Promotion Panel is required, at least one (1) rating panel member shall be from outside the division or office in which the vacancy arises, unless it is not operationally or geographically possible to do so. If needed, a PSB personnel staffing specialist may serve as a panel member for any position, regardless of the grade level of the position being paneled.

Within ninety (90) days after the Effective Date, the FDIC shall develop standard instructions to be provided to all rating panel members and shall create and implement an EEO/Conflict of Interest certification form to be signed by all rating panel members. The certification form shall be used to ensure that: (1) all panel members are informed that their decisions must be made without regard to the race, color, age, sex, religion, disability, or national origin of the candidates, and (2) members know to

recuse themselves from participation in the rating process if they have personal knowledge or views that will impair their ability to consider and rate the candidates solely on the basis of merit.

**(iii) Interviews**

Within one hundred twenty (120) days after the Effective Date, the FDIC shall develop rules governing the interviewing of merit promotion candidates. Selecting officials shall be encouraged (but not required) to interview referred candidates. If one (1) candidate is interviewed, the selecting official shall interview all other candidates referred, provided that the total number of candidates referred to the selecting official does not exceed nine (9). If the total number of candidates referred to the selecting official is greater than nine (9), the selecting official shall interview at least nine (9) candidates. In determining which nine (9) candidates shall be interviewed, the selecting official shall interview internal FDIC candidates before interviewing outside candidates. If a referred candidate cannot be contacted after reasonable efforts to do so, that candidate need not be interviewed. While selecting officials are not obligated to interview more than nine (9) referred candidates, selecting officials shall have the discretion to interview more than nine (9) candidates. Selecting officials shall be encouraged to conduct in-person interviews with referred candidates, but conducting interviews by means of telephone, video teleconference, and similar methods is permissible.

Within one hundred twenty (120) days after the Effective Date, the FDIC shall develop and distribute written structured interview guidelines. Those guidelines shall provide that, to the greatest extent possible, all candidates for the same vacancy shall be interviewed on the same subjects using the same or similar questions. The use of the same or similar interview questions for all candidates interviewed shall in no way impact or restrict an interviewer's ability to ask relevant follow-up questions

based on a candidate's responses. Interview questions shall be designed to elicit information consistent with the position description and job analysis for the job for which the candidate is being interviewed (*i.e.*, the interview questions will be job-related). Where interview notes are taken, they shall be retained.

**(iv) Cancellation, Non-Selection, or Lapse of Vacancy Announcements**

Within ninety (90) days after the Effective Date, the FDIC shall develop and distribute written guidelines regarding the cancellation, non-selection, or lapse of vacancy announcements. Selecting officials shall be required to provide written documentation of the reason(s) for the cancellation, non-selection, or lapse of a vacancy announcement. When a selecting official elects to cancel a vacancy announcement, non-select from a vacancy announcement, or allow a vacancy announcement to lapse, that decision must be reviewed and approved by the selecting official's supervisor. PSB must concur in all cancellations, non-selections, or lapses of vacancy announcements.

**(v) Selections**

If a selection for a position is made, the selecting official shall prepare a written justification setting forth the reason(s) for the selection of the individual from the candidates referred, based on the criteria set forth in the vacancy announcement.

**(c) Non-Competitive Promotions**

**(i) Career Ladder Promotions**

Within one hundred eighty (180) days after the Effective Date, the FDIC shall develop and distribute written guidelines regarding the use of benchmarks in career ladder promotions to ensure that

such benchmarks, if any, are consistent with the position descriptions and cluster job analyses for the positions to which such benchmarks apply.

Employees in career ladder positions shall be promoted on the first pay period after having met the minimum qualification requirements for promotion to the next grade when they have demonstrated the ability to perform at the higher grade, including the successful completion of any FDIC required testing procedures, and there is enough work at the next higher grade to be performed. Any FDIC testing procedures required for advancement within a career ladder position shall be consistent with the position description and cluster job analysis for that position.

If a career ladder promotion is to be delayed beyond the first pay period after the date when minimum qualification requirements for career ladder promotion to the next grade have been met, the employee shall be sent, not later than thirty (30) days prior to that date, a notice certifying that: (1) there is not enough higher graded work to be performed; or (2) the employee's supervisor has determined that the employee has not demonstrated the ability to perform at the higher grade. The notice shall: (a) be signed by the employee's immediate supervisor; (b) be concurred in by the employee's second-line supervisor; and (c) advise the employee of his or her right to have the issue re-evaluated not later than six (6) months after the date of the notice. If the employee's supervisor has determined that the employee has not demonstrated the ability to perform at the higher grade, the notice shall also identify: (i) the basis(es) for that determination; and (ii) the steps which must be taken by the employee to demonstrate the ability to perform at the higher grade.

**(ii) Desk Audits/Reclassification Decisions**

Within ninety (90) days after the Effective Date, the FDIC shall disseminate a global email

message regarding the operation and implications of desk audits, and shall provide copies of that information to individual employees and supervisors when an individual desk audit is requested or undertaken. If an employee requests a desk audit or a desk audit is otherwise performed, the FDIC shall provide a written notice of determination of the reclassification decision and the grounds for that decision to the employee once that determination has been made.

**(d) Career Enhancement Opportunities**

**(i) Job Assignments**

Within ninety (90) days after the Effective Date, the FDIC shall develop and distribute written guidelines for supervisors regarding job assignments and the allocation of career-enhancement opportunities among employees. To the extent that employees have established Career Development Plans (formerly known as Individual Development Plans or IDPs) (“CDPs”), those CDPs shall be taken into account by supervisors when making assignments and allocating career enhancement opportunities to employees.

To the greatest extent possible, supervisors shall make job assignments fairly and equitably in an effort to maximize career enhancement opportunities and emphasize maximum rotation possible among employees, taking into consideration the mission, subject matter, staffing, time frame, and workload requirement needs of the FDIC. At least once per year, supervisors shall be required to offer each employee they supervise the opportunity to discuss job assignments. If, as of the first anniversary of the Effective Date of this Consent Decree, there is credible evidence of substantial non-compliance with this provision, the parties may re-open discussions on this issue for the purpose of fashioning an appropriate

resolution. If the parties are unable to reach agreement on an appropriate resolution, the issue shall be referred to the mediator for the sole purpose of determining (a) the nature and scope of any noncompliance which has occurred; and (b) whether it shall be mandatory for supervisors in the organizational unit(s) in which non-compliance has occurred to meet at least once a year with each employee they supervise to discuss job assignments.

**(ii) Career Development Plans**

Within ninety (90) days after the Effective Date, the FDIC shall disseminate a global e-mail message regarding the availability of CDPs and the Career Management Program, and shall encourage the use of these career enhancement tools by both employees and supervisors. At least once per year, supervisors shall be required to offer to each employee they supervise the opportunity to discuss and establish a CDP. The FDIC shall develop on-going opportunities (such as workshops, presentations at FDIC conferences, IPTV, and videotapes) to communicate to supervisors and employees information about CDPs. Within sixty (60) days after the first anniversary of the Effective Date, the FDIC shall develop and administer an employee CDP survey designed to obtain the candid views of employees on the CDP process and its availability. The survey will, *inter alia*, solicit from each employee their views as to whether their supervisor offered and provided a full and fair opportunity to establish a CDP and, where the employee engaged in the development of a CDP: (a) whether the development of the CDP was interactive and the supervisor provided information and guidance about opportunities available and appropriate to serve the employee's career objectives; and (b) whether, and to what extent, opportunities and job assignments were available that were consistent with the provisions of the CDP. The survey will inform employees that the responses of individual employees will be confidential, will be

returned to the Division of Administration, and will not be disclosed to an employee's supervisor. Not later than forty-five (45) days prior to administering the CDP survey, the FDIC shall provide a draft of the proposed survey questions to the Class Representatives and solicit their comments thereon. The FDIC shall consider in good faith any comments on the proposed survey questions provided by the Class Representatives. The FDIC shall administer the CDP survey again on or before the date that is sixty (60) days after the second anniversary of the Effective Date. The FDIC shall provide CDP survey results to Class Counsel not later than thirty (30) days after such results are tabulated.

**(iii) Details**

To maximize and encourage career enhancement opportunities, details of more than sixty (60) days duration shall be publicized, and employees shall be given an opportunity to apply for such details. Any exceptions to this procedure, such as immediate or emergency staffing needs, allocation of excess or surplus staffing, or the use of details in conjunction with existing developmental programs (such as the Women's Executive Leadership Program or the Executive Potential Program) shall be approved by PSB in advance.

**2. Training and Education**

**(a)** The FDIC shall, in consultation with the Neutral Expert, train relevant PSB personnel specialists in the performance of cluster job analysis techniques and the application of those cluster job analyses to position descriptions, vacancy announcements, crediting plans and career ladder benchmarks.

(b) The FDIC shall train its personnel specialists in making qualification determinations.

(c) The FDIC shall provide career enhancement training to employees, to include training on the effective preparation of job application materials, interviewing techniques, and career development.

(d) The FDIC shall train its managers and supervisors in interviewing techniques and best practices (such as the effective use of technology), including encouragement to interview all applicants where feasible.

(e) The FDIC shall incorporate training modules on bias awareness, perception, job assignments, informal mentoring, and employee development in its existing supervisory training programs.

(f) The FDIC shall train all supervisors regarding the purpose and process of CDPs.

(g) The FDIC shall provide EEO, diversity, and personnel training to all its supervisors, and shall provide EEO and diversity training to all its employees.

(h) The FDIC shall provide and promote a formal mentoring program, and shall provide, expand, and promote expression of interest opportunities under its diversity plan.

### **3. Monitoring and Compliance**

#### **(a) Cooperation**

The FDIC, the Class, and their respective counsel shall, in good faith and using their

best efforts, cooperate with each other to carry out the activities and tasks contemplated by this Consent Decree.

**(b) FDIC Point of Contact for Class**

The FDIC's Director of ODEO or his designee shall be the primary point of contact for the Class regarding issues related to monitoring and compliance under this Consent Decree.

**(c) Neutral Expert**

The Neutral Expert retained in accordance with Section II.A.16 of this Decree shall randomly monitor the cluster job analyses, position descriptions, vacancy announcements, and crediting plans completed by the FDIC for consistency and compliance with this Decree.

**(d) Personnel Compliance Officer Position**

The FDIC shall establish a personnel compliance officer position, the duties of which shall include monitoring job analyses, position descriptions, vacancy announcements, and crediting plans for overall compliance and uniformity. Class Counsel may provide a letter to the FDIC expressing the Class's view about the qualities that a personnel compliance officer should possess, but the selection of the personnel compliance officer is within the sole discretion of the FDIC.

**(e) Information and Documentation**

**(i) Production of Documents**

The FDIC shall provide to Class Counsel during the three-year period of the Consent Decree, the following existing documents and information:

- a.** annual promotion statistics of the same type and in the same format as previously provided during the

mediation (on the twelfth (12th), twenty-fourth (24th), and thirty-third (33rd) month anniversaries of the Effective Date);

- b.** annual Affirmative Employment Plan submitted to the EEOC (within fifteen (15) days after its submission to the EEOC);
- c.** information relevant to the EEO administrative complaint process as provided in the Annual Federal Employment Statistical Report of Discrimination Complaints, EEOC Form 462, submitted to the EEOC (within fifteen (15) days after its submission to the EEOC);
- d.** information regarding the number of details over sixty (60) days and the race of the persons to whom they are provided (annually on the anniversary of the Effective Date); and
- e.** the results of the CDP surveys administered to employees (within thirty (30) days after the survey results are tabulated).

Class Counsel may request additional existing documents and information not listed above during the three-year period of this Decree. If the FDIC denies such a request, it shall provide Class

Counsel with a written statement of its reasons for denying the request.

**(ii) Limitations on Data Production Obligations**

**a. General Limitations**

Nothing in this Consent Decree requires the FDIC to gather information it does not presently gather or to computerize information it does not presently computerize.

**b. Confidentiality of EEO Complaints**

The FDIC shall provide statistically aggregated information concerning EEO complaints. Nothing in this Consent Decree requires the FDIC to reveal the identities of persons involved in the EEO complaint process.

**c. No Obligation to Violate Privacy Act**

Nothing in this Consent Decree shall be construed to impose an obligation on the FDIC to make disclosures of information which violate the Privacy Act, 5 U.S.C. § 552a, *et seq.*

**(f) Procedures for Analyzing Promotions Data**

When the FDIC provides to Class Counsel the promotions data referenced in Section III.B.3(e)(i) of this Consent Decree, the Plaintiffs' Expert shall conduct one or more statistical analyses of the promotions data that the parties agree upon jointly. If the Plaintiffs' Expert finds a legally significant disparity, it shall provide a report containing the results of the analysis to both parties, and shall be available to answer questions about the method of analysis, assumptions used in conducting the analysis, and the results of the analysis. The FDIC shall, within forty-five (45) days after receipt of Plaintiffs' Expert's report, provide Class Counsel with a report of the FDIC's findings with respect to any such disparity.

After reviewing the FDIC report for a period not to exceed forty-five (45) days, Class Counsel shall provide counsel for the FDIC with a written notice identifying with specificity any remaining concerns Class Counsel may have about the alleged disparity. Class Counsel may subsequently meet with the Director of ODEO and with counsel of record for the FDIC to discuss such concerns. The FDIC shall give any concerns Class Counsel may raise full and fair consideration, shall investigate these concerns, as appropriate, and shall advise Class Counsel, within forty-five (45) days, of the FDIC's conclusions. If the procedures described above do not result in an agreement between the parties regarding the concerns raised, Class Counsel shall raise any continuing concerns about their review of the statistical analysis through the alternative dispute resolution procedures set forth in Section V. C. of this Consent Decree. If the concerns about the statistical analysis are not resolved through the use of the alternative dispute resolution procedures set forth in Section V. C. of this Consent Decree, Class Counsel retains the right to seek relief through any available and appropriate legal process.

The procedures set forth above with respect to data analysis to be performed at the end of twelve (12) months shall be repeated at the end of the periods ending on the twenty-fourth (24th) and the thirty-third (33rd) months after the Effective Date. The FDIC shall pay the fees and expenses of Plaintiffs' Expert for monitoring and compliance during the three-year term of this Consent Decree to a maximum amount of fifteen thousand dollars (\$15,000) per year. **4.**

## **Feedback and Input**

### **(a) EEO and Diversity Policies**

Within a reasonable time prior to issuing any formal FDIC-initiated EEO or diversity policy statements, the FDIC shall provide the Class Representatives with drafts of such policy statements and

solicit their comments thereon. The FDIC shall consider in good faith any comments regarding such policy statements made by the Class Representatives.

**(b) Access to Senior Management**

For the duration of this Decree, the plaintiffs shall have the option of meeting with FDIC senior management at least once every six (6) months at a mutually agreeable time. The attendees at the meetings shall include (a) no more than six Class Members chosen by whatever means the Class Representatives determine; (b) the Director of ODEO; (c) either the Chief Operating Officer or the Chief Financial Officer of the FDIC; (d) Class Counsel; and (e) counsel for the FDIC.

**(c) SEC, REC, and Diversity Council Input**

The FDIC shall continue to solicit employee input on EEO, diversity, and personnel issues for submission to the Senior Executive Council, Regional Executive Councils, and Chairman's Diversity Advisory Council.

**IV. ATTORNEYS' FEES, EXPENSES, AND COSTS**

**A. PAST REASONABLE ATTORNEYS' FEES, EXPENSES, AND COSTS**

In full, complete and final satisfaction of any and all claims for costs, including attorneys' and experts' fees and costs incurred by the Class through Final Approval of this Consent Decree, the following payments shall be made to Class Counsel, Plaintiffs' Expert, and the Claims Administrator on the terms indicated.

As set forth above in Section III.A.1 and in Exhibit 6 to this Decree, Class Counsel shall receive a payment from the Damages Fund in full and final satisfaction of any and all claims the Class may have

for reasonable attorneys' fees, expenses, and costs incurred in This Case up to Final Approval of this Consent Decree. The parties have agreed that two million dollars (\$2,000,000) is a reasonable attorneys' fee for work performed and to be performed on This Case up to the date of Final Approval. Accordingly, the FDIC agrees that it shall not challenge any award of attorneys' fees and expenses made by the Court to Class Counsel for such fees from the Damages Fund for work performed on This Case up to the date of Final Approval in an amount up to and including two million dollars (\$2,000,000). The Class hereby authorizes Class Counsel designated above to be paid the attorneys' fees, expenses, and costs mentioned above from the Damages Fund on behalf of all Class Members.

In addition to the payment to Class Counsel from the Damages Fund as provided in the preceding paragraph, the FDIC shall pay the actual fees and expenses for work performed by Plaintiffs' Expert in connection with This Case through and including August 1, 2000, up to a maximum of one hundred thousand dollars (\$100,000). In addition, the FDIC shall pay the expert fees and costs actually billed by Plaintiffs' Expert for its work on the administration and distribution of the monetary relief provided for in Section III.A.2 of this Consent Decree, up to a maximum amount of ten thousand dollars (\$10,000). In addition to the foregoing, the FDIC shall pay the actual fees and costs of the Claims Administrator for its work on the administration and distribution of the monetary relief provided for in Section III.A.3 of this Consent Decree, up to a maximum amount of one hundred thousand dollars (\$100,000).

The Class hereby authorizes Plaintiffs' Expert and the Claims Administrator to be paid the fees, expenses, and costs provided for in this Decree on behalf of all Class Members. This settlement accordingly shall represent full and complete satisfaction of all claims against the FDIC for attorneys'

fees, experts' fees, expenses, and costs that have been, or could be, made in This Case, or any judicial, quasi-judicial, or administrative proceedings involving the claims raised in This Case.

**B. REASONABLE ATTORNEYS' FEES, EXPENSES, AND COSTS FOR APPEALS**

**1. Court of Appeals**

In the event that the Court Order granting Final Approval of this Consent Decree is appealed to the United States Court of Appeals for the District of Columbia (the "D.C. Circuit"), the FDIC shall pay to Class Counsel costs, including reasonable attorneys' fees and expenses, that are reasonably incurred in defending the validity of this Consent Decree in such an appeal (including any requests for reconsideration or petitions for rehearing or rehearing *en banc*), up to a maximum of fifty thousand dollars (\$50,000).

**2. United States Supreme Court**

In the event that a petition for a writ of *certiorari* is filed with the United States Supreme Court (the "Supreme Court") with respect to the validity of this Consent Decree, the parties shall negotiate in good faith regarding the additional amount of costs, including reasonable attorneys' fees and expenses, that the FDIC shall pay to Class Counsel as reimbursement for defending the validity of this Consent Decree in the Supreme Court, subject to the following procedures.

(a) Within thirty (30) days following the Effective Date of this Decree, Class Counsel shall submit to counsel for the FDIC a verified demand and sufficient documentation in support of their demand, including an itemization of the attorneys' fees, expenses, and costs, reasonably incurred in defending this Consent Decree before the Supreme Court.

(b) Within thirty (30) days after Class Counsel's fee submission, counsel for the FDIC shall notify Class Counsel of any amounts disputed. At the same time, counsel for the FDIC shall submit the appropriate request to the FDIC Division of Finance for the payment of all non-disputed amounts. The parties shall then attempt in good faith to agree on any disputed amounts.

(c) If the parties agree on the amount to be paid under this Section IV.B.2 of the Consent Decree, the FDIC shall promptly pay the full amount agreed to by the parties pursuant to this section of the Consent Decree.

(d) If the parties are unable to agree on the appropriate amount to be paid, the parties may seek resolution of the dispute through the alternative dispute resolution process, as described in Section V of this Decree.

(e) No interest shall accrue or be paid on any of the above payments to be made to the Class Counsel.

(f) The Class hereby authorizes Class Counsel designated above to be paid the costs, including reasonable attorneys' fees and expenses, provided in Section IV.B.2 of this Consent Decree on behalf of all Class Members.

**C. REASONABLE ATTORNEYS' FEES, EXPENSES, AND COSTS FOR IMPLEMENTING AND MONITORING THE DECREE**

The FDIC shall pay to Class Counsel the costs, including reasonable attorneys' fees, expenses, and expert costs, reasonably incurred from the Effective Date of this Consent Decree until the Decree's expiration date in implementing and monitoring the Decree, subject to the following terms, procedures, and maximum amounts.

## **1. Expert Fees, Expenses, and Costs**

The FDIC shall pay the following expert fees and costs that are reasonably incurred in implementing and monitoring this Decree from the Effective Date until the Decree's expiration date:

### **(a) Plaintiffs' Expert**

The FDIC shall pay the fees and expenses of Plaintiffs' Expert for monitoring and compliance (including, without limitation, analysis of and reporting on the data periodically provided by the FDIC pursuant to Section III.B.3(e)(i) of this Consent Decree) during the three-year term of this Consent Decree to a maximum amount of fifteen thousand dollars (\$15,000) per year.

### **(b) Neutral Expert**

The FDIC shall pay the reasonable fees and expenses of the Neutral Expert for the work performed for the parties in accordance with Section III.B of this Consent Decree during the three-year term of this Decree, to a maximum aggregate amount of one hundred thousand dollars (\$100,000), provided that the Neutral Expert has received prior authorization from counsel for the FDIC and Class Counsel to perform the services for which fees and expenses are to be sought.

The Class hereby authorizes Plaintiffs' Expert and the Neutral Expert to be paid the fees, expenses and costs provided for herein on behalf of all Class Members.

## **2. Attorneys' Fees, Expenses, and Costs**

The FDIC shall pay to Class Counsel costs, including reasonable attorneys' fees and expenses, that are reasonably incurred in implementing and monitoring the Decree (excluding, however, attorneys' fees and expenses relating to mediation and enforcement of this Decree in the Court, which are separately addressed herein) from the Effective Date of this Consent Decree until the Decree's

expiration date, up to a maximum of fifty thousand dollars (\$50,000) per year. The Class hereby authorizes Class Counsel designated above to be paid the costs, including reasonable attorneys' fees and expenses, provided in this section of the Consent Decree on behalf of all Class Members.

**D. REASONABLE ATTORNEYS' FEES, EXPENSES,  
AND COSTS FOR MEDIATION**

As more fully set out in Section V.C.2(d) of this Consent Decree, attorneys' fees incurred in mediation under this Decree shall be subject to mediation. The FDIC shall pay, as determined in the mediation, up to forty-five thousand dollars (\$45,000) for the three-year term of this Decree for reasonable attorneys' fees, expenses, and costs incurred in mediation for the three-year term of the Consent Decree.

**E. REASONABLE ATTORNEYS' FEES, EXPENSES,  
AND COSTS FOR ENFORCEMENT OF THE DECREE**

For enforcement proceedings brought before the Court pursuant to the terms of Section V of this Consent Decree, the Plaintiff Class may be entitled to a reasonable attorneys' fee (including expert fees) and costs, as provided under Title VII. *See* 42 U.S.C. § 2000e - 5(k). The parties may also obtain such other relief as may be available under the Federal Rules of Civil Procedure or any other applicable law.

**V. ENFORCEMENT**

**A. GENERAL PRINCIPLES**

**1. ADR Mandatory**

Neither party may seek relief in Court prior to exhausting the mandatory alternative dispute resolution ("ADR") provisions for negotiation and mediation set forth in Sections V.A, B and C below.

## **2. Best Efforts**

The parties agree that they will make best efforts to resolve any disputes concerning material breach of this Consent Decree through the ADR procedures set forth below, and that resolution by the District Court is a last resort.

## **3. No Individual Issues**

It is the intent of the parties that issues related to individual claims by employees shall not be the subject of any ADR proceedings or any other enforcement action provided for in this Consent Decree.

### **B. NOTICE OF DISPUTE**

Within thirty (30) days of becoming aware of a material breach of the Consent Decree, counsel for the complaining party shall provide a written Notice of Dispute to the counsel for the opposing party.

If the alleged non-complying party is the FDIC, a copy of the Notice of Dispute shall also be sent to the Executive Secretary of the FDIC. The Notice of Dispute shall set forth with specificity the nature of the dispute, the facts supporting the belief that a material breach has occurred, and the requested relief.

### **C. NEGOTIATION AND MEDIATION**

#### **1. Negotiation**

Within twenty-one (21) days after the Notice of Dispute is received, the parties agree to commence, and thereafter engage in, good faith negotiation for a period of up to thirty (30) days regarding the alleged material breach, with all necessary principals in attendance.

#### **2. Mediation**

If the dispute is not resolved through negotiation, the parties agree to commence within thirty (30) days after the termination of the negotiation, and thereafter engage in, good faith mediation for a

period of up to thirty (30) days, with all necessary principals in attendance.

**(a) Mediator**

The parties agree to retain Linda Singer, Esq. of ADR Associates to act as the mediator, or, if she is unavailable, another mediator she recommends who is acceptable to both parties and counsel.

**(b) Mediation Statements**

The filing of written materials and mediation statements shall be made only if requested by the mediator. If written materials and/or mediation statements are requested by the mediator, the parties agree to abide by any limitations set by the mediator as to length and content.

**(c) Cost of Mediator**

The FDIC shall pay the cost of the mediator up to a maximum of thirty thousand dollars (\$30,000) for the first year of this Consent Decree, to a maximum of twenty-five thousand dollars (\$25,000) for the second year, and to a maximum of twenty thousand dollars (\$20,000) for the third year, provided that issues related to employees' individual claims shall not be the subject of negotiation or mediation (or any other enforcement action) under this Consent Decree. Any unspent funds for the cost of the mediator in one year shall not carry forward to the next year.

**(d) Attorneys' Fees and Costs**

Attorneys' fees and costs incurred in the mediation shall be included as a topic of the mediation. The FDIC shall pay, as determined in the mediation, up to a maximum of forty-five thousand dollars (\$45,000) for the three-year term of the Consent Decree for attorneys' fees and costs incurred in mediation.

**3. Extensions of Time**

The parties may, by mutual consent, extend any time period set forth in these ADR procedures for negotiation and mediation.

**4. Confidentiality**

**(a) Negotiation and Mediation Confidential**

All negotiation and mediation conducted pursuant to this Consent Decree shall be confidential pursuant to 5 U.S.C. §§ 571 and 574, all applicable state and federal law, and the Agreement to Mediate dated February 2000 and previously executed by the parties in connection with the most recent mediation of This Case at Exhibit 1.

**(b) Agreements to Mediate**

In addition, the parties agree to execute a new agreement to mediate (identical in substance to the Agreement to Mediate) for each mediation conducted pursuant to this Consent Decree, with the mediator and all counsel and principals in attendance as signatories.

**(c) Attempts to Obtain Confidential Information**

**(i) Notice of Attempt**

Within five (5) days of becoming aware of an attempt by any person who is not a signatory to an applicable Confidentiality Agreement to seek Confidential Information related to any previous mediation of This Case or any subsequent negotiations or mediations conducted pursuant to this Consent Decree, counsel shall provide written notice to opposing counsel and the mediator setting forth any known information related to the attempt.

**(ii) Cooperation to Prevent Disclosure**

The parties agree to cooperate, collaborate and work together to prevent disclosure of

Confidential Information related to any previous mediation of This Case or any subsequent negotiations or mediations conducted pursuant to this Consent Decree. Such cooperation and collaboration may include joint filings and joint court appearances.

#### **D. COURT PROCEDURES**

If a dispute is not resolved through mediation, either party may seek relief for material breach of the Consent Decree in the District Court.

The relief that may be requested initially shall be limited to an order for compliance with the terms of Consent Decree. Neither party may seek a finding of contempt prior to (i) an initial court decision on the merits of the alleged material breach; (ii) in the event that a material breach is found, an order requiring compliance; and (iii) a breach of that order.

Neither party may request temporary equitable relief, provided that either party may seek preliminary equitable relief solely to preserve the status quo until the underlying dispute concerning material breach can be resolved.

#### **VI. PROCEDURES FOR FAIRNESS HEARING**

Subject to approval by the Court, the parties hereby agree to the following procedures and schedule for notice and submission of this Consent Decree to the Court for approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

At the time this Consent Decree is submitted to the Court, the parties each agree to recommend to the Court that it is fair, reasonable, and adequate to the Class as a whole, within the meaning of that phrase contemplated by Rule 23(e) of the Federal Rules of Civil Procedure. Counsel for

the parties shall request prompt judicial approval of this Decree as written.

Attached hereto as Exhibit 2 is a proposed Notice of Pendency of Class Action and Proposed Consent Decree, which the parties hereby request that the Court approve and sign. In accordance with Section 108 of the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(n), within fourteen (14) days after Preliminary Approval of this Consent Decree, the Claims Administrator shall send (A) by first-class mail, United States Postal Service, to the last known address of each Class Member who is no longer an FDIC employee; and (B) by e-mail to each Class Member who is, at the time, a current FDIC employee, a copy of the Notice of Pendency of Class Action and Proposed Consent Decree, a monetary relief claim form, attached as Exhibit 3 (“Claim Form”) to be completed by each Class Member and returned to the Claims Administrator, and a Notice of Monetary Distribution Formula, attached as Exhibit 6.

Within ninety-three (93) days after Preliminary Approval of this Consent Decree, the Claims Administrator shall send by first-class mail, United States Postal Service, to the last known address of each Class Member the Notice of Individual Monetary Award, attached as Exhibit 4, identifying the amount of monetary award, if any, proposed by the Plaintiffs’ Expert to be paid to that Class Member (whether from the Backpay Fund or the Damages Fund or both), and the Notice of Fairness Hearing, attached as Exhibit 5, which the parties hereby request that the Court approve and sign.

In addition, the FDIC shall (i) issue a global e-mail to all then-current FDIC employees containing the Notice of Fairness Hearing, and (ii) post full copies of the Consent Decree, with exhibits, on both its internal and external websites.

The parties agree to request that the Court schedule a hearing to determine whether this

Consent Decree is fair, reasonable, and adequate to the Class as a whole (the "Fairness Hearing") as required by Rule 23(e) of the Federal Rules of Civil Procedure at the earliest practicable time.

Any person who wishes to comment on or object to the terms of this Decree or its implementation with respect to him or her shall be required, not later than forty-five (45) days from the date the FDIC issued the global e-mail of the Notice of Fairness Hearing to the then-current FDIC employees or from the date postmarked by the United States Postal Service on the Notice of Fairness Hearing mailed to the Class, whichever is later, to submit a written statement of comments or objections to the Court, with copies to counsel for both parties. The statement shall comport with the procedures set forth in the Notice. The statement shall contain the individual's name, address, and telephone number, along with a statement of his or her comments on or objection(s) to the Decree and the reason(s) for any objection(s), and whether he or she wishes to speak at the Fairness Hearing. Any attorney retained by an individual Class Member at his or her own expense to submit comments or objections and/or appear at the Fairness Hearing on his or her behalf must, not later than forty-five (45) days from the date the FDIC issued the global e-mail of the Notice of Fairness Hearing to the then-current FDIC employees or from the date postmarked by the United States Postal Service on the Notice of Fairness Hearing mailed to the Class, whichever is later, identify himself/herself in writing to the Court, submit written comments or objections, and (if applicable) indicate in writing his or her desire to speak at the Fairness Hearing. The statement shall comport with the procedures set forth in the Notice of Fairness Hearing, attached as Exhibit 5. Objections raised at the Fairness Hearing shall be limited to those matters addressed in timely written objections.

## **VII. APPLICABLE CONTRACT PRINCIPLES**

### **A. COUNTERPARTS**

This Consent Decree may be executed in one or more counterparts, and each executed copy shall be deemed an original, which shall be binding upon all parties to this Decree.

### **B. HEADINGS**

The headings in this Consent Decree are for the convenience of the parties only, and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of this Consent Decree.

### **C. ENTIRE AGREEMENT**

This Consent Decree, including Exhibits, comprises the full and exclusive agreement and understanding of the parties with respect to this settlement, and supersedes all prior written or oral agreements (including, without limitation, any and all term sheets previously agreed to by the parties). No representations or inducements to compromise this action have been made, other than those recited in this Decree. This Decree does not impose any obligations on the parties beyond the terms and conditions stated herein. Accordingly, this Decree shall not prevent or preclude the FDIC from revising its employment practices and policies or taking other personnel actions during the term of the Decree that do not violate the requirements of the Decree.

### **D. NO WAIVER**

The waiver by any party of any term, condition, covenant, or representation of this Consent Decree or the breach of any term, condition, covenant, or representation herein, in any one instance, shall not operate as, or be deemed to be a waiver of, the right to enforce any other term, condition,

covenant, or representation. The failure by any party at any time to enforce, or require performance of, any provision of this Decree shall not operate as a waiver of, or limit such party's right at a later time to enforce or require performance of such provisions or of any other provisions of this Decree, subject to the limits of the Court's jurisdiction set forth above in Section II.B.

**E. SEVERABILITY**

Except as set forth below, if after Final Approval any term or provision of this Decree, or the application thereof to any person or circumstances, is held to any extent to be invalid or unenforceable, the remainder of this Decree, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Decree shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding the above, if (1) all of the monetary relief provisions in Section III.A; or (2) all of the equitable relief provisions in Section III.B ; or (3) the release/bar provisions in Section II.D.2 of this Decree are held to be invalid or unenforceable, the entire Decree shall be null and void.

**F. GOVERNING LAW**

The parties agree that the validity, construction, and enforcement of this Decree shall be governed by federal law. To the extent that it is determined that the validity, construction, or enforcement of this Decree is governed by state law, the law of the District of Columbia shall apply.

**G. NOTICE TO PARTIES**

Whenever this Decree provides for notice to be given to the parties, such notice shall be served on the parties as follows:

**Notice To the Plaintiff Class Shall Be Sent To:**

Avis E. Buchanan, Esq.  
Washington Lawyers' Committee  
for Civil Rights and Urban Affairs  
11 Dupont Circle, N.W., Suite 400  
Washington, D.C. 20036

**and**

Joseph M. Sellers, Esq.  
Cohen, Milstein, Hausfeld &  
Toll, P.L.L.C.  
1100 New York Avenue, N.W.,  
Suite 500, West Tower  
Washington, D.C. 20005

**Notice To the FDIC Shall Be Sent To:**

D. Michael Collins, Director  
Office of Diversity and Economic Opportunity  
Federal Deposit Insurance Corporation  
801 17th Street, N.W.  
Room 1201  
Washington, D.C. 20434-0001

**and**

**If By Regular Mail To:**

Thomas J. Sarisky, Counsel  
Legal Division  
Federal Deposit Insurance Corporation  
801 17th Street, N.W.  
Room H-11048  
Washington, D.C. 20434-0001

**If By Hand Delivery or Overnight Mail To:**

Thomas J. Sarisky, Counsel  
Legal Division  
Federal Deposit Insurance Corporation  
1717 H Street, N.W.  
Room 11048  
Washington, D.C. 20006-3900

**H. MODIFICATIONS**

Except as provided in Section VII.K of this Decree with respect to changes of law, this Consent Decree may not be amended or modified except with the express, prior written consent of the parties and the approval of the Court.

**I. EXTENSION OF TIME BY AGREEMENT OF PARTIES**

All time deadlines established in this Decree may be extended by agreement of the parties.

**J. BINDING AGREEMENT**

This Consent Decree is binding on all parties and their successors, assigns, representatives, and trustees.

**K. CHANGES IN LAW**

**1. Illegal Action Not Required**

The FDIC shall not be obligated to carry out any term of this Consent Decree if any otherwise applicable current or future state or federal statute or regulation precludes the FDIC from complying with, or withdraws the FDIC's authority to perform, that term. The FDIC shall notify Class Counsel and the Court should any such change in law prevent the FDIC from complying with any term of this Consent Decree during the three-year monitoring period.

**2. Suspension of Obligation Pending Legality Determination**

In the event that an attack on the legality of this Consent Decree results in court proceedings concerning the lawfulness of the FDIC's compliance with one or more terms of this Consent Decree, the FDIC's obligation to comply with such term(s) shall be suspended until final resolution of such proceedings, including all appeals.

**3. Modification of Decree to Conform to Changes in Law**

In the event that changes in the law subsequent to the Effective Date of this Consent Decree make any of its provisions contrary to law either as written or as applied, either party may, after notice to and consultation with the other party, apply to the Court for a modification of those provisions so that they comply.

**AGREED:**

**FOR THE PLAINTIFFS:**

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**AVIS E. BUCHANAN, ESQ.**

D.C. Bar No. 365208  
Washington Lawyers' Committee  
for Civil Rights and Urban Affairs  
11 Dupont Circle, N.W., Suite 400  
Washington, D.C. 20036  
(202) 319-1000

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**JOSEPH M. SELLERS, ESQ.**

D.C. Bar No. 318410  
Cohen, Milstein, Hausfeld &  
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1100 New York Avenue, N.W.  
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(202) 408-4600

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**SUZETTE M. MALVEAUX, ESQ.**

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Toll, P.L.L.C.  
1100 New York Avenue, N.W.,  
Suite 500, West Tower

Washington, D.C. 20005  
(202) 408-4600

Dated: \_\_\_\_\_

**FOR THE FDIC:**

\_\_\_\_\_  
**THOMAS J. SARISKY, Counsel**  
Pa. Bar No. 37842

\_\_\_\_\_  
**LISA M. VILLARREAL, Counsel**  
D.C. Bar No. 375870

\_\_\_\_\_  
**CATHY A. COSTANTINO, Counsel**  
D.C. Bar No. 366837

\_\_\_\_\_  
**ANTHONY F. PAGANO, III, Counsel**

Federal Deposit Insurance Corporation  
801 17th Street, N.W.  
Room H-11048  
Washington, D.C. 20343-0001  
(202) 736-0133

Dated: \_\_\_\_\_

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2001.

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**United States District Judge  
Ellen Segal Huvelle**

Dated: \_\_\_\_\_