U.S. Department of Homeland Security
P.O. Box 10526
Laguna Niguel, CA 92607-0526

U.S. Citizenship and Immigration Services

TO:

Ken Szymusiak CEcD
Lansing Economic Area Partnership
500 E. Michigan Avenue
Lansing, MI 48912

DATE: JAN 24 2013

Application: Form I-924

File: RCW1031910174

Unique Identifier: ID1031910174

RE: Reaffirmation of Regional Center Designation Following Submission of Form I-924A

DECISION

This notice is in reference to the regional center designation for the Lansing Economic Development Corporation Regional Center which was issued by the U.S. Citizenship and Immigration Services ("USCIS") on April 20, 2010. The Regional Center designation was initially granted in accordance with the Immigrant Investor Pilot Program ("Pilot Program") established by Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended (Public Law 102-395). However, regional center designations remain subject to annualized reporting requirements.

Accordingly, USCIS notified the Lansing Economic Development Corporation Regional Center on May 5, 2012 of its intent to terminate the existing regional center designation pursuant to 8 CFR § 204.6(m)(6) for failing to timely file the Form I-924A, Supplement to Form I-924, for fiscal year 2011. The Notice of Intent to Terminate provided the principal of the Lansing Economic Development Corporation Regional Center an opportunity to submit the required Form I-924A.

In response to the Notice of Intent to Terminate, USCIS received the required Form I-924A for Lansing Economic Development Corporation Regional Center for fiscal year 2011 on May 24, 2012. Accordingly, USCIS reaffirms the existing regional center designation for Lansing Economic Development Corporation Regional Center.

Sincerely,

Daniel M. Renaud
Acting Director, California Service Center

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797E, Notice of Ac

A #	Application/Petition
	I924, Application for Regional Center under Immigrant Investor Pilot Program
Receipt #	**Application/Petitioner**
RCW1031910174	Lansing Economic Development Corporation, Regional Center
Notice Date	**Page** / **Beneficiary**
May 2, 2012	1 of 4

ACTION COMPLETED
APPROVED FOR FILING
MAY 24 2012
INITIALS C3023S
FOC: CSC

Robert L. Trezise, JR.
C/O: Lansing Redevelopment Corporation
401 S. Washington Square, Suite 100
Lansing, MI 48933

RECEIVED
MAY 07 2012
ECONOMIC DEVELOPMENT CORP.

Intent to Terminate Processing Coversheet

Notice also sent to:

C3023S

RETURN THIS BLUE PROCESSING COVERSHEET ON TOP OF YOUR RESPONSE TO THE INTENT TO TERMINATE.

Note: You are given until **June 1, 2012** in which to submit the requested information to the address at the bottom of this notice.

RESPONSE TO AN INTENT TO TERMINATE

For more information, visit our website at **www.uscis.gov**

Or call us at **1-800-375-5283**

Telephone service for the hearing impaired: 1-800-767-1833

For non-US Postal Service
Attn: EB 5 RC Proposal
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

CSC4639 WS22090 DIV III AC

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

USCIS - CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0590
800-375-5283

RCW1031910174

Please see additional information on the reverse side.

Form I-797E (Rev. 05/05/06)

Additional Information for Applicants and Petitioners

General

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Inquiries

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Approval of an immigrant or nonimmigrant petition means that the beneficiary, the person for whom it was filed, has been found eligible for the requested classification. However, approval of a petition does not give any status or right. Actual status is given when the beneficiary is given the proper visa and uses it to enter the United States. Please contact the appropriate U.S. consulate directly if you have any questions about visa issuance.

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This Notice of Intent to Terminate affects the Lansing Economic Development Corporation Regional Center (LEDCRC) which was initially approved and designated as a qualifying regional center in the Immigrant Investor Pilot Program ("Pilot Program") by the U.S. Citizenship and Immigration Services (USCIS) on April 20, 2010, pursuant to Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended (Public Law 102-395).

I. PROCEDURAL HISTORY AND BACKGROUND

LEDCRC initial regional center designation Form I-924 regional center proposal was filed on March 11, 2009. LEDCRC was granted the regional center designation in order to promote the goals of the Pilot Program. LEDCRC was approved to attract immigrant investor capital into an area comprised of the city of Lansing, Michigan, focusing on loans to 3rd party enterprises and/or equity investments in real estate construction, renovation and management, and provide equipment for new and existing businesses. The LEDCRC shall focus the investment into new commercial enterprises to include the promotion of capital investment opportunities in the following target industry categories that were approved:

1. Mixed Use Development.
2. Hospitality/Tourism.
3. Manufacturing/Warehousing.
4. Information Tecnology/Biotechnology/Hi-tecnology.
5. Higher Education.

The purpose of this letter is to notify LEDCRC that USCIS intends to terminate the existing designation as a regional center for participation in the Pilot Program pursuant to 8 CFR § 204.6(m)(6). An explanation follows.

II. REGIONAL CENTER STATUTORY AND REGULATORY FRAMEWORK

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (Public Law 102-395), as amended, provides:

(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include

such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR § 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.

The regulation at 8 CFR § 204.6(m)(6) provides:

(6) Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved productivity, job creation, or increased domestic capital domestic in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of the regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR § 103.3, the regional center may appeal the decision to USCIS within 30 days after service of notice.

III. ANALYSIS

All designated regional centers must meet the EB-5 statutory and regulatory criteria in order to maintain a regional center within which immigrant investors seeking to obtain permanent resident status under INA § 203(b)(5) will be able to successfully invest in a new commercial enterprise (as described in 8 CFR § 204.6(h)) with a qualifying investment that will benefit the United States economy and create 10 jobs, including jobs indirectly created through the new commercial enterprise.

A. Timely Filing of the Form I-924A, Supplement to Form I-924

Title 8 Code of Federal Regulations at Part 204.6(m)(6) states that each regional center must demonstrate economic growth, improved regional productivity, job creation, or increased domestic capital investment by the submission of updated information on an annual basis, on a cumulative basis, and/or otherwise requested by USCIS to ensure each regional center continues to meet the requirements of section 610(a) of the Appropriations Act. The form that is used to demonstrate a regional center's continued eligibility for regional center designation is the Form I-924A, Supplement to Form I-924. Each designated regional center must file a Form I-924A for each fiscal year (October through September 30) within 90 days after the end of the fiscal year (on or before December 29) of the calendar year in which the fiscal year ended.

Failure to timely file a Form I-924 Supplement (Form I-924A) for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Pilot Program will result in the issuance of an intent to terminate the participation of the regional center in the Pilot Program, which may ultimately result in the termination of the approval and designation of the regional center.

USCIS records do not show that LEDCRC filed a Form I-924A, Supplement to Form I-924 for fiscal year 2011. Therefore, USCIS, hereby gives notice of its intent to terminate LEDCRC for failing to file Form I-924A.

You have 33 days from the date of this notice to submit a fully executed Form I-924A in accordance with the Form I-924A filing instructions. In the event LEDCRC does not respond within the timeframe noted above, or does not provide the required fully executed Form I-924A, then LEDCRC's designation as a regional center will be terminated and you will receive written notification of the final decision to terminate the LEDCRC regional center designation.

Please mail the fully executed Form I-924A to the address noted below, and include a copy of this letter on top of your submission.

USCIS California Service Center
P.O. Box 10526
Laguna Niguel, CA 92607-0526

If your submission is more than several pages, please use fasteners to attach the documents at the top of each page, accompanied by an index of exhibits.

U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

RECEIVED
APR 26 2010
ECONOMIC DEVELOPMENT CORP.

U.S. Citizenship and Immigration Services

April 20, 2010

Robert L Trezie, Jr.
C/O Lansing Redevelopment Corporation
401 S. Washington Sq. Suite 100
Lansing, MI 48933

W09000540

Application: Request for Designation as a Regional Center
Applicant(s): Robert L. Trezie, Jr.
Re: LEDC Regional Center

Pursuant to Section 610 of the Appropriations Act of 1993, on March 11, 2009, Robert L. Trezie, Jr., submitted a proposal seeking approval and designation by U.S. Citizenship and Immigration Services (USCIS) of the LEDIC Regional Center.

Based on its review and analysis of your proposal, and of your response to the USCIS Request For Evidence, USCIS hereby designates LEDC Regional Center as a Regional Center within the Immigrant Investor Pilot Program and approves the request as described below:

GEOGRAPHIC AREA:

The LEDC Regional Center shall have a geographic scope which includes the City of Lansing, Michigan.

FOCUS OF INVESTMENT ACTIVITY:

As depicted in the economic model, the general proposal and the economic analysis, the Regional Center will engage in the following economic activities: Loans to 3rd party enterprises and/or equity investments in real estate construction, renovation and management, and provide equipment for new and existing businesses.

The Regional Center for EB-5 Immigrant purposes shall focus investments into new commercial enterprises, in the following five (5) target industry economic clusters:

1. Mixed Use Development
2. Hospitality/Tourism
3. Manufacturing/Warehousing
4. Information Technology/Biotechnology/Hi-technology
5. Higher Education

If any investment opportunities arise that are beyond the scope of the approved industry clusters, then an amendment would be required to add that cluster.

Aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for these commercial enterprises located within the approved Regional Center area. For any alien requesting the reduced threshold of $500,000 based upon an investment in a Targeted Employment area, the alien must establish at the time of filing of the I-526 petition that either the investment will be made in a TEA designated area or was in a TEA designated area at the time of the alien's initial investment into the enterprise.

EMPLOYMENT CREATION

Immigrant investors who file petitions for commercial enterprises located in the Regional Center area must fulfill all of the requirements set forth in 8 CFR 204.6. The approved econometric model as described by the Regional Center is RIMS II. [1]

In addition, where job creation or preservation of existing jobs is claimed based on a multiplier rooted in underlying new "direct jobs", the immigrant investor's individual I-526 petition affiliated with your Regional Center, should include as supporting evidence:

- A comprehensive detailed business plan with supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of any new direct jobs for "qualifying employees" to be achieved/realized within two years pursuant to 8 CFR 204.6(j)(4)(B).

An alien investor's I-829 petition to remove the conditions which was based on an I-526 petition approval that involved the creation of new direct jobs or the creation of new indirect jobs based on a multiplier tied to underlying new direct jobs needs to be properly supported by evidence of job creation. To support the full number of direct and indirect new jobs being claimed in connection with removal of conditions, the petition will need to be supported by probative evidence of the number of new direct full time (35 hours per week) jobs for qualified employees whose positions have been created as a result of the alien's investment. Such evidence may include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of qualified employees whose jobs were created directly.

Additional Guidelines for individual Immigrant Investors Visa Petition (I-526)

Each individual petition, in order to demonstrate that it is associated with the Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain as supporting evidence relating to this Regional Center designation, the following:

1. A copy of this letter, the Regional Center approval and designation.

2. A comprehensive and detailed business plan for the specific job creating project(s) and/or investment activity.

3. A revised copy of the job creation methodology required in 8 CFR 204.6(j)(4)(iii).

4. A legally executed copy of any:

    a. Private Placement Memorandum;
    b. Subscription Agreement;
    c. Operating Agreement;
    d. Escrow Agreement, if any;

[1] A review of the economic analysis shows that the submitted data improperly calculates total employment. As the RIMS II multiplier measures both direct and indirect jobs in its calculation, there is no need to add direct employment to the RIMS II employment output total. However, because a revised calculation shows that sufficient jobs will be created using your exemplar plans; this issue has not precluded the approval of this proposal.

e. Organizational documents for the commercial enterprise.

DESIGNEE'S RESPONSIBILITIES INHERENT IN CONDUCT OF THE REGIONAL CENTER:

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year[2], commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the Regional Center responsible for the normal operation, management and administration of the Regional Center.

2. Be prepared to explain how you are administering the Regional Center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.

3. Be prepared to explain the following:

   a. How the Regional Center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.

   b. How the Regional Center is actively engaged in the ongoing monitoring, evaluation, oversight and follow up on any investor commercial activity affiliated through the Regional Center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the Regional Center.

4. Be prepared to provide:

   a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
      i. the petition was filed,
      ii. was approved,
      iii. denied, or
      iv. withdrawn by the petitioner, together with the date(s) of such event.

   b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted.

   c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.

   d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.

[2] A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

e. For each alien investor listed in item 4.a., above, identify the following:

i. the date(s) of investment in the commercial enterprise;

ii. the amount(s) of investment in the commercial enterprise; and

iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or Regional Center from when the investment was initiated to the present.

5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your Regional Center that have:

a. received alien investors' capital, and in what aggregate amounts;

b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;

c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
i. The name and address of each "direct" job creating commercial enterprise.
ii. The industry category for each indirect job creating investment activity.

6. Be prepared to provide:

a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your Regional Center.

b. The total aggregate number of approved EB-5 alien investor I-829 petitions per each Federal Fiscal Year to date through your Regional Center.

7. The total aggregate sum of EB-5 alien capital invested through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

10. If for any given Federal Fiscal Year your Regional Center did or does not have investors to report, then provide:

a. a detailed written explanation for the inactivity,

b. a specific plan which specifies the budget, timelines, milestones and critical steps to:

i. actively promote your Regional Center program,

ii. identify and recruit legitimate and viable alien investors, and

iii. a strategy to invest into job creating enterprises and/or investment activities within the Regional Center.

11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your Regional Center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your Regional Center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.

12. Finally, please be aware that it is incumbent on each USCIS approved and designated Regional Center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:

- the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
- the management and administration of the RC,
- the RC structure,
- the RC mailing address, web site address, email address, phone and fax number,
- the scope of the RC operations and focus,
- the RC business plan,
- any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
- the economic focus of the RC, or
- any material change relating to your Regional Center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the Regional Center approval and designation under the Immigrant Investor Pilot Program, please contact the USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,

Christina Poulos
Director
California Service Center

LeapInc
stronger together

www.LeapInc.biz

500 E. Michigan Avenue, Suite 202
Lansing, MI 48912

USCIS California Service Center
Attn: EB5 RC Proposal
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Department of Homeland Security
U.S. Citizenship and Immigration Services

I–797E, Notice of Action

A #	Application/Petition
	I924, Application for Regional Center under Immigrant Investor Pilot Program
Receipt #	**Application/Petitioner**
RCW1031910174	**Lansing Economic Development Corporation Regional Center**
Notice Date / **May 2, 2012** — **Page** / **1 of 4**	**Beneficiary**

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C/O: Lansing Redevelopment Corporation
401 S. Washington Square, Suite 100
Lansing, MI 48933

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CSC4639 WS22090 DIV III AC

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COPY

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II. REGIONAL CENTER STATUTORY AND REGULATORY FRAMEWORK

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(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

Notice of A

		Application/Petition REGIONAL CENTER PROPOSAL
Receipt # W09000540		
Notice Date December 18, 2009	Page 1 of 3	Regional Center Lansing Regional Center

Robert L Trezie
C/O Lansing Redevelopment Corporations
401 S. Washington Sq Suite 100
Lansing, MI 48933

Request for Evidence

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WS 24068 CSC 3360 DIV III

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Attn: EB 5 RC Proposal
24000 Avilla Road, 2nd Floor
Laguna Niguel, CA 92677

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CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0526

W09000545

Form I-797 (8/06) **Please see additional information on the back.**

AL31000621 RECD CSC 10MAR11

Addi[illegible]formation[illegible]licants and Petitioners.

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The filing of an application or pet[illegible] that after every consideration, USCIS concluded person to enter or remain in the U[illegible] ce submitted did not establish eligibility for the any other right or benefit.[illegible]

ROBERT L TREZIE, JR
C/O LANSING REDEVELOPMENT CORPORATION
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LANSING, MI. 48933

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You should follow the same proced[illegible] his notice states that this denial can be appealed and USCIS office if you have questions[illegible] decision is in error, you can file an appeal.

Please have this form with you wh[illegible] more information about these processes by either about this case.[illegible] to contact your local USCIS office, or by calling the [illegible]ner Service Center.

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GPO U.S. GOVERNMENT PRINTING OFFICE: 2008—351-113

Promotion of Economic Growth within the selected Geographic Area (8 CFR 204.6(m)(3)(i)):

8 CFR 204.6(m)(3)(i) requires that a proposal be submitted which:

> Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through improved regional productivity, job creation, and increased domestic capital investment;

The evidence presented does not describe the economic growth in the terms listed above. While the EB-5 program emphasizes job creation it is not the only factor that must be addressed in your proposal. Submit evidence showing the types of economic growth that will be promoted with in your regional center jurisdiction. This type of economic analysis can be combined with the other analyses as shown below.

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It is imperative to fully explain indirect job creation, as well as the direct and induced jobs, if any. The requirement of creating at least 10 new full-time (35 hours per week) jobs per each individual alien investor may be satisfied by showing that, as a result of the investment and the activities of the new enterprise, at least 10 jobs per alien investor will be created directly or indirectly through an employment creation multiplier effect. Aspects of this element of the proposal may be combined with Regional or National Impact analysis in a single economic analysis and job creation model.

When relying on econometric models for indirect job creation[1] it is imperative that "direct jobs" will be real identifiable jobs supported by wage reports or I-9 forms otherwise they must be explicitly identified as

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LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Virg Bernero, Mayor

Date: March 9, 2010

To : U.S. Citizenship & Immigration Services
Attn. EB-5 Regional Center Proposal
California Service center
P.O. Box 10590
Laguna Niguel, CA 92607-0526

Re: EB-5 Regional Center Proposal – City of Lansing, MI
Response to Dec. 18, 2009 request for further information.

To Whom It May Concern:

Attached you will find the city of Lansing's second response to the USCIS request for further information regarding our application to create an EB-5 Regional Center. Since our proposal was first submitted for your review in March 2009, the economic climate around the globe has deteriorated and credit markets have become frozen and unobtainable for many companies and investment opportunities. Furthermore, the state of Michigan has continued to languish at the bottom of all economic recovery indicators. However, in Lansing we see this global meltdown as a prime opportunity for our city to position itself to be the leader in our state's great recovery. With the assistance of the EB-5 Regional Center program we are confident we can leverage capital to speed this recovery and get people back to work. We look forward to our approval and subsequent success.

Sincerely,

Robert L. Trezise, Jr.
President & CEO
Lansing Economic Development Corporation

Indirect Job Creation & Economic Impact (8 CFR 204.6(m)(3)(ii)):

Per the request for further information that was issued to our office on December 18,2009, USCIS requested that we provide an indirect job creation analysis for all industry categories which would be targeted for investment within our program. The five (5) categories we have chosen to pursue are as follows:

- Mixed Use Development (analysis provide in prior submission)
- Hospitality/Tourism (Exhibit 1)
- Manufacturing / Warehousing (Exhibit 2)
- Info-, Bio-, Hi- Tech Industries (Exhibit 3)
- Higher Education (Exhibit 4)

Our previous reply in July 2009 provided a thorough analysis of Mixed Use Development and the methodology which will be utilized by Anderson Economic Group, the lead economist for our EB-5 Regional Center. Attached in Exhibit 1, you will find similar analyses for the four remaining industrial sectors which were proposed in our application.

For each industry you will find a list of assumptions which provide guidance for a sample project that could be proposed within our center. The purpose of these analyses is to showcase the methodology that will be followed to ensure that proper care is given to the accounting of indirect job creation.

Our analysis utilizes the RIMS II input-output multipliers which were purchased from the U.S. Bureau of Economic Analysis. The two multipliers utilized for this analysis are as follows:

- Direct – Effect Employment multipliers are used to capture the total employment impact (including direct and indirect employment) caused by planned direct employment from the project being completed. The total employment impact is obtained by multiplying the direct employment by the direct-effect employment multiplier, which is customized for the region and industry.

- Final Demand Employment multipliers are used to capture the total employment impact (including direct and indirect employment) caused by the planned operating expenditures of the completed project. The total employment impact is obtained by multiplying the operating spending in each category of operating spending (i.e. the "final demand" created in that industry) by the final-demand employment multiplier, which is customized for the region and industry.

Exhibit 1

Hotel Project

Assumptions

Full Service Hotel
250 Rooms
165,000 s.f (based on s.f. of exisiting Radisson Lansing Hotel)
660 s.f. per room (includes banquet & common areas)
New Direct Employment = 125 (based on industry 2 rooms per 1 staff standards)
Source for expense info: 2008 STR HOST Study
Est. Construction Price = $40,000,000

		Base Value / Jobs	Multiplier	Industry Used	Total Indirect Employment
Direct Effect Multipliers					
Indirect Employment		125	1.352	Accomodation	169
Final Demand Multipliers					
Departmental Expenses (per available room)					
	Per available room (250 rooms)				
Rooms	$10,212	$2,553,000	20.2805	Accomodation	52
Food & Beverage	$13,703	$3,425,750	26.9427	Food Service	92
Undistributed Operating Expenses					
	Per Available Room (250 rooms)				
Admin & General	$5,411	$1,352,750	21.7553	Admin & Support Services	29
Marketing	$4,275	$1,068,750	11.5398	Advertising and Related Services	12
Property Oper. & Maintenance	$2,946	$736,500	14.8802	Management of Companies or Enterprises	11
				Total Indirect Employment	366
				Total Direct Employment	125
				Total New Employment	**491**

Exhibit 2

Manufacturing / Warehousing Project

Assumptions
Joint Venture Project
$3 million purchase of locally made manufacturing equipment
30 new direct employees
Avg. yearly wage $45,935 (National Avg. - U.S. Census Bureau)

	Base Value / Jobs	Multiplier	Industry Used	Total Indirect Employment
Direct Effect Multipliers				
Indirect Employment	30	1.9922	Fabricated metal product manufacturing	60
Final Demand Multipliers				
Machinery Purchase	$3,000,000	9.1841	Machinery Manufacturing	28
Logistics (yearly)	$400,000	12.4267	Truck Transportation	5
Utilities Expense (yearly)	$300,000	3.563	Utilities	1
Materials for Production (yearly)	$300,000	6.7138	Primary Metal Manufacturing	2
			Total Indirect Employment	95
			Total Direct Employment	30
			Total Employment	**125**

Exhibit 3

Info-, Bio-, Hi- Tech Project

Assumptions
Joint Venture Project
Equity investment in a new spinoff company based on Michigan State University research & patent.
Ethanol / Bio-fuels Industry
$500,000 purchase of locally made manufacturing equipment
5 new direct employees

	Base Value / Jobs	Multiplier	Industry Used	Total Indirect Employment
Direct Effect Multipliers				
Indirect Employment	5	1.9922	Professional, scientific, and technical services	10
Final Demand Multipliers				
Machinery Purchase	$ 500,000	9.1841	Machinery Manufacturing	5
Corn* (annual)	$ 150,000	15.7506	Crop & Animal Production	2
Engineering Consultants	$ 100,000	13.9678	Professional, scientific, and technical services	1
			Total Indirect Employment	18
			Total Direct Employment	5
* $3 / per bushel x 50,000 units			**Total Employment**	**23**

Exhibit 4

Higher Education Project

Assumptions

Joint Venture Project

Equity investment in a new mock court trial building with Thomas M. Cooley Law School

15 new direct employees

200 new students

30,000 s.f. facility

Construction Cost = $20,000,000

	Base Value / Jobs	Multiplier	Industry Used	Total Indirect Employment
Direct Effect Multipliers				
Indirect Employment	15	1.338	Professional, scientific, and technical services	20
Final Demand Multipliers				
New student households*	$ 1,920,000	9.8777	Households	19
New Tuition Payments**	$ 7,600,000	28.0063	Educational Services	213
			Total Indirect Employment	252
			Total Direct Employment	15
			Total Employment	**267**

* 200 new households x avg rent of $800 / month ($9,600 year)

** Based on 2009-10 avg. Cooley Law School Tuition of $38,000 / year

Regional Impact of the Regional Center (8 CFR 204.6 (m)(3)(iv)):

The scope and breadth of projects that will be undertaken by the Lansing Regional Center are sure to have lasting impacts on the Greater Lansing Regional Economy. The attached predictions of impact are based upon the use of U.S. Bureau of Economic Analysis RIMS II multipliers which represent the Greater Lansing Region described as the counties Ingham, Clinton, and Eaton.

The analysis of Regional Impact is calculated in Exhibits 5 & 6.

Exhibit 5: Reflects the increase in total dollar change in output that occurs in all industries for each additional dollar of output delivered to final demand by the industries listed. In our estimation the major industries that will be impacted by our proposed projects are: business services, utilities, maintenance & repair, and construction.

Exhibit 6: Reflects the total dollar change in earnings of households within the Greater Lansing Region employed within all industries for each additional dollar of output delivered to final demand by the industries identified as being greatly impacted by the proposed projects.

Exhibit 5

Final Demand Output Analysis

Assumptions:

Utilizes the projected expenditures based on the five (5) economic analysis projects provided in the Job Creation Analysis

Utilizes BEA RIMS II Final Demand Output Multipliers

Figures reflect estimated totals of all example projects combined.

	Base Value	Multiplier	Industry	Regional demand change for all industries
Business Services	$ 9,452,750	1.9009	Management of companies and enterprises	$17,968,732
Utilities	$300,000	1.2917	Utilities	$387,510
Maintenance & Repair	$1,386,500	1.9009	Management of companies and enterprises	$2,635,598
Construction (based on expected costs)				
Mixed Use Project	$16,000,000	1.7612	Construction	$28,179,200
Hotel Project	$40,000,000	1.7612	Construction	$70,448,000
Higher Ed. Project	$20,000,000	1.7612	Construction	$35,224,000
			Total Increase in Demand for All Industries	**$154,843,040**

Exhibit 6

Regional Household Earnings Impact Analysis

Utilizing example projects as outlined in the Indirect Job Creation Impact Analysis

Assumptions

Investment = Sum of all estimated project investment as proposed per industry.
Expenditures Total = $24,205,750
Total Direct Employment = 301
Total Regional Households = 172,413 (2000 U.S. Census)
Multipliers reflect BEA RIMS II Final Demand Earnings Multipliers

		Base Value	Multiplier	Industry	Earnings increase all Households
	Mixed Use Project				
	Waste Management (annual)	$80,000	0.4313	Waste management and remediation services	$34,504
	Maintenance (annual)	$650,000	0.6401	Management of companies and enterprises	$416,065
	Marketing (annual)	$19,000	0.6401	Management of companies and enterprises	$12,162
	Hotel Project				
	Rooms (annual)	$2,553,000	0.4583	Accomodation	$1,170,040
	Food & Beverage (annual)	$3,425,750	0.3157	Food Service	$1,081,509
	Admin & General (annual)	$1,352,750	0.5828	Admin & Support Services	$788,383
	Marketing (annual)	$1,068,750	0.6401	Management of companies and enterprises	$684,107
	Property Oper. & Maintenance (annual)	$736,500	0.6401	Management of Companies or Enterprises	$471,434
	Manufacturing Project				
	Machinery Purchase (one time)	$3,000,000	0.4269	Machinery Manufacturing	$1,280,700
	Logistics (annual)	$400,000	0.464	Truck Transportation	$185,600
	Utilities Expense (annual)	$300,000	0.2088	Utilities	$62,640
	Materials for Production (annual)	$300,000	0.3217	Primary Metal Manufacturing	$96,510
	Bio-Tech Project				
	Machinery Purchase (one time)	$500,000	0.4269	Machinery Manufacturing	$213,450
	Corn (annual)	$150,000	0.2667	Crop & Animal Production	$40,005
	Engineering Consultants (one time)	$100,000	0.6314	Professional, scientific, and technical services	$63,140
	Higher Education				
	New student household rent payments (annual)	$1,920,000	0.2912	Households	$559,104
	New Tuition Payments (annual)	$7,600,000	0.658	Educational Services	$5,000,800
	Totals	**$24,155,750**			**$12,160,152**
	Total Regional Households	**172,413**			
	Increase in Household Earnings through Regional Center Investment (per household)	**$70.53**			

Promotion of Economic Growth within the selected Geographic Area (8 CFR 204.6(m)(3)(i)):

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

Notice of Action

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Receipt # W09000540		
Notice Date December 18, 2009	Page 1 of 3	Regional Center Lansing Regional Center

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CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0526

WO9000545

Form I-797 (8/06) **Please see additional information on the back.**

Additional Information for Applicants and Petitioners.

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Denials.

A denial means that after every consideration, USCIS concluded that the evidence submitted did not establish eligibility for the requested benefit.

If you believe there is more evidence that will establish eligibility, you can file a new application or petition, or you can file a motion to reopen this case. If you believe the denial is inconsistent with precedent decisions or regulations, you can file a motion for reconsideration.

If the front of this notice states that this denial can be appealed and you believe the decision is in error, you can file an appeal.

You can obtain more information about these processes by either using InfoPass to contact your local USCIS office, or by calling the National Customer Service Center.

U.S. Department of Homeland Secur
U.S. Citizenship and Immigration Services

Notice of Action

		Application/Petition REGIONAL CENTER PROPOSAL
Receipt # W09000540		
Notice Date April 1, 2009	Page 1 of 5	Regional Center Lansing Regional Center

Robert L Trezise
C/O Lansing Economic Development Corporation
401 S Washington Suite 100
Lansing, MI 48933

Request for Evidence

IMPORTANT: WHEN YOU HAVE COMPLIED WITH THE INSTRUCTIONS ON THIS FORM, RESUBMIT THIS NOTICE ON TOP OF ALL REQUESTED DOCUMENTS AND /OR INFORMATION TO THE ADDRESS BELOW. THIS OFFICE HAS RETAINED YOUR PETITION/APPLICATION WITH SUPPORTING DOCUMENTS.

THE INFORMATION REQUESTED BELOW MUST BE RECEIVED BY THIS OFFICE NO LATER THAN EIGHTY-FOUR (84) DAYS FROM THE DATE OF THIS NOTICE. IF YOU DO NOT PROVIDE THE REQUESTED DOCUMENTATION WITHIN THE TIME ALLOTTED, YOUR APPLICATION WILL BE CONSIDERED ABANDONED PURSUANT TO 8 C.F.R. 103.2(B)(13) AND, AS SUCH, WILL BE DENIED.

WS 24068 CSC 3360 DIV III

RETURN THIS NOTICE ON TOP OF THE REQUESTED INFORMATION LISTED ON THE ATTACHED SHEET.

Note: You are given until JUNE 29, 2009 in which to submit the information requested.

Pursuant to 8 C.F.R. 103.2(b)(11) failure to submit ALL evidence requested at one time may result in the denial of your application.

"COPY"

For non-US Postal Service
Attn: EB 5 RC Proposal
24000 Avilla Road, 2nd Floor
Laguna Niguel, CA 92677

You will be notified separately about any other applications or petitions you filed. Save a photocopy of this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
Attn: EB 5 RC Proposal
CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0526

W09 000 545

Form I-797 (8/06)

Please see additional information on the back.

General.

The filing of an application or petition does not in itself allow a person to enter or remain in the United States and does not confer any other right or benefit.

Inquiries.

If you do not hear from us within the processing time given on this notice and you want to know the status of this case, use InfoPass at **www.uscis.gov** to contact your local USCIS office or call our National Customer Service Center at **1–800–375–5283**.

You should follow the same procedures before contacting your local USCIS office if you have questions about this notice.

Please have this form with you whenever you contact a local office about this case.

Requests for Evidence.

If this notice asks for more evidence, you can submit it or you can ask for a decision based on what you have already filed. When you reply, please include a copy of the other side of this notice and also include any papers attached to this notice.

Reply Period.

If this notice indicates that you must reply by a certain date and you do not reply by that date, we will issue a decision based on the evidence on file. No extension of time will be granted. After we issue a decision, any new evidence must be submitted with a new application or petition, motion or appeal, as discussed under **"Denials"**.

Approval for a Petition.

Approval of an immigrant or nonimmigrant petition means that the beneficiary, the person for whom it was filed, has been found eligible for the requested classification. However, approval of a petition does not give any status or right. Actual status is given when the beneficiary is given the proper visa and uses it to enter the United States. Please contact the appropriate U.S. consulate directly if you have any questions about visa issuance.

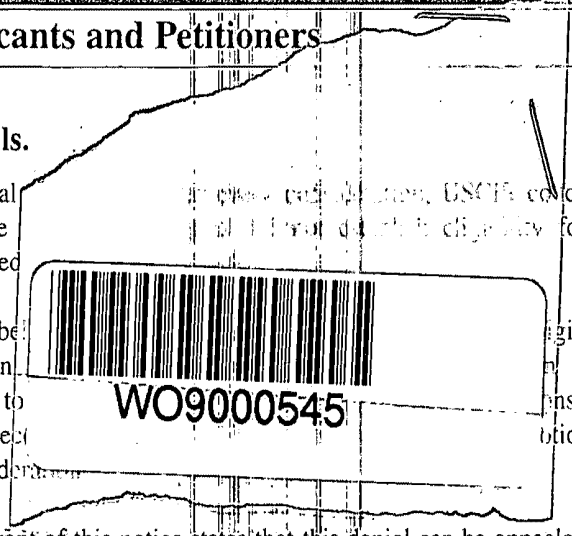
For nonimmigrant petitions, the beneficiary should contact the consulate after receiving our approval notice. For approved immigrant petitions, the beneficiary should wait to be contacted by consulate.

If the beneficiary is now in the United States and believes he or she may be eligible for the new status without going abroad for a visa, he or she should use InfoPass to contact a local USCIS office about applying here.

Denials.

A denial [illegible] USCIS concluded that the [illegible] for the requested [illegible]

If you be[illegible]gibility, you can [illegible] file a motion to [illegible]nsistent with pre[illegible]tion for reconsideration.



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THE UNITED STATES OF AMERICA

RECEIPT NUMBER		CASE TYPE
W09000540		Regional Center Proposal
RECEIVED DATE		**REGIONAL CENTER NAME**
March 11, 2009		Lansing Economic Development Corporation Regional Center
NOTICE DATE	**PAGE**	
March 26, 2009	1 of 1	

Robert L. Trezise, Jr.
LEDC Regional Center
401 S. Washington Sq., Suite 100
Lansing, MI 48933

Notice Type:

Receipt Notice

Receipt Notice - This notice confirms that USCIS received your Regional Center Proposal. If any of the above information is incorrect, send an e-mail to: USCIS.ImmigrantInvestorProgram@dhs.gov. This notice does not grant any immigration status or benefit. It is not even evidence that this case is still pending. It only shows that the application or petition was filed on the date shown.

Processing Time - The current processing time for this case is estimated at 120 days. Unlike other case types, verification or tracking of this case is not available electronically or on our website. We will notify you by mail when we make a decision on this case or if we need something from you. If you do not receive an initial decision or update from us within our current processing time, you may send an e-mail to: USCIS.ImmigrantInvestorProgram@dhs.gov. or contact us at the address below.

Address Change - If your mailing address changes while your case is pending, you may send an e-mail to: USCIS.ImmigrantInvestorProgram@dhs.gov. Otherwise, you might not receive notice of our action on this case.

Please save this notice and a copy of any papers that you send to us along with proof of delivery.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
Attn: EB-5 RC Proposal
P.O. BOX 10526
LAGUNA NIGUEL CA 92607-10526

- *Please save this notice for your records. Please enclose a copy if you have to write us or a U. S. Consulate about this case, or if you file another application based on this decision.*
- *You will be notified separately about any other applications or petitions you have filed.*

Additional Information

GENERAL.

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

INQUIRIES.

You should contact the office listed on the reverse side of this notice if you have questions about the notice, or questions about the status of your application or petition. *We recommend you call.* However, if you write us, please enclose a copy of this notice with your letter.

APPROVAL OF NONIMMIGRANT PETITION.

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

APPROVAL OF AN IMMIGRANT PETITION.

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I-485, *Application to Register Permanent Residence or Adjust Status*.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

Notice of Action

	Application/Petition REGIONAL CENTER PROPOSAL
Receipt # W09000540	
Notice Date April 1, 2009 — Page 1 of 5	Regional Center Lansing Regional Center

RECEIVED
APR 07 2009
ECONOMIC DEVELOPMENT CORP.

RECD-CSC '09 JUN 29 ...

AL3100621

Robert L Trezise
C/O Lansing Economic Development Corporation
401 S Washington Suite 100
Lansing, MI 48933

Request for Evidence

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WS 24068 CSC 3360 DIV III

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24000 Avilla Road, 2nd Floor
Laguna Niguel, CA 92677**

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CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0526**

W09 000 545

Form I-797 (8/06) **Please see additional information on the back.**

Additional Information for Applicants and Petitioners.

General.

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For nonimmigrant petitions, the beneficiary should contact the consulate after receiving our approval notice. For approved immigrant petitions, the beneficiary should wait to be contacted by consulate.

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Denials.

A denial means that after every consideration, USCIS concluded that the evidence submitted did not establish eligibility for the requested benefit. .

If you believe there is more evidence that will establish eligibility, you can file a new application or petition, or you can file a motion to reopen this case. If you believe the denial is inconsistent with precedent decisions or regulations, you can file a motion for reconsideration.

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In accordance with Federal Register Notice dated Jan 9, 2009, and effective Jan 26, 2009, your case has been relocated to the California Service Center for processing.

What is the Immigrant Investor Pilot Program?

The Immigrant Investor Pilot Program ("Pilot Program") was created by Section 610 of Public Law 102-395 (October 6, 1992). This is different in certain ways from the basic EB-5 investor program.

The Pilot Program began in accordance with a Congressional mandate aimed at stimulating economic activity and creating jobs for U.S. workers, while simultaneously affording eligible aliens the opportunity to become lawful permanent residents. Through this innovative program, foreign investors are encouraged to invest funds in an economic unit known as a "Regional Center."

A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.

8 CFR 204.6 (m)(3) describes specific evidence that must be submitted before consideration for eligibility for this benefit may proceed. After review of your proposal in the light of these requirements, the following information, evidence or clarification is needed to proceed.

It is always best to start with a cover letter that acts as an executive summary followed by a table of contents of the various tabbed sections to follow.

The proposal should include a sample project(s) with examples of documentation required for an individual investor to qualify. The kinds of documents are described below under the business approach and structure category. Many organizations use a specific project in the developmental stage as the basis for the sample, submitting documentation that they intend to use for their 1st project. This allows the USCIS to comment on the documentation before submission by the individual investor. While the comments are not binding on USCIS, they do assist many new Regional Centers in planning and developing activities. The sample project(s) should reflect the kinds of activities that the Regional Center will sponsor. For instance, Real Estate Construction, remodeling and development would be one activity type while general capital investment in a start-up would be another.

Indirect Job Creation (8 CFR 204.6(m)(3)(ii)):

Under the provisions of the INA which apply to the Immigrant Investor Pilot Program and specific amendments to the statute, especially in the 2002 amendment Per Public Law 107-273, enacted November 2, 2002, which clearly states:

> A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions,

contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments and the other positive economic effects such capital investments will have.

Also 8 CFR 204.6(m)(3)(ii) requires you to:

Provide in verifiable detail how jobs will be created indirectly;

It is imperative to fully explain indirect job creation, as well as the direct and induced jobs, if any. The requirement of creating at least 10 new full-time (35 hours per week) jobs per each individual alien investor may be satisfied by showing that, as a result of the investment and the activities of the new enterprise, at least 10 jobs per alien investor will be created directly or indirectly through an employment creation multiplier effect. Submit an Economic Analysis and model that shows and describes job creation for each category of economic activity (for example, manufacturing, food production/processing, warehousing, tourism and hospitality, transportation, power generation, agriculture, etc.) Aspects of this element of the proposal may be combined with other issues listed below in a single economic analysis and job creation model.

When relying on econometric models for indirect job creation[1] it is imperative that "direct jobs" will be real identifiable jobs supported by wage reports or I-9 forms otherwise they must be explicitly identified as hypothetical in nature. Another method would be to predict jobs based on dollar amount invested in the overall project and this too must be made clear. This distinction will be critical at the I-829 removal of condition stage of the immigration process.

Regional or National impact of the Regional Center (8 CFR 204.6 (m)(3)(iv)):

Regulations at 8 CFR 204.6(m)(3)(iv) require that the proposal contain:

[1] USCIS does not accept or credit creation of direct temporary "construction jobs" within a business plan or economic job creation forecasts activities which involve a limited duration construction phase of less than 3 years unless the scope, complexity, and the ongoing construction phase must be fully sustained for all the construction phase jobs for 3 years or more with respect to the size, scope, nature, engineering/technology challenges and breadth of the project--for example a massive-scale nuclear power facility, or major Dam or a giant oil refinery, or similar type of massive and expansive and major engineering project. Shorter term construction jobs less than three years in duration have been determined to be of such a short term in nature as to not be sustained and to decrease and disappear as the initial construction activities wind down to completion. Such shorter term construction jobs in many locations are seasonal at best. Nevertheless, for all capital investment expenditures for the construction phase, all capital-induced "down-stream" support activities and "indirect" jobs impacted and associated with the construction activities such as suppliers, transportation, engineering and architectural services, maintenance and repair services, interior design services, manufacturing of components and materials, etc., may be factored into the calculations for creation of indirect jobs.

> ...a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center;

A detailed prediction must be provided which includes the topics of regional or national impact on household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside the Regional Center. This can be combined with job creation and overall economic impact.

The proposal should not makes vague references to regional economic impacts but should provide actual monetary predictions and address the elements listed in USCIS regulations. The economic model and analysis requested under job creation and National and Regional impact of the Regional Center will also need to address these specific points as listed here.

Overall Economic Impact of the Regional Center (8CFR 204.6(m)(3)(iv):

Submit a complete and valid economic analysis sufficiently detailed to predict the *overall economic impact to be made by the Regional Center*. This can be combined with items relating to job creation and impact of the Regional Center.

The Business Approach and Structure of the Regional Center (Section 610 of Public Law 102-395(October 6, 1992))**:**

The business aspects of the Regional Center must be fully explained as to its structure. This aspect of a proposal includes, but is not limited to, the following basic elements or samples of them *as applicable to the business approach and structure to be used by the Regional Center:*

- An overall Business Plan –
- Draft Operating Agreement
- Draft Partnership Agreement
- Draft Subscription Agreement
- Draft of an Offering Letter, Memorandum, Confidential Private Placement Memorandum, or similar offering made in writing to an immigrant investor through the Regional Center.
- Draft Memorandum of Understanding, Interagency Agreement, Contract, Letter of Intent, Advisory Agreement, or similar agreement to be entered into with any other party, agency or organization to engage in activities on behalf of or in the name of the Regional Center.
- Articles of Incorporation from the State for the Regional Center

In regards to the draft operating agreement already submitted, is this draft for the Regional Center LLC or for the individual projects? Exhibit 8 indicates that your intention is to form a LLP for each project, while exhibit 10 is a draft operating agreement for an LLC. Clarify your intent in this matter.

Administrative Oversight (8 CFR 204.6)):

The regulations at 8 CFR 204.6(m)(6), require that an approved Regional Center in order to maintain the validity of its approval and designation, must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether an approved and designated Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year[2], commencing with the initial year as follows:

Submit a description of your plans to administer, oversee, and manage the proposed Regional Center, including but not limited to such things as to identify, assess and evaluate proposed immigrant investor projects and enterprises; how the proposed Regional Center would perform "due diligence" as to whether investment capital to be sought will consist solely of alien investor capital or a combination of alien investor capital and domestic capital; how to monitor all investment activities affiliated, through or under the sponsorship of the proposed Regional Center, and to maintain records, data and information on projects, investors, business activities, etc., in order to report to USCIS for each Federal Fiscal Year. This is known as "due diligence" and is coupled with "oversight reporting responsibilities" to be fully explained if approved and designated.

Translations:

Any document containing a foreign language submitted to USCIS shall be accompanied by a full English translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies:

Unless specifically required that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain part of the record, even if the submission was not required.

[2] A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

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A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.

8 CFR 204.6 (m)(3) describes specific evidence that must be submitted before consideration for eligibility for this benefit may proceed. After review of your proposal in the light of these requirements, the following information, evidence or clarification is needed to proceed.

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> A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions,

contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments and the other positive economic effects such capital investments will have.

Also 8 CFR 204.6(m)(3)(ii) requires you to:

Provide in verifiable detail how jobs will be created indirectly;

It is imperative to fully explain indirect job creation, as well as the direct and induced jobs, if any. The requirement of creating at least 10 new full-time (35 hours per week) jobs per each individual alien investor may be satisfied by showing that, as a result of the investment and the activities of the new enterprise, at least 10 jobs per alien investor will be created directly or indirectly through an employment creation multiplier effect. Submit an Economic Analysis and model that shows and describes job creation for each category of economic activity (for example, manufacturing, food production/processing, warehousing, tourism and hospitality, transportation, power generation, agriculture, etc.) Aspects of this element of the proposal may be combined with other issues listed below in a single economic analysis and job creation model.

When relying on econometric models for indirect job creation[1] it is imperative that "direct jobs" will be real identifiable jobs supported by wage reports or I-9 forms otherwise they must be explicitly identified as hypothetical in nature. Another method would be to predict jobs based on dollar amount invested in the overall project and this too must be made clear. This distinction will be critical at the I-829 removal of condition stage of the immigration process.

Regional or National impact of the Regional Center (8 CFR 204.6 (m)(3)(iv)):

Regulations at 8 CFR 204.6(m)(3)(iv) require that the proposal contain:

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[1] USCIS does not accept or credit creation of direct temporary "construction jobs" within a business plan or economic job creation forecasts activities which involve a limited duration construction phase of less than 3 years unless the scope, complexity, and the ongoing construction phase must be fully sustained for all the construction phase jobs for 3 years or more with respect to the size, scope, nature, engineering/technology challenges and breadth of the project--for example a massive-scale nuclear power facility, or major Dam or a giant oil refinery, or similar type of massive and expansive and major engineering project. Shorter term construction jobs less than three years in duration have been determined to be of such a short term in nature as to not be sustained and to decrease and disappear as the initial construction activities wind down to completion. Such shorter term construction jobs in many locations are seasonal at best. Nevertheless, for all capital investment expenditures for the construction phase, all capital-induced "down-stream" support activities and "indirect" jobs impacted and associated with the construction activities such as suppliers, transportation, engineering and architectural services, maintenance and repair services, interior design services, manufacturing of components and materials, etc., may be factored into the calculations for creation of indirect jobs.

> ...a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center;

A detailed prediction must be provided which includes the topics of regional or national impact on household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside the Regional Center. This can be combined with job creation and overall economic impact.

The proposal should not makes vague references to regional economic impacts but should provide actual monetary predictions and address the elements listed in USCIS regulations. The economic model and analysis requested under job creation and National and Regional impact of the Regional Center will also need to address these specific points as listed here.

Overall Economic Impact of the Regional Center (8CFR 204.6(m)(3)(iv):

Submit a complete and valid economic analysis sufficiently detailed to predict the *overall economic impact to be made by the Regional Center*. This can be combined with items relating to job creation and impact of the Regional Center.

The Business Approach and Structure of the Regional Center (Section 610 of Public Law 102-395(October 6, 1992))**:**

The business aspects of the Regional Center must be fully explained as to its structure. This aspect of a proposal includes, but is not limited to, the following basic elements or samples of them *as applicable to the business approach and structure to be used by the Regional Center*:

- An overall Business Plan –
- Draft Operating Agreement
- Draft Partnership Agreement
- Draft Subscription Agreement
- Draft of an Offering Letter, Memorandum, Confidential Private Placement Memorandum, or similar offering made in writing to an immigrant investor through the Regional Center.
- Draft Memorandum of Understanding, Interagency Agreement, Contract, Letter of Intent, Advisory Agreement, or similar agreement to be entered into with any other party, agency or organization to engage in activities on behalf of or in the name of the Regional Center.
- Articles of Incorporation from the State for the Regional Center

In regards to the draft operating agreement already submitted, is this draft for the Regional Center LLC or for the individual projects? Exhibit 8 indicates that your intention is to form a LLP for each project, while exhibit 10 is a draft operating agreement for an LLC. Clarify your intent in this matter.

Administrative Oversight (8 CFR 204.6)):

The regulations at 8 CFR 204.6(m)(6), require that an approved Regional Center in order to maintain the validity of its approval and designation, must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether an approved and designated Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year[2], commencing with the initial year as follows:

Submit a description of your plans to administer, oversee, and manage the proposed Regional Center, including but not limited to such things as to identify, assess and evaluate proposed immigrant investor projects and enterprises; how the proposed Regional Center would perform "due diligence" as to whether investment capital to be sought will consist solely of alien investor capital or a combination of alien investor capital and domestic capital; how to monitor all investment activities affiliated, through or under the sponsorship of the proposed Regional Center, and to maintain records, data and information on projects, investors, business activities, etc., in order to report to USCIS for each Federal Fiscal Year. This is known as "due diligence" and is coupled with "oversight reporting responsibilities" to be fully explained if approved and designated.

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LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Virg Bernero, Mayor

6/22/2009

U.S. Citizenship and Immigration Services
Attn: EB-5 RC Proposal
California Service Center
P.O. box 10590
Laguna Niguel, CA 92677

U.S. Citizenship & Immigration Services:

Accompanying this letter is further documentation regarding the City of Lansing's request for designation as an EB-5 Regional Center. Per the document received by our office from USCIS we have focused on the following components of the application in this response:

1.) Indirect Job Creation & economic impact of the regional center.

2.) Business Operations including an expanded market plan.

3.) Administrative oversight.

The Lasing Economic Development Corporation is prepared to work with USCIS to ensure that the City of Lansing will have an opportunity to participate in the EB-5 Regional Center program. Thank you again for your consideration of our request. Please do not hesitate to contact us if we can answer any questions.

Sincerely,

Robert L. Trezise, Jr.
President & CEO
Lansing Economic Development Corporation

1.) Indirect Job Creation & Economic Impact

In order to ensure that proper methodology is followed in regards to calculating indirect job creation and the economic impact of immigrant investments, the Lansing EDC has formed a partnership with Anderson Economic Group to serve as the economic consultant for the Lansing Regional Center. Anderson Economic Group is an experienced and diversified economic consulting firm that will bring unprecedented resources to the Lansing Regional Center and ensure that all invested funds will create the required indirect employment to ensure proper documentation. The attached memo outlines Anderson Economic Group's methodologies and also provides documentation to support the Lansing Regional Center's proposed initial project, Market Place.

ANDERSON ECONOMIC GROUP

Memorandum

Date: June 24, 2009

To: Mr. Ken Szymusiak, Lansing Economic Development Corporation

From: Scott Watkins, Anderson Economic Group
Alex Rosaen, Anderson Economic Group

Re: Economic impact of EB-5 applicant investments

Summary

An EB-5 designation for the City of Lansing will help generate new investment in our community, attract highly-skilled and entrepreneurial immigrants, and provide a positive impact on our economy. This economic impact, of course, will reach beyond the actual dollar amount invested by program participants, and an important component of the EB-5 program is being able to measure this broader economic impact.

Anderson Economic Group has specific expertise and experience in completing such studies, and is pleased to be a part of the LEDC's team involved in reviewing the economic impacts of the program. In this memo we outline the methodology we will follow to quantify the economic impacts of EB-5 investments in the City of Lansing, and demonstrate how this approach is applied using a specific project which may, with EB-5 approval, receive investments under the program.

Economic Impact Methodology

To determine the economic impact that an EB-5 investment has had on the City of Lansing we will:

i. Meet with the LEDC and the EB-5 investor and business operator(s), to obtain the required data about the business activity the investment has generated within the City of Lansing. This will include information on number of employees, payroll and compensation plans, capital and operating expenditures, the share of these expenditures that are made to other businesses within the community, and the exact nature and industry of the business so that we can select the appropriate economic multipliers.

ii. Create an economic impact model that will quantify the direct and indirect employment that is attributable to the investment, on an annual basis. To estimate indirect employment we will carefully select the appropriate economic multipliers, which we

Anderson Economic Group LLC • www.AndersonEconomicGroup.com
1555 Watertower Place, Suite 100 • East Lansing, MI 48823 • Tel: (517) 333-6984 • Fax: (517) 333-7058
East Lansing | Chicago

will obtain from the U.S. Bureau of Economic Analysis RIMS II program, and apply the multipliers to the direct jobs and expenditures associated with the investment business, thus obtaining an accurate measure of indirect economic impacts associated with the EB-5 investment.

iii. Upon completing our model and the required analysis we will prepare a memorandum to outline the data we used, any assumptions made, our analytic approach, and the findings of the analysis. This will include a description of the investment, and a narrative to explain how it generates economic impacts in the area, and what the value of those economic impacts are on an annual basis.

Sample Economic Impact Analysis

To illustrate how our economic impact methodology would apply to one of the investment areas that the LEDC hopes to attract EB-5 funds for, let's consider a urban real estate investment project designed to relocate Lansing City Market and create a new riverfront mixed-use village, "Market Place." The analysis below includes example categories and values for operating expenditures representative of residential and office building management. An economic impact analysis for the I-829 removal of condition stage would use actual operating expenditures as a basis for the analysis.

Note that the analysis does not include the impact of construction despite the clear economic impact associated with the construction phase of a new real estate development. This is because construction will be completed by the time analysis (for the removal of condition stage) showing ongoing employment impact will take place.

Details of EB-5 Investment. The investor would become a partner in developing the Market Place village. As currently envisioned, the development would include the construction of two buildings, though more could be added to the plan if market conditions allow. The buildings would include:

- A residential building with between 80 and 100 residential rental units. The building would be four stories in height, and would have approximately 80,000 square feet of interior space.
- A mixed-use building with approximately 50,000 square feet of office space for a corporate headquarters and approximately 100 residential apartment units.

This proposed development would cost approximately $16 million to construct, a portion of which would be at-risk investment supplied by an investor participating in the EB-5 program.

Direct Jobs and Expenditures Data. The employment created by the proposed development would come from two sources. First, the development company would bring new workers directly onto their payroll to manage the operation of the new properties. These created jobs would be verifiable through wage reports or I-9 forms. The developer in this case estimates needing to directly hire approximately 3 employees to manage the residential building, and 4 employees to manage the mixed office and residential building.

The second source of employment is generated by non-payroll operational expenditures. The buildings' operations would create additional direct and indirect jobs through operating

expenditures spent on work contracted out by the building managers, supplies, utility costs, and other operating expenses.

The example operating expenditures of the proposed buildings are summarized in Table 1 below:

TABLE 1. Example Operating Expenditures for Proposed Development

	Residential Building	Mixed Office/ Residential Building	Total
General Maintenance	$300,000	$350,000	$650,000
Waste management	$35,000	$45,000	$80,000
Marketing	$12,000	$7,000	$19,000

Total Economic Impact of Investment. We estimate the total impact on employment of the proposed development's operations using RIMS II input-output multipliers purchased from the U.S. Bureau of Economic Analysis. We use two types of multipliers for this analysis:

- Direct-Effect Employment multipliers are used to capture the total employment impact (including direct and indirect employment) caused by planned direct employment at the development company as they manage the buildings. The total employment impact is obtained by multiplying the direct employment by the direct-effect employment multiplier, which is customized for the region and industry.

- Final-Demand Employment multipliers are used to capture the total employment impact (including direct and indirect employment) caused by planned operating expenditures by the development company as they contract outside firms to perform tasks such as building maintenance. The total employment impact is obtained by multiplying the operating spending in each category of operating spending (i.e. the "final demand" created in that industry) by the final-demand employment multiplier, which is customized for the region and industry.

The results are summarized in Table 2 below

TABLE 2. Total Annual Employment Impact of Proposed Development

	Base Value	Multiplier[a]	Industry Used for Multiplier Selection	Total Employment (Direct plus Indirect)[b]
Direct Employment	6	2.4970*	Rental and leasing services and lessors of intangible assets	14.982
Waste management	$80,000	13.1397	Waste management and remediation services	1.051
Maintenance	$650,000	14.8802	Household goods repair and maintenance	9.672
Marketing	$19,000	11.5398	Advertising and related services	0.219
TOTAL	-	-		25.924

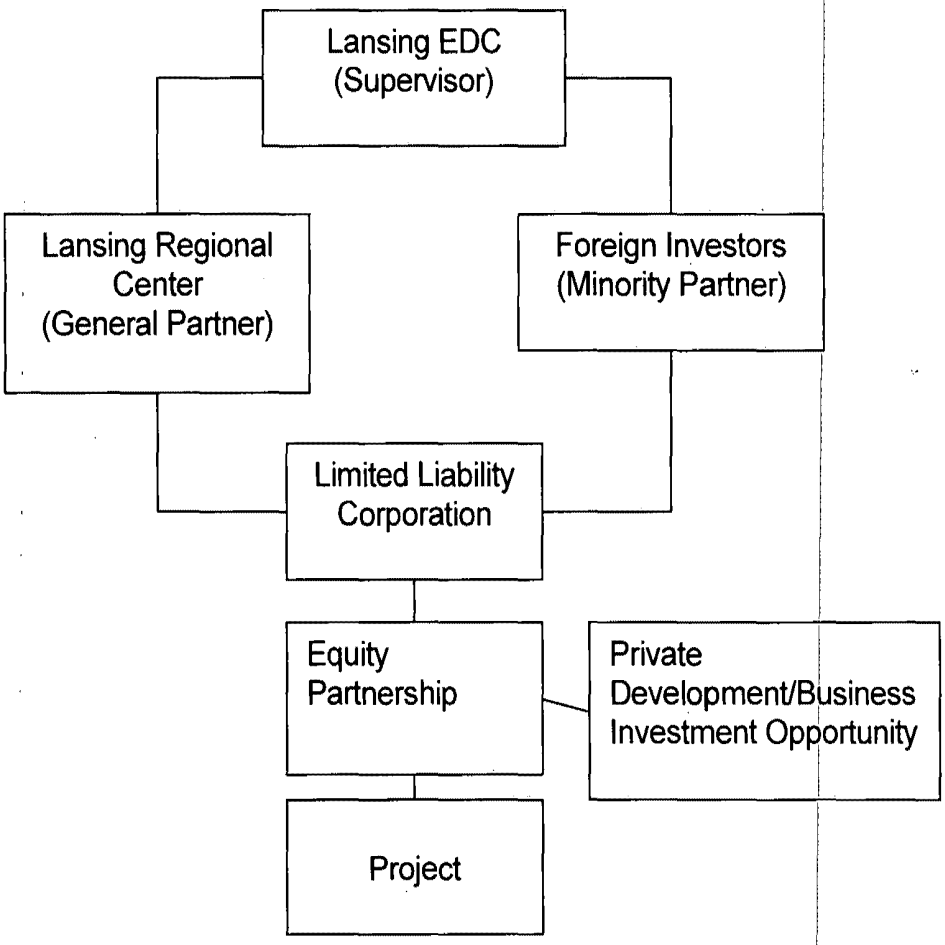
a.RIMS II final-demand employment multiplier for Lansing, Michigan MSA, which includes Ingham, Clinton, and Eaton Counties, unless otherwise noted by an asterisk (*) indicating the use of a direct-effect employment multiplier. Final-demand employment multipliers indicate the employment impact per million dollars spent in the specified industry.
b.Total employment is obtained by multiplying the base value by the multiplier.

As shown in Table 2, an example real estate development project, with the operating expenditures identified in Table 1, would create 25.924 jobs in the Lansing, Michigan MSA. This includes direct jobs in the City of Lansing, and indirect jobs in the local labor market, as defined by the surrounding MSA.

2.) Business Operations & Marketing Plan

Clarification of Submitted Draft Operating Agreement:
It was the intent of the submitted operating agreement to reflect the creation of a Limited Liability Corporation as specified in the revised operating structure (as seen below). The General Partner (Lansing Regional Center) will be created as a Limited Liability Corporation.

Revised Proposed Regional Center Structure:



Role of Lansing Economic Development Corp. (LEDC):
The LEDC will be retained as council pursuant to any advisory agreements entered into by the General Partner on behalf of each limited partnership to provide administrative services as follows:

- Identifying qualifying investments
- Completing due diligence in regards to proposed investments
- Monitoring qualifying investments for job creation and other EB-5 compliance requirements
- Providing accounting and reporting services for qualifying investments
- Assisting qualifying businesses in obtaining future financing

Role of Lansing Regional Center (LRC):
The LRC will operate as a limited liability company under the supervision of the Lansing EDC Board of Directors. LRC will have a separate independent board of directors which will provide oversight of the fund and direction to the LRC Manager. The LRC Director will be an employee of the Lansing EDC and will be in charge of day-to-day management of each limited partnership. Management responsibilities shall include:

- Marketing qualifying investments to limited partners
- Determining that qualified investments meet minimum criteria
- Assuring that investments generate job creation criteria set forth by the EB-5 Program
- Supervise investment to insure financial performance and continued EB-5 Program qualification
- Providing detailed financial reports to Limited Partners
- Maintenance of accounting books and records for each Limited Partnership
- Retaining all professional services that may be deemed necessary for each Limited Partnership
- Providing detailed financial and status reports to LRC & LEDC Boards of Directors

Investment Offerings:
Investment offering letters will be issued to prospective investors by the Lansing Regional Center's partnering legal firm Foster, Swift, Collins and Smith, P.C.

Articles of Incorporation:
Due to the organizational structure of the Lansing Economic Development Corporation it will be necessary for the LEDC Board to pass a resolution authorizing the creation of the new Limited Liability Corporation. Once the USCIS approves of the Lansing Regional Center proposal the LEDC Board will act immediately to authorize incorporation.

Expanded Marketing / Promotional Efforts

Lansing is an international community. The city has large immigrant and refugee populations as well as a significant international student body. Additionally the city is continuing to build upon its assets through its continually evolving Sister & Friendship City program, which is helping to elevate Lansing's international reputation to cultural and economic exchange in the global economy. The Lansing Regional Center plans to implement a multi-level marketing strategy to generate interest in open investment opportunities.

Target Audiences:

- Wealthy immigrants (currently residing in US)
- Wealthy immigrants (currently residing abroad)
- New enterprises & expanding foreign companies:
    - Circulate program through entire business community as potential financing mechanism- Global Business Club of Mid-Michigan, Small Business Association of Michigan, Greater Lansing Chamber of Commerce etc.
- MSU/Cooley Law School international students:
    - Opportunity to stay in familiar American city, can cultivate ties made here, can take job without as many barriers allowing for social roots to take hold, funding for new ventures and innovation.
    - Contact international student (exchange) office, contact immigration law office, provide talks, provide brochures, advertise and promote within alumni newsletter, advertise within university newspapers.
    - Partnerships between international students and global Lansing enterprises that do global business, internships.
- Employers of immigrants: Provide option for employer to fund (or assist) immigrant employee, or inform business of program so employer can inform employee.
    - Give talks, provide brochure, article in ea. business's newsletter
- Immigration attorneys & EB-5 brokers

Implementation:

1.) Leveraging Existing Business Relationships

The Lansing EDC has forged a number of relationships with many international and immigrant businessmen whom now call Lansing home yet are still very connected to the business communities in their respective home cities, and have volunteered to assist with the distribution of print materials as well as organize small symposiums for interested investors to gather information about the program.

2.) Leverage Existing International Organizations & Programming

It is of utmost importance that the Lansing Regional Center to utilize existing international programs to recruit potential investors and utilize this network to market projects to a global audience. Existing organizations and programs include:

- Lansing Regional Sister Cities Commission:

The Lansing Regional center will work within the city's strong international relationships formed within Sister Cities including relationships with:

- Otsu, Japan
- Guadelajara, Mexico
- St. Petersburg, Russia
- Saltillo, Mexico
- Sanming, China
- Akuapim, Ghana

- Michigan State University – Visiting International Professionals Program (VIPP)

Utilize the vast human capital leveraged by Michigan State University's VIPP program which hosts international professionals for educational programming at MSU. Some of these attendees are very well established business professionals and well have interest in the Lansing Regional Center and are also well connected in their home countries.

3.) Michigan Economic Development Corporation - Shanghai Office

The Lansing EDC has permission to distribute marketing materials through the Michigan EDC's Shanghai office in regards to the Lansing Regional Center. The MEDC is deeply entrenched within the Chinese business community recruiting companies to invest in Michigan and also assisting Michigan based companies with their expansions into China. Due to the nature of their daily operations, utilization of the MEDC will be critical in getting promotional materials in front of our target market.

Contact Info:

Harry C. Whalen
Manager International Business Development
State of Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913 U.S.A.
Tel: (1) 517.241.4554

Fax: (1) 517.241.3689
e-mail: whalenh@michigan.org

4.) Consulate General of the People's Republic of China

The Consulate General has agreed to assist the city of Lansing in marketing the Lansing Regional Center. This connection will allow a direct link to the Lansing Regional Center from the Consulate General's website, and provide a unique opportunity to foreign investors interested in Mid-west prospects.

Contact info:

Ping Huang
Consul General
Consulate-General of the People's Republic of China
Chicago, IL

5.) Fifth Third Bank International Offices

Fifth Third Bank has committed the company's International Desk, located in Brussels, Belgium, for distribution of marketing materials. In addition, Fifth Third has agreed to market the program to clients who will be potential users. This will be a key partnership as Fifth Third is seeking to expand their global presence and the Lansing Regional Center will be at the forefront of this expansion.

6.) Website

The Lansing Regional Center will also be marketed heavily on the internet through the Lansing EDC's website. The website design and deployment is being coordinated by Spartan Internet Consulting, which is a leading company in the field of internet marketing and strategic implementation. By utilizing cutting edge analytical tracking tools the website will be enabled to seek out potential investors and provide the Lansing Regional Center with unprecedented global exposure.

7.) Immigration Attorneys & EB-5 Brokers

When necessary, the Lansing EB-5 Regional Center will work with brokers in countries where this type of process is customary. Through the broker network the Lansing Regional Center will gain true global exposure.

8.) Greater Lansing Office of New Americans

Under the guidance of Lansing Mayor Virg Bernero, Michigan State University, and the Lansing Economic Area Partnership (LEAP) an initiative has been created that will position the greater Lansing region as a true international community. The Office of New Americans (ONA) is a new program under development that will coordinate all of the community's international assets to

ensure that greater Lansing has a unified voice to the global community. The following are just a few of the office's ambitious objectives: leverage regional business assets into global economic growth, assist in the welcoming of refugee populations including employment initiatives to ensure that we do not under-employ the population's vast intellect, implementation of new international business associations, and many other innovative programs to cater to the international community.

In an effort to securing funding for the launch of this initiative the Lansing EDC along with our partner organizations presented the initiative to Mr. Rick Foster, VP for Programs, W.K. Kellogg Foundation. The presentation was led by Dr. Soji Adelaja, Director of Michigan State University's Land Policy Institute, and was very well received by the W.K. Kellogg Foundation. So much so, that the Foundation has asked for a formal proposal and suggested that several hundred thousand dollars would be made available to launch a pilot program. The formal proposal is being drafted for submittal at this time.

9.) International Airports

Opportunity to increase international traffic, and reputation as international airport in an increasingly global city.

- Advertise heavily in international terminals, global internet website presence

3.) Administrative Oversight

Administration of the Lasing Regional Center will be handled by the Lansing Economic Development Corporation and its partnering institutions: Fifth Third Bank; Foster, Swift, Collins, and Smith P.C.; and Anderson Economic Group LLC. All proposed projects will be thoroughly vetted to ensure that the project complies with necessary job creation multipliers and will provide for a safe investment vehicle.

It is the intent of the Lansing Regional Center to create investment vehicles that would be funded solely by alien investor capital. However, it is possible that investor capital could be directed toward projects that would also have financing provided by private domestic capital.

The Lansing EDC has a fully functional records keeping operation which is utilized to ensure the safe keeping of the organization's incentive and loan programs and is familiar with standard auditing records keeping as associated with loan and investment programs.

Department of Homeland Security
U.S. Citizenship and Immigration Services

I–797E, Notice of Action

A #		Application/Petition
		I924, Application for Regional Center under Immigrant Investor Pilot Program
Receipt #		Application/Petitioner
RCW1031910174		Lansing Economic Development Corporation Regional Center
Notice Date	Page	Beneficiary
May 2, 2012	1 of 4	

Robert L. Trezise, JR.
C/O: Lansing Redevelopment Corporation
401 S. Washington Square, Suite 100
Lansing, MI 48933

Intent to Terminate Processing Coversheet

Notice also sent to:

RETURN THIS BLUE PROCESSING COVERSHEET ON TOP OF YOUR RESPONSE TO THE INTENT TO TERMINATE.

Note: You are given until June 1, 2012 in which to submit the requested information to the address at the bottom of this notice.

RESPONSE TO AN INTENT TO TERMINATE

For more information, visit our website at www.uscis.gov
Or call us at 1-800-375-5283

Telephone service for the hearing impaired: 1-800-767-1833

For non-US Postal Service
Attn: EB 5 RC Proposal
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

CSC4639 WS22090 DIV III AC

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

USCIS - CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0590
800-375-5283

RCW1031910174

Please see additional information on the reverse side.

Form I–797E (Rev. 05/05/06)

COPY

This Notice of Intent to Terminate affects the Lansing Economic Development Corporation Regional Center (LEDCRC) which was initially approved and designated as a qualifying regional center in the Immigrant Investor Pilot Program ("Pilot Program") by the U.S. Citizenship and Immigration Services (USCIS) on April 20, 2010, pursuant to Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended (Public Law 102-395).

I. PROCEDURAL HISTORY AND BACKGROUND

LEDCRC initial regional center designation Form I-924 regional center proposal was filed on March 11, 2009. LEDCRC was granted the regional center designation in order to promote the goals of the Pilot Program. LEDCRC was approved to attract immigrant investor capital into an area comprised of the city of Lansing, Michigan, focusing on loans to 3rd party enterprises and/or equity investments in real estate construction, renovation and management, and provide equipment for new and existing businesses. The LEDCRC shall focus the investment into new commercial enterprises to include the promotion of capital investment opportunities in the following target industry categories that were approved:

1. Mixed Use Development.
2. Hospitality/Tourism.
3. Manufacturing/Warehousing.
4. Information Tecnology/Biotechnology/Hi-tecnology.
5. Higher Education.

The purpose of this letter is to notify LEDCRC that USCIS intends to terminate the existing designation as a regional center for participation in the Pilot Program pursuant to 8 CFR § 204.6(m)(6). An explanation follows.

II. REGIONAL CENTER STATUTORY AND REGULATORY FRAMEWORK

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (Public Law 102-395), as amended, provides:

(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include

such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR § 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.

The regulation at 8 CFR § 204.6(m)(6) provides:

(6) Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved productivity, job creation, or increased domestic capital domestic in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of the regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR § 103.3, the regional center may appeal the decision to USCIS within 30 days after service of notice.

III. ANALYSIS

All designated regional centers must meet the EB-5 statutory and regulatory criteria in order to maintain a regional center within which immigrant investors seeking to obtain permanent resident status under INA § 203(b)(5) will be able to successfully invest in a new commercial enterprise (as described in 8 CFR § 204.6(h)) with a qualifying investment that will benefit the United States economy and create 10 jobs, including jobs indirectly created through the new commercial enterprise.

A. Timely Filing of the Form I-924A, Supplement to Form I-924

Title 8 Code of Federal Regulations at Part 204.6(m)(6) states that each regional center must demonstrate economic growth, improved regional productivity, job creation, or increased domestic capital investment by the submission of updated information on an annual basis, on a cumulative basis, and/or otherwise requested by USCIS to ensure each regional center continues to meet the requirements of section 610(a) of the Appropriations Act. The form that is used to demonstrate a regional center's continued eligibility for regional center designation is the Form I-924A, Supplement to Form I-924. Each designated regional center must file a Form I-924A for each fiscal year (October through September 30) within 90 days after the end of the fiscal year (on or before December 29) of the calendar year in which the fiscal year ended.

Failure to timely file a Form I-924 Supplement (Form I-924A) for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Pilot Program will result in the issuance of an intent to terminate the participation of the regional center in the Pilot Program, which may ultimately result in the termination of the approval and designation of the regional center.

USCIS records do not show that LEDCRC filed a Form I-924A, Supplement to Form I-924 for fiscal year 2011. Therefore, USCIS, hereby gives notice of its intent to terminate LEDCRC for failing to file Form I-924A.

You have 33 days from the date of this notice to submit a fully executed Form I-924A in accordance with the Form I-924A filing instructions. In the event LEDCRC does not respond within the timeframe noted above, or does not provide the required fully executed Form I-924A, then LEDCRC's designation as a regional center will be terminated and you will receive written notification of the final decision to terminate the LEDCRC regional center designation.

Please mail the fully executed Form I-924A to the address noted below, and include a copy of this letter on top of your submission.

USCIS California Service Center
P.O. Box 10526
Laguna Niguel, CA 92607-0526

If your submission is more than several pages, please use fasteners to attach the documents at the top of each page, accompanied by an index of exhibits.

U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

U.S. Citizenship and Immigration Services

April 20, 2010

Robert L Trezie, Jr.
C/O Lansing Redevelopment Corporation
401 S. Washington Sq. Suite 100
Lansing, MI 48933

W09000540

Application: Request for Designation as a Regional Center
Applicant(s): Robert L. Trezie, Jr.
Re: LEDC Regional Center

Pursuant to Section 610 of the Appropriations Act of 1993, on March 11, 2009, Robert L. Trezie, Jr., submitted a proposal seeking approval and designation by U.S. Citizenship and Immigration Services (USCIS) of the LEDIC Regional Center.

Based on its review and analysis of your proposal, and of your response to the USCIS Request For Evidence, USCIS hereby designates LEDC Regional Center as a Regional Center within the Immigrant Investor Pilot Program and approves the request as described below:

GEOGRAPHIC AREA:

The LEDC Regional Center shall have a geographic scope which includes the City of Lansing, Michigan.

FOCUS OF INVESTMENT ACTIVITY:

As depicted in the economic model, the general proposal and the economic analysis, the Regional Center will engage in the following economic activities: Loans to 3rd party enterprises and/or equity investments in real estate construction, renovation and management, and provide equipment for new and existing businesses.

The Regional Center for EB-5 Immigrant purposes shall focus investments into new commercial enterprises, in the following five (5) target industry economic clusters:

1. Mixed Use Development
2. Hospitality/Tourism
3. Manufacturing/Warehousing
4. Information Technology/Biotechnology/Hi-technology
5. Higher Education

If any investment opportunities arise that are beyond the scope of the approved industry clusters, then an amendment would be required to add that cluster.

Aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for these commercial enterprises located within the approved Regional Center area. For any alien requesting the reduced threshold of $500,000 based upon an investment in a Targeted Employment area, the alien must establish at the time of filing of the I-526 petition that either the investment will be made in a TEA designated area or was in a TEA designated area at the time of the alien's initial investment into the enterprise.

EMPLOYMENT CREATION

Immigrant investors who file petitions for commercial enterprises located in the Regional Center area must fulfill all of the requirements set forth in 8 CFR 204.6. The approved econometric model as described by the Regional Center is RIMS II. [1]

In addition, where job creation or preservation of existing jobs is claimed based on a multiplier rooted in underlying new "direct jobs", the immigrant investor's individual I-526 petition affiliated with your Regional Center, should include as supporting evidence:

- A comprehensive detailed business plan with supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of any new direct jobs for "qualifying employees" to be achieved/realized within two years pursuant to 8 CFR 204.6(j)(4)(B).

An alien investor's I-829 petition to remove the conditions which was based on an I-526 petition approval that involved the creation of new direct jobs or the creation of new indirect jobs based on a multiplier tied to underlying new direct jobs needs to be properly supported by evidence of job creation. To support the full number of direct and indirect new jobs being claimed in connection with removal of conditions, the petition will need to be supported by probative evidence of the number of new direct full time (35 hours per week) jobs for qualified employees whose positions have been created as a result of the alien's investment. Such evidence may include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of qualified employees whose jobs were created directly.

Additional Guidelines for individual Immigrant Investors Visa Petition (I-526)

Each individual petition, in order to demonstrate that it is associated with the Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain as supporting evidence relating to this Regional Center designation, the following:

1. A copy of this letter, the Regional Center approval and designation.

2. A comprehensive and detailed business plan for the specific job creating project(s) and/or investment activity.

3. A revised copy of the job creation methodology required in 8 CFR 204.6(j)(4)(iii).

4. A legally executed copy of any:

    a. Private Placement Memorandum;
    b. Subscription Agreement;
    c. Operating Agreement;
    d. Escrow Agreement, if any;

[1] A review of the economic analysis shows that the submitted data improperly calculates total employment. As the RIMS II multiplier measures both direct and indirect jobs in its calculation, there is no need to add direct employment to the RIMS II employment output total. However, because a revised calculation shows that sufficient jobs will be created using your exemplar plans; this issue has not precluded the approval of this proposal.

e. Organizational documents for the commercial enterprise.

DESIGNEE'S RESPONSIBILITIES INHERENT IN CONDUCT OF THE REGIONAL CENTER:

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year[2], commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the Regional Center responsible for the normal operation, management and administration of the Regional Center.

2. Be prepared to explain how you are administering the Regional Center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.

3. Be prepared to explain the following:

   a. How the Regional Center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.

   b. How the Regional Center is actively engaged in the ongoing monitoring, evaluation, oversight and follow up on any investor commercial activity affiliated through the Regional Center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the Regional Center.

4. Be prepared to provide:

   a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
      i. the petition was filed,
      ii. was approved,
      iii. denied, or
      iv. withdrawn by the petitioner, together with the date(s) of such event.

   b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted.

   c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.

   d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.

[2] A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

e. For each alien investor listed in item 4.a., above, identify the following:

i. the date(s) of investment in the commercial enterprise;

ii. the amount(s) of investment in the commercial enterprise; and

iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or Regional Center from when the investment was initiated to the present.

5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your Regional Center that have:

a. received alien investors' capital, and in what aggregate amounts;

b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;

c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
i. The name and address of each "direct" job creating commercial enterprise.
ii. The industry category for each indirect job creating investment activity.

6. Be prepared to provide:

a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your Regional Center.

b. The total aggregate number of approved EB-5 alien investor I-829 petitions per each Federal Fiscal Year to date through your Regional Center.

7. The total aggregate sum of EB-5 alien capital invested through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your Regional Center for each Federal Fiscal Year to date since your approval and designation.

10. If for any given Federal Fiscal Year your Regional Center did or does not have investors to report, then provide:

a. a detailed written explanation for the inactivity,

b. a specific plan which specifies the budget, timelines, milestones and critical steps to:

i. actively promote your Regional Center program,

ii. identify and recruit legitimate and viable alien investors, and

iii. a strategy to invest into job creating enterprises and/or investment activities within the Regional Center.

11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your Regional Center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your Regional Center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.

12. Finally, please be aware that it is incumbent on each USCIS approved and designated Regional Center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:

- the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
- the management and administration of the RC,
- the RC structure,
- the RC mailing address, web site address, email address, phone and fax number,
- the scope of the RC operations and focus,
- the RC business plan,
- any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
- the economic focus of the RC, or
- any material change relating to your Regional Center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the Regional Center approval and designation under the Immigrant Investor Pilot Program, please contact the USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,

Christina Poulos
Director
California Service Center

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c/o Ken Szymanski
401 S. Washington Sq., Ste 1-a
Lansing, MI 48933

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Laguna Niguel CA

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U.S. Citizenship + Immigration Services
ATTN: EB5 RC Proposal
California Service Center
P.O. Box 10590
Laguna Niguel, CA

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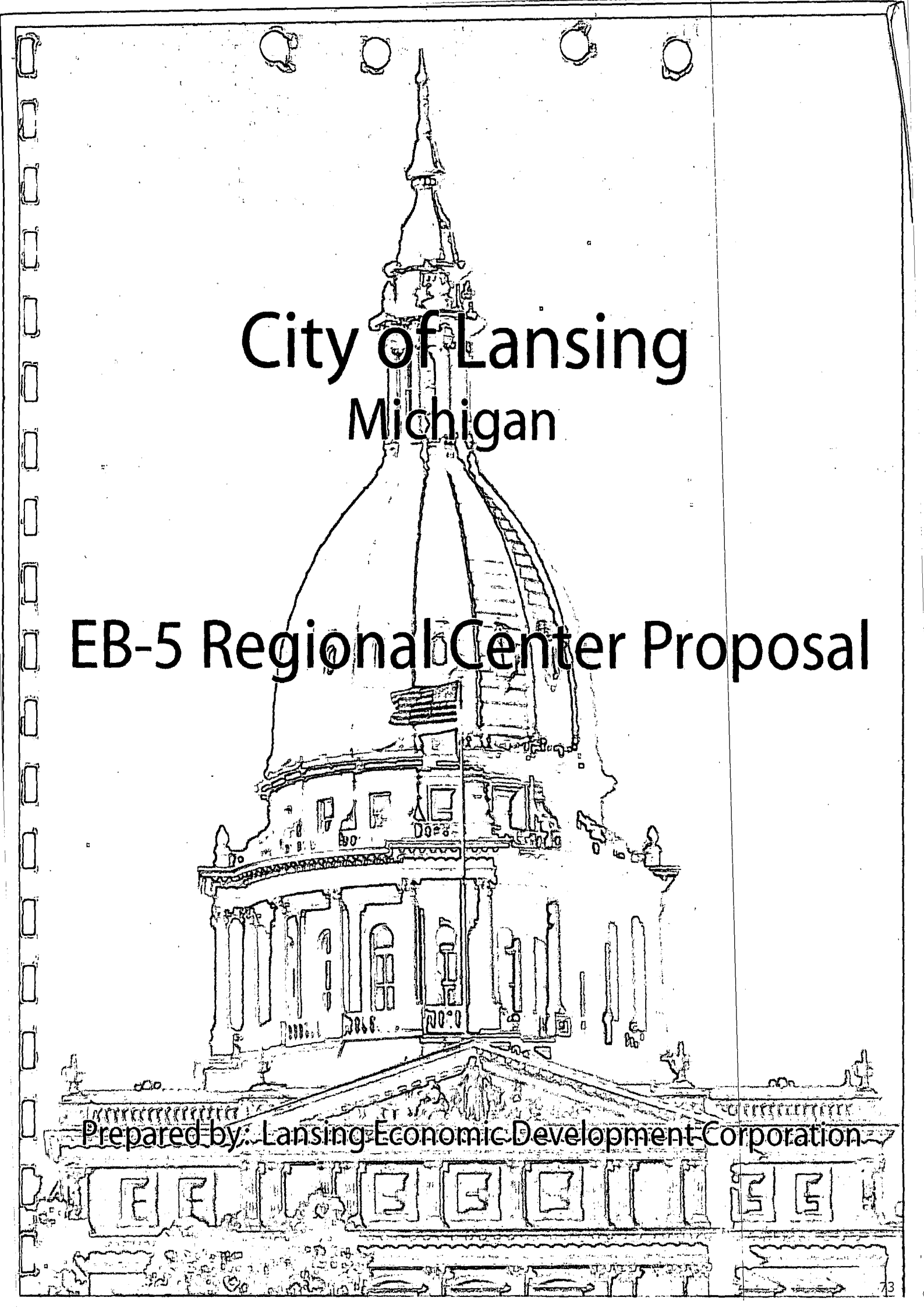

City of Lansing
Michigan

EB-5 Regional Center Proposal

Prepared by: Lansing Economic Development Corporation

LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Virg Bernero, Mayor

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Ms. Barbara Q. Velarde
Chief, Office of Service Center Operations
20 Massachusetts Ave., NW
Room 2123
Washington, D.C. 20529

Dear Ms. Velarde:

It is the objective of the Lansing Economic Development Corporation (LEDC) to obtain an EB-5 Regional Center designation for the city of Lansing, with the intent of utilizing foreign investment to spur economic development within the city and the entire Greater Lansing region. Michigan's recent economic struggles and those related to the automotive industry have had a profound impact on Lansing's economic makeup. The LEDC feels that by utilizing the EB-5 investment program the city can better leverage our assets and position Lansing as a leader in Michigan's economic rebound.

Like most mid-western industrial cities, the core community of Lansing has been decimated by urban sprawl of surrounding townships, high unemployment, aging infrastructure, contaminated properties, declining public school systems, and high property taxes. Additionally the city has seen unemployment rates grow to over 150% of the national average.

However, even with the many challenges the city faces there is plenty of optimism. In the past two years there has been a renewed interest in downtown development and the city has made huge strides:

- New private investment exceeding $600 million dollars over the past two years.
- 897% increase in private investment since 2005.
- 443% increase in private job creation since 2005.
- 277% increase in job retention since 2005.

The LEDC Regional Center intends to capitalize on recent momentum by focusing foreign investment toward target markets and industries that have proven successful track records and a demonstrated need in our community. These markets include:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism

- Manufacturing / Warehousing
- Info-, Bio-, & High- Technology Companies
- Higher Education

Lansing continues to emerge as a true urban destination as well as a hub for technological innovation. Increased demand for investment capital has presented unprecedented opportunities and the implementation of the EB-5 Regional Center program will allow the city to open its doors to international capital and position itself as a city that is receptive to the global economy. I appreciate your consideration of our request and look forward to your concurrence with our proposal.

Sincerely,

Robert L. Trezise, Jr.
President & CEO
Lansing Economic Development Corporation

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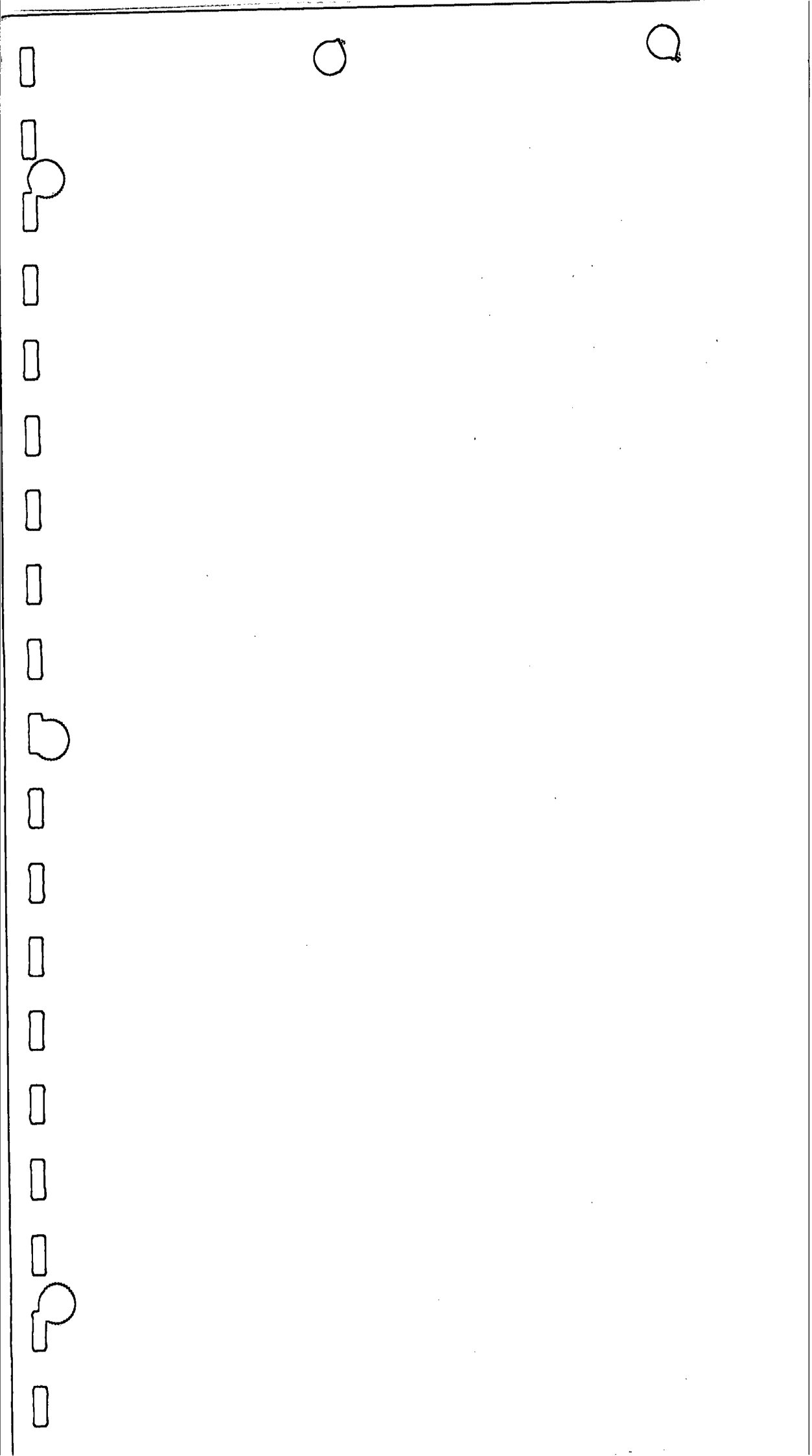
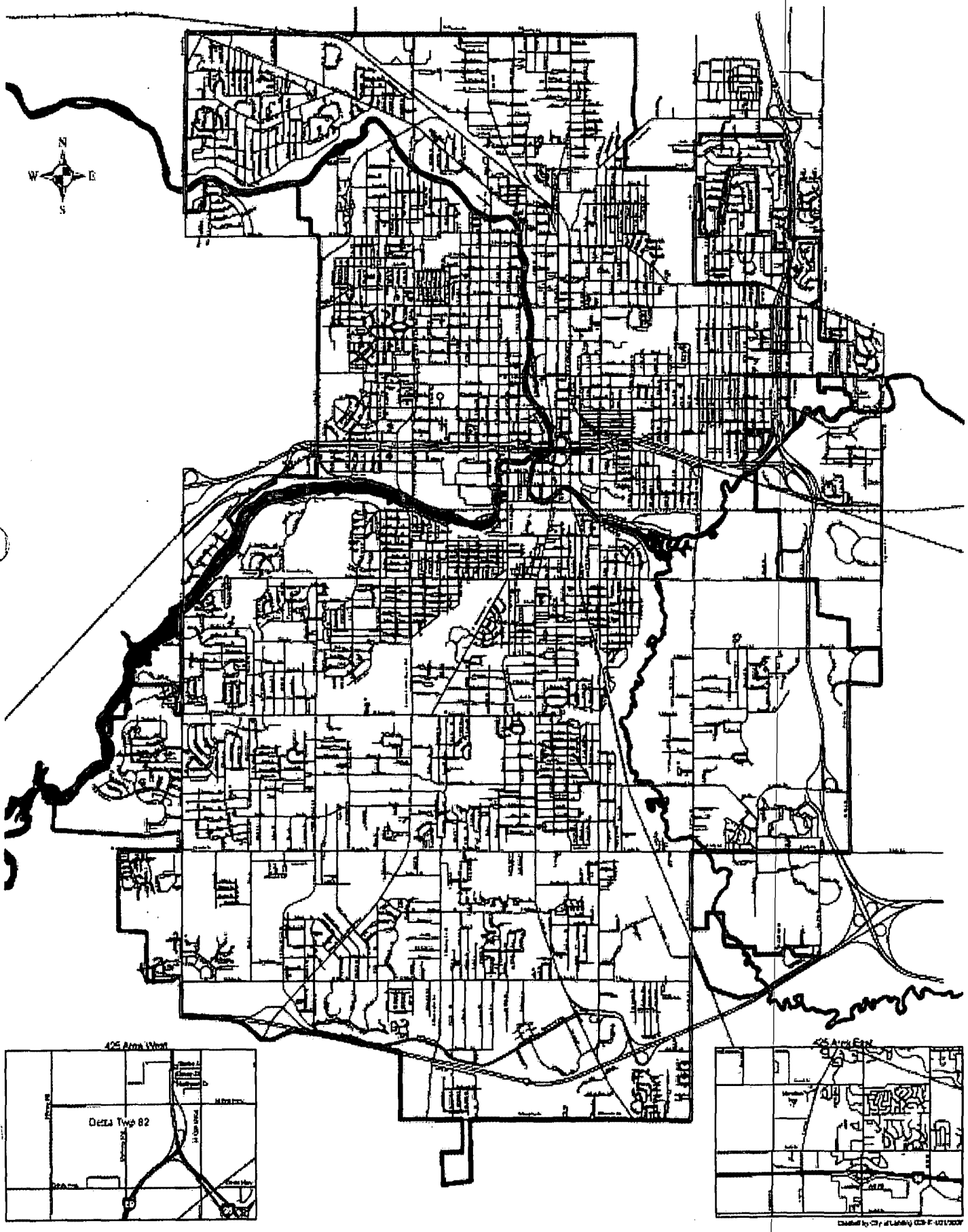


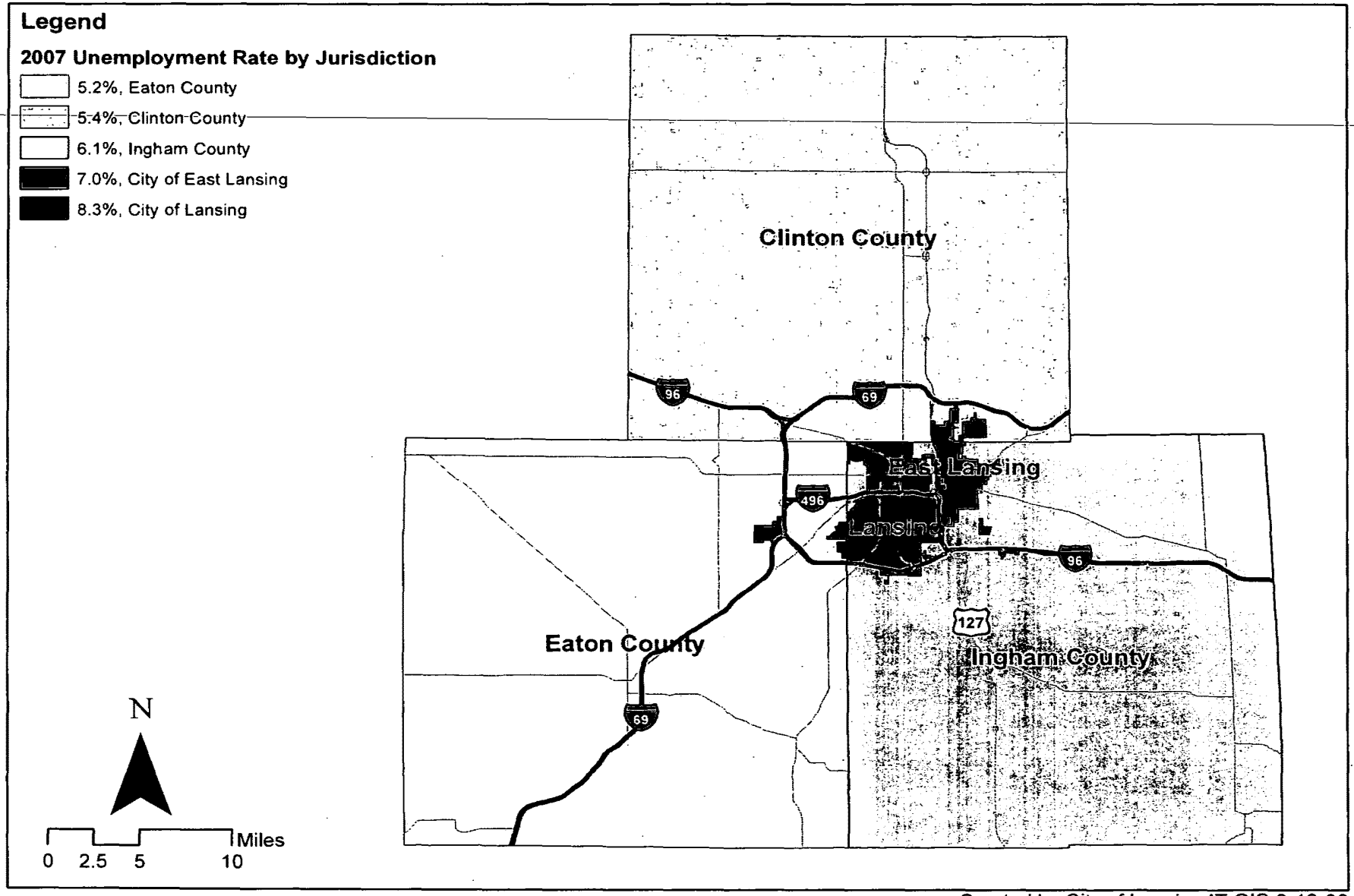
Description of Geographical Boundary

The Lansing Regional Center will invest all EB-5 funds within the geographic boundaries of the city of Lansing including all applicable properties subject to State of Michigan Public Act 425 agreements. The boundary of the proposed Regional Center is graphically represented in the attached map.

City of Lansing



2007 Year End Unemployment



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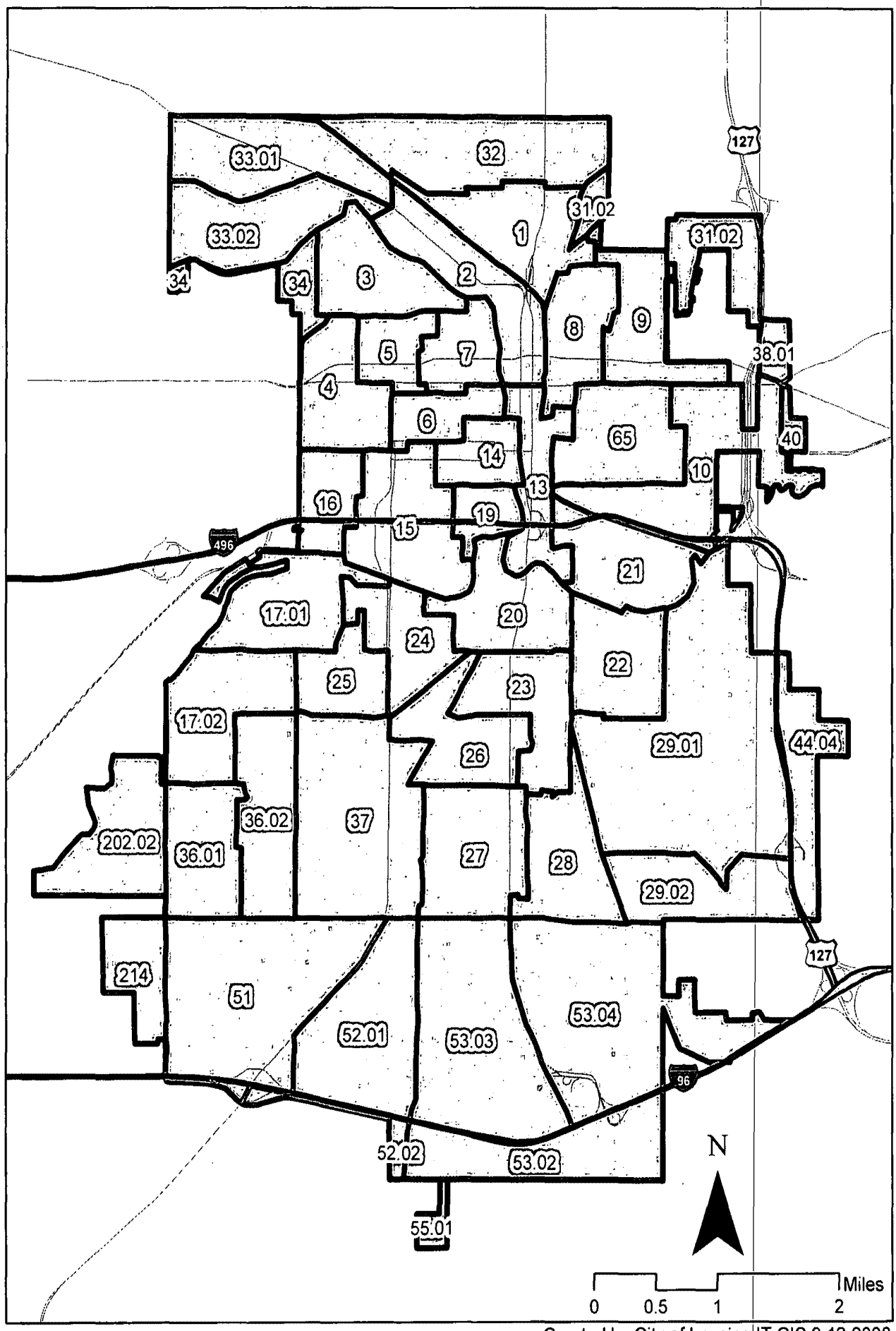
City of Lansing 2000 Census Tracts



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Investment Objectives & Target Industries

Investment Objectives:
It is the intent of the Lansing Regional Center to serve as an equity partner in qualified companies or projects which will provide investors with minimized risk, and favorable return on investment while contributing to the economic growth of the City of Lansing and subsequently the Greater Lansing Region.

Target Investments:
Business investment and development in the City of Lansing through the Lansing Regional Center will focus on key industries which show strong indications of growing market demand, expansion capabilities, growing employment demand and high returns on investment. The Lansing Regional Center will focus on investing in projects within the following target markets:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism
- Manufacturing / Warehousing
- Info-, Bio-, & High-Technology
- Higher Education

Mixed-use Urban Real Estate Development: In the past 3 years downtown Lansing has emerged as the premier urban live / work destination in mid-Michigan and has yet to meet capacity in this regard. The central business district continues to regain market share in regards to commercial office space as companies seek to abandon ubiquitous sprawling township office parks for true urban offices that are essential to attracting today's young urban oriented talent. In fact the majority of the city's new residential and retail units, 450 units in 3 years, have been brought online with almost 100% absorption and the trend is not slowing. The Lansing Regional Center looks to accelerate this progress by partnering with real estate developers to transform downtown with new projects that will meet and appeal to the demand currently created by the city's large student population and growing young professional crowd. The presence of three world class higher education providers in Michigan State University, Cooley Law School, and Lansing Community College have provided the region with an unbelievable talent pool and a population searching for new urban living and entertainment options. Examples of such projects include loft condominiums and apartments, street level bars and restaurants, new class A office space, cutting edge entertainment venues, and entrepreneurial incubator space. As the global economy continues to expand, new opportunities are being created that encourage our young talent pool to stay and grow the city and state, and the Lansing Regional Center will be a key component in creating a true vibrant urban community essential to the retention of these talented

individuals and entrepreneurial businesses.

Hospitality / Tourism: Recently the city of Lansing has also become a true entertainment and conference mecca, which is no wonder given the region's abundant resources:

- The 120,000 s.f. municipally owned Lansing Center is the region's premier conference and banquet facility and host to plethora of meetings, trade shows, and special events.
- The enormously successful Lansing Lugnuts baseball franchise, the Class A Midwest League affiliate of the Toronto Blue Jays; and their magnificent Oldsmobile Park Stadium constructed in 1996.
- The nationally recognized week long Common Ground Music Festival with over 30 bands on 3 stages, which has doubled in attendance to nearly 100,000 spectators over the past 5 years.
- The Wharton Center for the Performing Arts located at Michigan State University, which in 2006 ranked #5 in attendance among global theater venues ahead of some of the world's most storied venues including the Radio City Music Hall and Royal Albert Hall.

The city, working in tandem with the Greater Lansing Convention and Visitors Bureau, and the Lansing Entertainment & Public Facilities Authority plans to continually invest in marketing a strong tourism and convention industry supported by new real estate development, expanding entertainment opportunities, and a centralized location. The Lansing Regional Center will target specific tourism related projects including downtown hotels, convention center expansion plans, a new performing arts center, and the creation of a state of the art movie studio soundstage to accommodate Michigan's rapidly growing film industry.

Manufacturing / Warehousing: From the founding of Oldsmobile to the two most advanced and new manufacturing plants in the General Motor's portfolio, Lansing has a deep history in manufacturing. In addition to GM, Lansing is home to some the world's largest manufacturing companies including Barnes Aerospace, Pratt & Whitney, and Johnson Controls. Yet, like many mid-Western cities, Lansing has also faced the problems of a manufacturing dependent economy and the growing pains associated with increased global competition. However, through entrepreneurship, university research, and utilization of the city's highly trained workforce; new niche market high-tech manufacturing opportunities are arising. Innovative companies such as Demmer Corporation and Niowave Inc, are each respectively leading the way in defense contracting and particle accelerator technologies. In fact, through diversification, as well as aggressive action by the Lansing EDC, Demmer Corporation has added over 1,000 new employees in the last 3 years! And the future of manufacturing in Lansing continues to brighten as new innovative manufacturing companies utilizing Michigan State University patents and research are continuously emerging

with technologies the world has never seen before. These companies present tremendous growth opportunities as well as the potential for enormous international product export potential. The Lansing Regional Center will invest in projects related to the growth of this rapidly diversifying sector including investment in product warehousing, manufacturing incubators, company expansion, and capital for university patented technology start-ups.

Info-, Bio-, High- Technology: In recent years Lansing has quickly become a hub of growth in the fields of information and bio-technology. Between 1998 and 2004, the greater Lansing Information Technology industry grew by 20 percent, which is about seven times faster than the rate for all jobs. This continued growth can be attributed to the number of institutions of higher learning and the availability of talent in the Lansing region. This growth potential has led to recent announcements that will not only transform Greater Lansing's regional economy, but possibly the world. It was recently announced that Michigan State University will serve as the home of the Facility for Rare Isotope Beams (FRIB) furthering MSU's prowess as the nation's premier institution for particle acceleration research. Additionally, IBM recently announced the creation of a new Global Data Center at MSU, the first of its kind in the United States. Even with all of the success, when compared to other regions Lansing has yet to reach full potential for growth in this sector. Lansing Regional Center funds will focus investment to encourage entrepreneurship and assist rapidly growing companies. Investments may include high-tech incubator development, university/student entrepreneur incubator development, start-up capital investment, as well as storage and laboratory services.

Higher Education: The greater Lansing region is home to a very large number of higher education institutions which continue to gain global influence. The Lansing Regional Center will be uniquely positioned to assist these institutions with the expansion of educational and research related facilities. Potential projects would involve the following institutions:

- Michigan State University – One of the world's largest universities (42,000+ students) and home of some of the world's leading research including the newly awarded site for the Facility for Rare Isotope Beams (FRIB) which further enhances MSU's prowess as the leader in atomic research.
- Lansing Community College – Home of 20,000+ students, a provider of outstanding vocational degrees and certifications, as well as a feeder for Bachelors degree programs to the State of Michigan's finest universities.
- Thomas M. Cooley Law School - The nation's largest and most diverse law school with a student base of approximately 3,000.

Economic Impact Modeling

The Lansing Regional Center will utilize the United States Bureau of Economic Analysis RIMS II modeling system as the primary mechanism for determining indirect job creation associated with immigrant invested funds. However, it is important to note that, depending on the target industry, it is the intent of the Lansing Regional Center to invest in projects that will be able to reflect direct employment creation figures that will satisfy EB-5 Regional Center requirements.

Due to the diversity of target industries to which investment will flow through the Lansing Regional Center it is our conclusion that the RIMS II modeling system will provide the most accurate depiction of the investments within our regional economy. Each investment will be analyzed thoroughly prior to fund disbursement to ensure that employment growth expectations will be attained. For example, sectors such as mixed-use real estate development projects may require the use of industry specific ratios associated with employment and square footage. When these ratios are utilized, all sources of information will be obtained from leading industry resources and all citation and contacts will be provided with EB-5 verification reports.

Information regarding the use of RIMS II multipliers as well as applicable multipliers for the Greater Lansing Region can be found on immediately following pages.

Greater Lansing RIMS II Economic Multipliers

INDUSTRY	Multiplier					
	Final Demand				Direct Effect	
	Output (dollars)	Earnings (dollars)	Employment (jobs)	Value-added (dollars)	Earnings (dollars)	Employment (jobs)
Agriculture, forestry, fishing, and hunting						
1 Crop and Animla Production	1.7922	0.2667	15.7506	0.7795	2.6219	1.6602
2 Forestry and Fishing and related activities	1.9029	0.7725	36.0869	0.9631	1.411	1.2619
Mining						
3 Oil and gas extraction	1.3974	0.3443	6.4346	0.86	1.4303	1.983
4 Mining, except oil and gas	1.4103	0.2784	5.3944	0.8379	1.591	2.2288
5 Support activities for mining	1.5358	0.2681	5.9544	0.8328	2.3206	2.6867
Utilities						
6 Utilities	1.2917	0.2088	3.563	0.7735	1.576	2.7917
Construction						
7 Construction	1.7612	0.5283	14.6427	0.9368	1.6191	1.7722
Manufacturing						
8 Wood product manufacturing	1.6151	0.2984	8.3259	0.6644	2.0124	2.0842
9 Nonmetallic mineral product manufacturing	1.6939	0.4245	9.4985	0.8248	1.7179	2.1508
10 Primary metals manufacturing	1.4964	0.3217	6.7138	0.551	1.6718	2.2166
11 Fabricated metal product manufacturing	1.5853	0.3467	8.3438	0.7416	1.7581	1.922
12 Machinery manufacturing	1.6245	0.4269	9.1841	0.7429	1.6323	2.036
13 Computer and electronic product manufacturing	1.6376	0.403	8.7283	0.7307	1.7491	2.1982
14 Electrical equipment and appliance manufacturing	1.525	0.3639	7.532	0.6783	1.6079	2.0699
15 Motor vehicle, body, trailer, and parts manufacturing	2.0233	0.299	6.6231	0.609	3.028	4.8381
16 Other transportation equipment manufacturing	1.4425	0.3082	6.0647	0.7052	1.6101	2.223
17 Furniture and related product manufacturing	1.7042	0.3159	7.847	0.7521	2.2403	2.5685
18 Miscellaneous manufacturing	1.6943	0.5506	10.7663	0.8572	1.4978	2.0207
19 Food, beverage, and tobacco product manufacturing	1.8604	0.3157	9.1893	0.6888	2.676	3.57
20 Textile and textile product mills	1.5375	0.3249	8.6956	0.5825	1.7616	1.8489
21 Apparel, leather, and allied product manufacturing	1.6099	0.4527	13.7619	0.8624	1.5809	1.5929
22 Paper manufacturing	1.4545	0.2519	5.6124	0.5764	1.9417	2.4672
23 Printing and related support activities	1.6368	0.4599	11.7742	0.8341	1.5809	1.732
24 Petroleum and coal products manufacturing	1	0	0	0	0	0
25 Chemical manufacturing	1.552	0.2637	5.0432	0.6315	2.1253	3.6404
26 Plastics and rubber products manufacturing	1.6051	0.257	6.1267	0.6552	2.1934	2.4269
Wholesale Trade						
27 Wholesale Trade	1.6381	0.4584	10.0223	1.0328	1.5921	2.0622
Retail Trade						
28 Retail Trade	1.721	0.4858	19.5613	1.0496	1.6155	1.393
Transportation & Warehousing						
29 Air transportation	1.5292	0.3618	8.2959	0.6543	1.6921	2.4061
30 Rail transportation	1.3601	0.1882	3.9612	0.7856	2.065	3.1778
31 Water transportation	1	0	0	0	0	0
32 Truck transportation	1.7979	0.464	12.4267	0.9155	1.8328	1.9883
33 Transit and ground passenger transportation	1.752	0.5475	24.6993	0.9177	1.5708	1.3314
34 Pipeline transportation	1.4715	0.2409	5.0892	0.6125	2.2323	3.5516
35 Other transportation and support actitivites	1.6927	0.6538	15.6905	1.175	1.3804	1.6005
36 Warehousing and storage	1.7588	0.6671	18.9673	1.2117	1.3893	1.4734
Information						
37 Publishing including software	1.7662	0.4406	9.9805	0.9795	1.8789	2.5901
38 Motion picture and sound recording	1.7177	0.4339	18.1524	0.8699	1.744	1.4724
39 Broadcasting and telecommunications	1.606	0.2917	6.7644	0.7972	2.1413	2.8483
40 Information and data processing services	1.7975	0.3486	9.7329	0.8976	2.5657	2.9658
Finance and Insurance						
41 Federal Reserve banks, credit intermediation and related services	1.4555	0.3326	7.557	1.0366	1.5731	1.9725
42 Securities, commodity contracts, investments	1.8851	0.6584	18.1622	1.0453	1.5516	1.6312
43 Insurance carriers and related actiivities	2.2097	0.5395	12.3695	1.0737	2.2495	2.6908
44 Funds, trusts, and other financial vehicles	1.6004	0.3734	8.2568	0.5798	1.8892	2.5757
Real estate and rental and leasing						
45 Real estate	1.3804	0.1496	5.0332	0.9229	2.7249	2.2475
46 Rental and leasing services and lessors of tangible assets	1.758	0.255	8.0042	0.8334	4.0137	3.5711
Professional, scientific, and technical services						
47 Professional, scientific, and technical services	1.8215	0.6314	13.9678	1.1083	1.5304	1.98

Management of companies and enterprises						
48 Management of companies and enterprises	1.9009	0.6401	11.3205	1.1328	1.5604	2.4951
Administrative and waste management services						
49 Administrative and support services	1.7623	0.5828	21.7553	1.0665	1.5277	1.4242
) Waste management and remediation services	1.7841	0.4313	11.0674	0.9108	1.8586	2.1906
Educational services						
51 Educational services	1.8925	0.658	28.0063	1.1162	1.4825	1.338
Health care and social assistance						
52 Ambulatory health care services	1.8192	0.6525	15.84	1.1498	1.4943	1.7531
53 Hospitals and nursing and residential care facilities	1.8478	0.6009	17.0924	1.0446	1.5613	1.6854
54 Social assistance	1.8683	0.6878	42.8046	1.109	1.4743	1.1961
Arts, entertainment, and recreation						
55 Performing arts, museums, and related activities	1.7942	0.5945	25.7107	1.149	1.5351	1.3694
56 Amusements, gambling, and recreation	1.6959	0.4616	20.3168	1.0421	1.5916	1.3502
Accomodation and food services						
57 Accomodation	1.6652	0.4583	20.2805	1.0045	1.597	1.352
58 Food services and drinking places	1.6995	0.4379	26.9427	0.8853	1.5965	1.2382
Other services						
59 Other services	1.8712	0.5386	20.7486	0.9914	1.6864	1.4896
Households						
60 Households	1.1215	0.2912	9.8777	0.6526	0	0

RIMS II Multipliers for Output, Earnings, and Employment

RIMS II provides users with five types of multipliers: Final-demand multipliers for output, for earnings, and for employment and direct-effect multipliers for earnings and for employment. These multipliers measure the economic impact of a change in final demand, in earnings, or in employment on a region's economy.[6] This section defines the RIMS II multipliers and gives brief examples of their use. (For a detailed discussion of the source data and methods used in the derivation of the RIMS II multipliers, see appendix A.)

Final-Demand Multipliers for Output

The final-demand multipliers for output are the basic multipliers from which all the other RIMS II multipliers are derived. They are presented in the final-demand output multiplier table. (For a sample of this table, designated as table 1.1, see appendix D.) In this table, each column entry indicates the change in output in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional output is calculated by multiplying the final-demand change in the column industry by the sum of all the multipliers for each row except the household row.[7]

For example, suppose that final demand in the food products machinery industry in the Kansas City BEA economic area (hereafter called the Kansas City economic area) increases by $1 million.[8] The effect of this increase in output on output in each industry in the economic area is calculated from the column of final-demand output multipliers for the food products machinery industry (summarized in column 1 in table A).[9] According to these calculations, the output of the farm products and agricultural, forestry, and fishing services industry increases by $15,000 (0.0150 times $1 million); the output of the industrial machinery and equipment industry, which includes the food products machinery industry, increases by $1.0393 million (1.0393 times $1 million); and total output in the economic area increases by $2.0655 million (2.0655 times $1 million).

Table A.—Final-Demand Multipliers for the Food Products Machinery Industry, Kansas City, MO-KS Economic Area

Industry	Output (dollars)	Earnings (dollars)	Employment[1] (jobs)
	(1)	(2)	(3)
Farm products and agricultural, forestry, and fishing services	0.0150	0.0036	0.2846
Industrial machinery and equipment	1.0393	.3072	9.8743
All other industries	1.0112	.2983	14.1743
Total	2.0655	.6091	24.3332

1. The employment multiplier is measured on the basis of a $1 million change in output delivered to final demand.

Multipliers for Earnings

RIMS II provides two types of multipliers for estimating the impacts of changes on earnings: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for earnings can be used if data on final-demand changes are available. In the final-demand earnings multiplier table, each column entry indicates the change in earnings in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact

6. The term "change in final demand," rather than the "change in output delivered to final users," is used in this handbook because of its widespread use in regional impact analysis.

The impact of an increase in final demand, earnings, or employment differs from that of a decline only by the sign of the impact.

7. The household row is excluded to avoid double counting, because each of the other row entries already includes earnings paid to households.

8. For a listing of the 1721A BEA economic areas and associated metropolitan areas, see appendix E . For a discussion of the procedure used to define the BEA economic areas, see Kenneth P. Johnson, "Redefinition of the BEA Economic Areas," SURVEY OF CURRENT BUSINESS 75 (February 1995): 75–81.

9. For the complete final-demand output multiplier table for this economic area, see RIMS table 1.1 in appendix D.

on regional earnings is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on earnings in each industry in the Kansas City economic area is calculated from the multipliers for earnings in column 2 in table A . According to these calculations, earnings in the farm products and agricultural, forestry, and fishing services industry increases by $3,600 (0.0036 times $1 million); earnings in the industrial machinery and equipment industry increases by $307,200 (0.3072 times $1 million); and total earnings in the economic area increases by $609,100 (0.6091 times $1 million).

The direct-effect multipliers for earnings can be used if data on the initial changes in earnings by industry are available. In the direct-effect earnings multiplier table, each entry indicates the total change in earnings in the region that results from a $1 change in earnings in the row industry. The total impact on regional earnings is calculated by multiplying the initial change in earnings in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that workers in the industry will have additional annual earnings of $1 million. The effect of this increase on total earnings in the economic area is calculated by multiplying the initial change in earnings of $1 million by the multiplier in the row for the food products machinery industry in the direct-effect earnings multiplier table. The multiplier is 2.0829, so the total impact on the economic area is an earnings increase of $2.0829 million (2.0829 times $1 million).[10]

Multipliers for Employment

RIMS II provides two types of multipliers for estimating the impacts of changes on employment: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for employment can be used if data on final-demand changes are available. In the final-demand employment multiplier table, each column entry indicates the change in employment in each row industry that results from a $1 million change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional employment is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on employment in each industry in the Kansas City economic area is calculated from the multipliers for employment in column 3 in table A . According to these calculations, employment in the farm products and agricultural, forestry, and fishing services industry increases by 0.2846 jobs (0.2846 times 1 for each $1 million change in final demand); employment in the industrial machinery and equipment industry increases by 9.8743 jobs (9.8743 times 1); and total employment in the economic area increases by 24.3332 jobs (24.3332 times 1).

The direct-effect multipliers for employment can be used if data on the initial changes in employment by industry are available. In the direct-effect employment multiplier table, each entry indicates the total change in employment in the region that results from a change of one job in the row industry. The total impact on regional employment is calculated by multiplying the initial change in employment in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that 1,000 new jobs in the industry are created. The effect of this increase on total employment in the economic area is calculated by multiplying the initial change in employment of 1,000 jobs by the multiplier in the row for the food products machinery industry in the direct-effect employment multiplier table. The multiplier is 2.601, so the total impact on the economic area is 2,601 new jobs (2.601 times 1,000).[11]

Choosing a Multiplier

The choice of multiplier for estimating the impact of a project on output, earnings, and employment depends on the availability of estimates of the initial changes in final demand, earnings, and employment. If the estimates of the initial changes in all three measures are available, the RIMS II user can select any of the RIMS II multipliers. To assess the reasonableness of the impact estimates based on the multiplier selected, the user can compare these estimates with the estimates based on the other multipliers. In theory, all the impact estimates should be consistent.[12]

10. The multiplier is from RIMS table 1.4, which is not included in this handbook.

11. The multiplier is from RIMS table 1.4, which is not included in this handbook.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect

In theory, all the impact estimates should be consistent.[12] If the available estimates are limited to initial changes in final demand, the user can select a final-demand multiplier for impact estimation. If the available estimates are limited to initial changes in earnings or employment, the user can select a direct-effect multiplier.[13]

In some instances, such as estimating the impact of shutting down an industry in a region, the user must select the output-driven multiplier for impact estimation.[14] The output-driven multiplier measures the change in output in each row industry that results from a $1 change in total industry output in the column industry under study. Using the output-driven multiplier instead of the final-demand output multiplier ensures that the impact of the industry's shutdown on its own output will not exceed that output.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect national average relationships between output and earnings (or employment). In contrast, the impact estimates based on the product of the initial change in earnings (or employment) and the direct-effect multiplier for earnings (or employment) reflect regional relationships between output and earnings (or employment). If the regional relationships differ from the national relationships, the two sets of estimates will differ and the estimates based on the direct-effect multipliers are preferable.

13. In this instance, the user typically estimates earnings or employment impacts. However, by converting the initial changes in earnings or employment into final-demand changes, the user can also estimate output impacts. For the conversion method, see the section "Initial Changes."

14. This multiplier, though not a part of RIMS II, can be derived from the final-demand output multiplier table. See appendix A.

Lansing Regional Center Operational Finances

It is the intent of the Lansing Economic Development Corporation to incorporate the expenses of Lansing Regional Center activities within the fiscal year 2008-2009 into the LEDC's current budget (see attached) ending June 30th, 2009. This funding will be continued with subsequent budgets.

Operating Budget (Application – June 30, 2009)

Director's Salary (20 hrs / week):	$10,750
Marketing / Promotions:	$ 8,000
Legal / Audit:	$ 3,000

The LEDC will be requesting a $38,590 budget increase for fiscal year 2009-2010, and the program has the support of the administration in this request.

Operating Budget (July 1, 2009 – June 30, 2010)

Director's Salary (fulltime):	$ 58,000
Marketing / Promotions:	$ 25,000
Legal / Audit:	$ 15,000

Funds related to the EB-5 Regional Center will be allocated from the LEDC's yearly services contract with the city of Lansing.

Additionally, the LRC plans to assess a $30,000 non-refundable application fee in addition to an investors required capital investment which will be used for administrative and legal costs. Understanding that marketing and staff costs will accrue prior to the receipt of immigrant investment funds, the LRC plans to utilize the LEDC budget as previously stated.

The allocated funds will sustain the EB-5 Program with sufficient emphasis on marketing and legal, as well as adequate staffing expenses.

The LEDC has the sole discretion over the use of all allocated budget funds. Because the LEDC will serve as director of the EB-5 Regional Center all funds will be secure.

LANSING ECONOMIC DEVELOPMENT CORPORATION FY 2009 BUDGET

OPERATIONAL REVENUES

Account Code	Description	FY 2008 Budget	As of 5/2 FY 2008 Actual Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.600002	Parking System Revenue	12,000	2,550	14,576	2,576	12,000	-
280.616101	Application Fees (Non-Brownfield)	19,500	18,000	18,500	(1,000)	13,000	(6,500)
280.616102.	Brownfield Application Fees	7,500	34,500	34,500	27,000	14,000	6,500
280.635003	Contract Service LBRA (Admin Fee)	62,319	72,051	72,051.00	9,732	66,638	4,319
280.635004	Contract Service EPA Admin (BCRLF, Petro, HazSub)	2,750	151	151	(2,599)	100	(2,650)
280.635006	Contract Service City	241,300	241,300	241,300	-	339,160	97,860
280.635008	EDA/SmartZone	20,000	-	-	(20,000)	5,000	(15,000)
280.670000	Interest Income	27,000	65,683	58,434	31,434	36,893	9,893
280.670301	Loan Interest Income	33,504	26,106	42,788	9,284	34,282	778
280.679100	From Fund Balance (Includes $10,000 Federal Public Affairs Council for 2008 and $4,196 LCMF Loan Default Contingency for 2009)	20,000	-	10,000	(10,000)	4,196	(15,804)
280.680000	Miscellaneous Revenue	-	2,380	2,380	2,380	100	100
280.680002	Annual Issuer's Fees	4,600	-	4,600	-	4,600	-
280.696282	Operating Transfer - TIFA	273,399	-	282,467	9,068	290,614	17,215
	Subtotal	723,872	462,721	781,747	57,875	820,583	96,711

PROGRAM REVENUE (PASS THRU)

280.547003	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
280.547004	Cool Cities Grant	65,000	61,725	61,725	(3,275)	35,000	(30,000)
280.635012	Façade Grant (Michigan Interfaith Trust Fund)	23,500	37,189	37,189	13,689	-	(23,500)
280.679100	Fund Balance ($12,110 IT Initiative/$81,564 Façade Grant Funds)	93,674	-		(93,674)	58,753	(34,921)
	Subtotal	192,174	106,340	106,340	(85,834)	93,753	(98,421)
	Total Revenue	**916,046**	**569,061**	**888,087**	**(27,959)**	**914,336**	**(1,710)**

OPERATIONAL EXPENSES

Account Code	Description	FY 2008 Budget	FY 2008 Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.172650.702000.	Salaries	383,600	333,129	376,991	(6,609)	389,700	6,100
280.172650.715000.	Fringe Benefits	9,000	8,278	7,941	(1,059)	9,000	-
280.172650.715002.	Fringe Benefit Cafeteria Plan	161,100	123,922	146,820	(14,280)	163,700	2,600
280.172650.741000.	Miscellanious Operating (Includes $10,000 Public Affairs Council in 2008	35,000	18,108	23,019	(11,981)	15,000	(20,000)
280.172650.741200.	Promotions/Marketing	68,219	45,133	55,209	(13,010)	150,452	82,233
280.172650.741810.	Dues and Subscriptions	1,325	1,100	1,145	(180)	2,205	880
280.172650.743000.	Contractual Services (Audit & Legal Fees)	22,500	17,752	17,752	(4,748)	23,300	800
280.172650.744000.	Utilities	10,300	8,449	8,955	(1,345)	15,180	4,880
280.172650.745100.	Building Rental	20,028	20,028	20,028	-	20,028	-
280.172650.747000.	Training/Conference	10,000	5,893	7,886	(2,114)	25,000	15,000
280.172650.748000.	Insurance & Bonds	2,800	2,506	2,506	(294)	2,822	22
000.000000.000000	LCMF Loan Default	-	-	-	-	4,196	4,196
	Subtotal	723,872	584,298	668,252	(55,620)	820,583	96,711

PROGRAM EXPENSE (PASS THRU)

280.172650.743020	Fund Balance (Michigan Interfaith Trust Fund Grant Funds)	23,500	15,000	37,189	13,689	-	(23,500)
280.172650.743020	Fund Balance (12,110 IT Initiative/$81,564 /Façade Grant Funds)	93,674	34,921	58,753	(34,921)	58,753	(34,921)
280.172650.743021	Cool Cities Grant	65,000	98,925	61,725	(3,275)	35,000	(30,000)
280.172650.974020	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
	Subtotal	192,174	156,272	165,093	(27,081)	93,753	(98,421)
	Total Expenses	**916,046**	**740,570**	**833,345**	**(82,701)**	**914,336**	**(1,710)**
	Difference between Revenue and Expense	**0**	**(171,509)**	**54,742**	**54,742**	**0**	**0**

Revised April 24, 2008 Revised April 24, 2008

Escrow & Custodial Financial Services

The Lansing Regional Center has entered into agreement with Fifth Third Bank to serve as escrow and custodial agent with all funds related to the Lansing Regional Center EB-5 Immigration through investment program.

Fifth Third will perform custodial services for all escrowed funds and will serve as the primary contact for all funds related to the Regional Center. Invested funds will undergo a comprehensive due diligence process performed by Fifth Third Bank to certify all invested funds were obtained legally and in adherence with the U.S. Patriot Act Section 326 as provided in *Appendix 1* of this application.

In addition to the performance of escrow and custodial services Fifth Third Bank will handle all foreign currency exchange and provide all interested applicants with a full suite of ***expatriate banking services*** to assist with all aspects of financial planning when locating to the United States. A description of these services is provided in subsequent pages.

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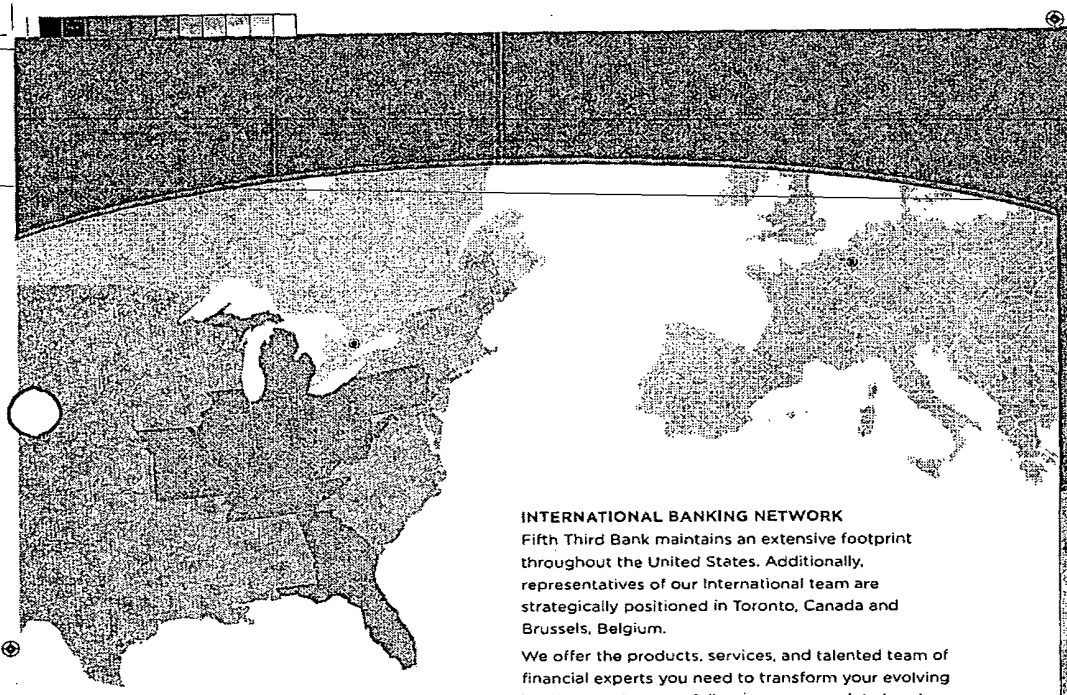

FIFTH THIRD BANK

International Banking

INTERNATIONAL BANKING NETWORK

Fifth Third Bank maintains an extensive footprint throughout the United States. Additionally, representatives of our International team are strategically positioned in Toronto, Canada and Brussels, Belgium.

We offer the products, services, and talented team of financial experts you need to transform your evolving business and successfully operate on a global scale.

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For more information on Fifth Third Bank's International Banking Solutions, please visit www.53.com

FIFTH THIRD BANK

*As of August 2007
Fifth Third and Fifth Third Bank are registered service marks of Fifth Third Bancorp.
Member FDIC. All loans are subject to credit review and approval. Equal Housing Lender.

150 Years of Banking Experience

As one of the oldest and most successful Financial Institutions in the United States, Fifth Third Bank has been serving the needs of the International Banking community for several decades. The Bank's success can be traced to our commitment to understanding and meeting the unique needs of our clients. Our proud heritage is deeply rooted in personalized service and a dedication to building lasting partnerships with our international clients.

Our team understands the importance and necessity of operating in a global marketplace. Success in this environment is often predicated on selecting the right financial partner. Fifth Third Bank is well positioned to fulfill that role and we look forward to introducing you to our International team and the products and services they manage.

FIFTH THIRD BANK

Fifth Third Bank's International Team

Our commitment to the International community is supported by a large team of specialized International Bankers whose primary focus is understanding and meeting your specific needs in the financial marketplace.

At a glance, our team is...

- Strategically dispersed to better understand local economies and have direct access with the clients they serve.
- Easily accessible to European parent companies through our office in Brussels, Belgium.
- Supported by a full service Canadian branch in Toronto.
- Currently servicing the needs of more than 1,200 foreign-owned corporate clients and 5,000 expatriate banking customers.
- Backed by one of the largest foreign exchange trading desks in the United States.
- Comprised of International Relationship Managers that serve as a primary contact within Fifth Third Bank.
- Fluent in several European languages.

BANKING SOLUTIONS

Fifth Third's International Banking Team has the experience, insight and resources to deliver a complete package of financial solutions to meet our clients' specific needs. We provide customized financial solutions to minimize risk and maximize opportunities in the international marketplace.

Fifth Third Bank's broad array of banking services include:

- **Cash Management** and depository services for U.S. and foreign parent companies.
- **Internet Banking** provides a secure channel facilitating balance reporting, funds transfers, and receivable and payable solutions.
- **Lockbox/Imaging** service for U.S. check collection potentially reducing float and increasing cash flow.
- **Financing/Leasing** for U.S. subsidiaries of foreign owned companies including lines of credit, term loans and equipment financing.
- **Credit Card** payment solutions through issuance and merchant services.
- **Expatriate Banking** including depository and savings accounts, credit cards, vehicle and home loans. A staff of bilingual expatriate bankers is on hand to assist with all your banking needs.
- **Global Treasury Management** services including foreign currency exchange, multi-currency accounts, wires and drafts.
- **Trade Services** including export financing, letters of credit, and documentary collections.

Key Data Points

Fifth Third Bank ranks in the Top 15 (top 1%) of all bank holding companies in the United States.

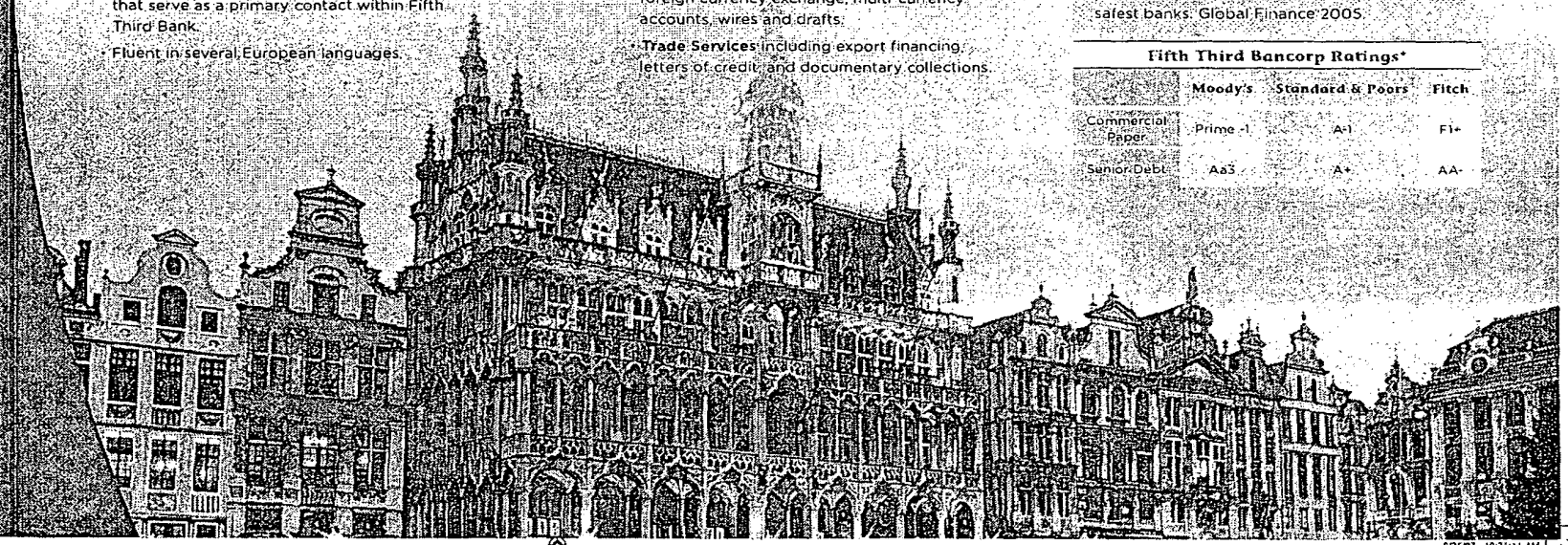
- More than $100 Billion in assets
- Extensive network of foreign exchange trading desks
- 22,000 Employees
- Strategically located throughout the manufacturing corridor of the United States
- European representative office established in 1996

Additional Worthy Accolades

- **Fortune 500 Company**
  Ranked in the top 300 of the largest U.S. Corporations
- **Forbes Global 2000**
  Ranked in the top 350 of the world's largest public companies
- **Most trusted Retail Banks**
  Fifth Third Bank ranked second in the list of most trusted U.S. Banks for safeguarding customer data, 2006 Privacy Trust Study
- **World's Safest Banks**
  Fifth Third ranked in the top 50 of the world's safest banks. Global Finance 2005

Fifth Third Bancorp Ratings*

	Moody's	Standard & Poors	Fitch
Commercial Paper	Prime -1	A-1	F1+
Senior Debt	Aa3	A+	AA-



Legal Services

Legal services for the Lansing Regional Center will be provided by Foster, Swift, Collins and Smith, P.C. a Michigan based multi practice law firm which was established in 1902. Foster Swift will be handling all administrative work regarding immigration documents as well as overseeing the execution of all escrow and partnership agreements related to Lansing Regional Center projects.

Contact Info:

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All Lansing Regional Center applicants will be encouraged to obtain personal immigration consul prior to the transfer of funds to ensure compliance with United States Immigration law and that all obligations are met with the Office of Home Land Security.

Marketing / Promotional Efforts

Lansing is an international community. The city has large immigrant and refugee populations as well as a significant international student body. Additionally the city is continuing to build upon its assets through its continually evolving Sister & Friendship City program, which is helping to elevate Lansing's international reputation to cultural and economic exchange in the global economy.

The Lansing Regional Center plans to implement a multi-level marketing strategy to generate interest in open investment opportunities. Marketing strategies tend to evolve as a campaign unfolds. However, the Lansing Regional Center plans to implement the following techniques upon receiving the regional center designation.

1.) Reliance on Existing Business Relationships

The Lansing EDC has forged a number of relationships with many international and immigrant businessmen whom now call Lansing home yet are still very connected to the business communities in their respective home cities, and have volunteered to assist with the distribution of print materials as well as organize small symposiums for interested investors to gather information about the program.

2.) Michigan Economic Development Corporation - Shanghai Office

The Lansing EDC has permission to distribute marketing materials through the Michigan EDC's Shanghai office in regards to the Lansing Regional Center. The MEDC is deeply entrenched within the Chinese business community recruiting companies to invest in Michigan and also assisting Michigan based companies with their expansions into China. Due to the nature of their daily operations, utilization of the MEDC will be critical in getting promotional materials in front of our target market.

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300 North Washington Square
Lansing, Michigan 48913 U.S.A.
Tel: (1) 517.241.4554
Fax: (1) 517.241.3689
e-mail: whalenh@michigan.org

3.) Consulate General of the People's Republic of China

The Consulate General has agreed to assist the city of Lansing in marketing the Lansing Regional Center. This connection will allow a direct link to the Lansing Regional Center from the Consulate General's website, and provide a unique opportunity to foreign investors interested in Mid-west prospects.

Contact info:

Ping Huang
Consul General
Consulate-General of the People's Republic of China
Chicago, IL

4.) Fifth Third Bank International Offices

Fifth Third Bank has committed the company's International Desk, located in Brussels, Belgium, for distribution of marketing materials. In addition, Fifth Third has agreed to market the program to clients who will be potential users. This will be a key partnership as Fifth Third is seeking to expand their global presence and the Lansing Regional Center will be at the forefront of this expansion.

5.) Website

The Lansing Regional Center will also be marketed heavily on the internet through the Lansing EDC's website. The website design and deployment is being coordinated by Spartan Internet Consulting, which is a leading company in the field of internet marketing and strategic implementation. By utilizing cutting edge analytical tracking tools the website will be enabled to seek out potential investors and provide the Lansing Regional Center with unprecedented global exposure.

6.) EB-5 Brokers

When necessary, the Lansing EB-5 Regional Center will work with brokers in countries where this type of process is customary. Through the broker network the Lansing Regional Center will gain true global exposure.

7.) Greater Lansing Office of New Americans

Under the guidance of Lansing Mayor Virg Bernero, Michigan State University, and the Lansing Economic Area Partnership (LEAP) an initiative has been created that will position the greater Lansing region as a true international community. The Office of New Americans (ONA) is a new program under development that will coordinate all of the community's international assets to ensure that greater Lansing has a unified voice to the global community. The following are just a few of the office's ambitious objectives: leverage regional business assets into global economic growth, assist in the welcoming of refugee populations including employment initiatives to ensure that we do not under-employ the population's vast intellect, implementation of new international business associations, and many other innovative programs to cater to the international community.

In an effort to securing funding for the launch of this initiative the Lansing EDC along with our partner organizations presented the initiative to Mr. Rick Foster, VP for Programs, W.K. Kellogg Foundation. The presentation was led by Dr. Soji Adelaja, Director of Michigan State University's Land Policy Institute, and was very well received by the W.K. Kellogg Foundation. So much so, that the Foundation has asked for a formal proposal and suggested that several hundred thousand dollars would be made available to launch a pilot program. The formal proposal is being drafted for submittal at this time.

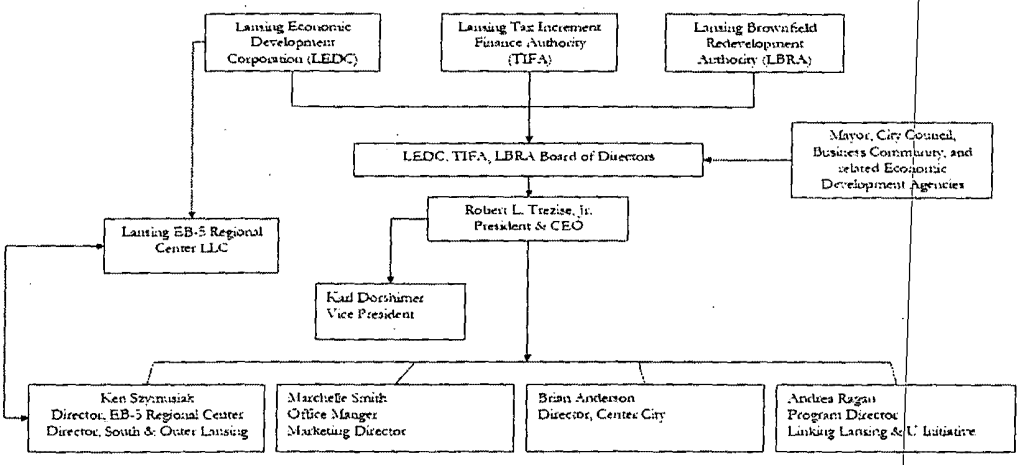
tax incentives for the rehabilitation or new construction of residential housing.

- Downtown Development
  The LEDC offers a matching grant and a loan program to encourage redevelopment in the core downtown area. Our "Building Facade Improvement" program offers up to $5,000 in matching grant funds to encourage property owners and tenants to make needed exterior building facade improvements. Additionally the LEDC's Business Finance Assistance Program can provide loans to help business development and expansion.

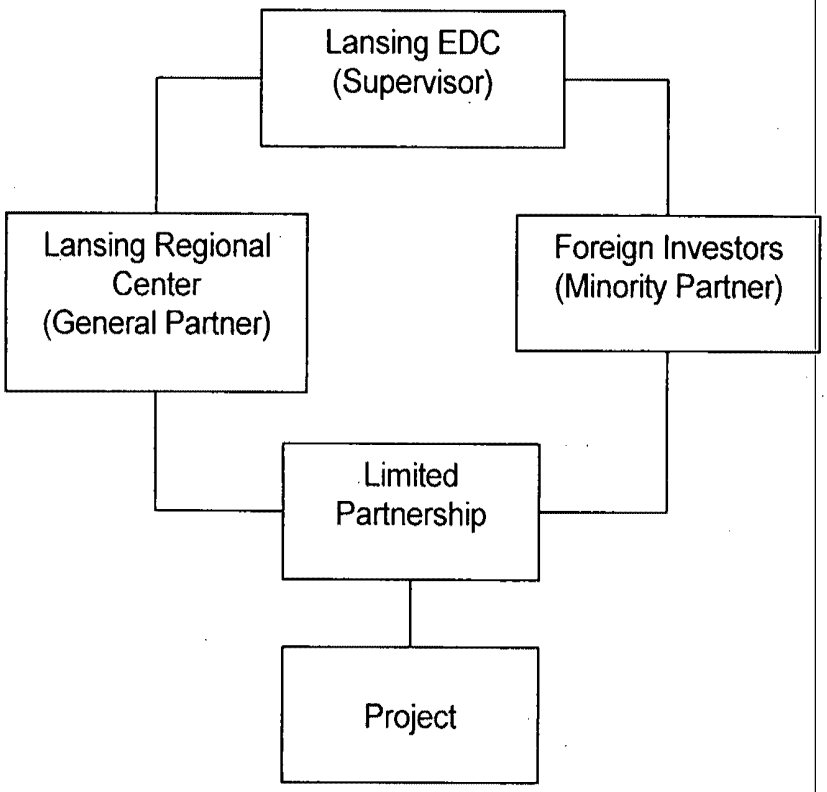
- Linking Lansing & U Initiative
  In 2006 Mayor Virg Bernero launched a new pro-active initiative, titled "Linking Lansing & U," with the sole purpose of developing programming and out-reach efforts to engage Lansing's student population. Programming revolves around three distinct focuses: employment / internships, housing, and entertainment. Since its launch "Linking Lansing & U" has engaged over 1,000 students in a multitude of events including wildly successful job shadow days, networking events, and student volunteer opportunities.

The LEDC is also actively involved in workforce development and economic development initiatives on both the state and regional levels. These close ties bring access to additional resources and expertise including: vocational and employment training, utilities, transportation, research and higher education and intergovernmental cooperation.

Lansing Economic Development Corporation
Organizational Chart



Lansing Regional Center Project Flow Chart:



Role of Lansing Economic Development Corp. (LEDC):
The LEDC will be retained as council pursuant to any advisory agreements entered into by the General Partner on behalf of each limited partnership to provide administrative services as follows:

- Identifying qualifying investments
- Completing due diligence in regards to proposed investments
- Monitoring qualifying investments for job creation and other EB-5 compliance requirements
- Providing accounting and reporting services for qualifying investments
- Assisting qualifying businesses in obtaining future financing

Role of Lansing Regional Center (LRC):
The LRC will operate as a limited liability company under the supervision of the Lansing EDC Board of Directors. LRC will have a separate independent board of

directors which will provide oversight of the fund and direction to the LRC Manager. The LRC Director will be an employee of the Lansing EDC and will be in charge of day-to-day management of each limited partnership. Management responsibilities shall include:

- Marketing qualifying investments to limited partners
- Determining that qualified investments meet minimum criteria
- Assuring that investments generate job creation criteria set forth by the EB-5 Program
- Supervise investment to insure financial performance and continued EB-5 Program qualification
- Providing detailed financial reports to Limited Partners
- Maintenance of accounting books and records for each Limited Partnership
- Retaining all professional services that may be deemed necessary for each Limited Partnership
- Providing detailed financial and status reports to LRC & LEDC Boards of Directors

Fifth Third Bank

CUSTODY SERVICES AGREEMENT

This CUSTODY SERVICES AGREEMENT (collectively with all schedules, exhibits, amendments, and addenda hereto, this "Agreement") is made effective as _____, by and between **FIFTH THIRD BANK**, 111 Lyon Street NW, MD # RMNR1C, Grand Rapids, Michigan 49503 ("Custodian"), and _____, _____, _____("Customer"). Custodian and Customer hereby agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below.

"Account" means the custodial account maintained by Custodian pursuant to this Agreement established in the name of and on behalf of Customer.

"Agreement" means this Custody Services Agreement and all schedules, exhibits, amendments and addenda hereto.

"Class Actions" means lawsuits initiated by or on behalf of a corporation that entitle the shareholders of such corporation to participate in such lawsuit by electing to so participate.

"Corporate Action Information" means all information communicated to Customer related to Corporate Actions when securities related to such Corporate Actions are held in the Account.

"Corporate Actions" means any actions undertaken by an issuer corporation that have an effect upon shareholders or entitlement holders of the corporation's securities (so long as such securities are held in the Account) including, without limitation, the inception of Class Actions.

"Custodian" means Fifth Third Bank, an Ohio banking corporation, acting pursuant to this Agreement.

"Customer ID" means a Customer-specific user identification code.

"Customer" means the party executing this Agreement for which the Custodian is performing the Services.

"Depository" means the Depository Trust Company, the Federal Reserve or such other sub-custodian as Custodian may from time to time nominate.

"Information" means the methods, techniques, programs, devices and operations of Custodian arising in connection with the services and products provided in connection therewith.

"Instructions" means the data messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by the Workstations, which requests that a task be performed on behalf of Customer or its customers regarding trust and/or demand deposit account funds maintained in the Account.

"Mandatory Corporate Actions" shall mean those Corporate Actions for which the effect on the shareholders or entitlement holders may not be modified by the Customer, including but not limited to, cash dividends, stock dividends, mergers, name changes, mandatory calls, and other mandatory corporate reorganizations.

"Other Instructions" means the messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by Custodian, which request that a task be performed on behalf of Customer or its customers regarding stock or other securities held in Customer's Account that does not relate to Voluntary Corporate Actions or the Customer's Voluntary Election Instructions.

"Proper Instruction" means the written and manually signed instructions of the person(s) identified in writing by Customer as being duly authorized by Customer to have authority over the Property.

"Property" means the property listed on a certain receipt(s) or as indicated on the confirmation separately supplied by Custodian to Customer in connection with this Agreement, which may include, without limitation, common and preferred stocks, bonds, debentures, notes, money market instruments or other obligations, and any certificates, receipts, warrants or other instruments or documents representing rights to receive, purchase or subscribe for any of the foregoing, or evidencing any other rights or interests therein.

"Services" means the custody services specified in the Custody Services Schedule attached hereto as **Schedule 1**.

"Transactions" means the Custodian's performance of certain tasks pursuant to Proper Instructions.

"Voluntary Corporate Actions" means those Corporate Actions for which shareholders or entitlement holders are entitled or required to make an election or decision among alternative courses of action such as, among other things, certain tender offers, conversions, distributions or exchanges that are voluntary by their terms.

"Voluntary Election Instructions" means those messages timely delivered from Customer to Custodian identifying ustomer's election or decision among alternative courses of action triggered by the occurrence of a Voluntary Corporate Action.

2. **DEPOSIT OF PROPERTY**. Customer has deposited the Property, or may deposit additional Property, with Custodian. The purpose of such deposit is to obtain from Custodian the Services. The Services shall include those normally and customarily provided by Custodian with respect to Property including safekeeping, trading, deposits, withdrawals, income, corporate actions, puts, calls, overdrafts, record retention, reports and such other related services as Custodian may offer from time to time.

3. **DESCRIPTION OF PROPERTY**. Customer represents and acknowledges that the description of the Property listed on the receipt(s) or confirmation is an accurate description of the Property. Custodian shall not be responsible for any Property until actually received by Custodian. Securities held by Custodian shall, unless payable to bearer, be registered in the name of the Custodian for the account of the Customer or its nominee, as Custodian may appoint, and at any time remove, in Custodian's sole discretion. Custodian may deposit all or a part of the Property in a Depository; provided, however, no such deposit or appointment shall relieve the Custodian of its obligations under this Agreement. Custodian, in accordance with it normal and customary practices, will segregate and identify on its books as belonging to the Customer all Property held by Custodian or any other entity authorized to hold Property in accordance with this Agreement.

4. **APPOINTMENT AS CUSTODIAN**. Customer hereby constitutes and appoints Custodian as custodian of the Property and Custodian agrees to act in the capacity as custodian with respect to the Property during the term of this Agreement. Custodian shall perform the Services and maintain the Account as set forth herein. Custodian shall be held to the exercise of reasonable care in carrying out its obligations under this Agreement. Custodian shall have no investment authority, nor any duty or obligation to supervise or advise Customer on any investments. Except as specifically set forth herein, Custodian shall have no liability and assumes no responsibly for any non-compliance by Customer of any laws, rules or regulations.

5. **SCOPE OF SERVICES**. Custodian may make changes to the Services and/or the Fee Schedule attached hereto as **Schedule 2** based upon, but not limited to: technological developments; legislative, regulatory, third party depository or sub-custodian operational changes; or the introduction of new services by Custodian. Custodian will notify Customer of any changes to the Services that will affect Customer at least 30 days prior to the effective date of such changes.

6. **INSTRUCTIONS; RELIANCE BY CUSTODIAN**. Custodian is authorized to rely and act on Proper Instructions in providing the Services, whether such Proper Instructions are received via telephone, facsimile, or by bank wire so long as Custodian believes in good faith that such Proper Instructions have been given by an authorized person or agent acting on behalf of Customer. Custodian will only rely upon Proper Instructions sent via electronic mail if Proper Instruction specifically approves this method of delivery in writing (by other than electronic means) prior to the delivery of such Proper Instructions by electronic mail. Custodian is also authorized to rely and act upon instructions transmitted electronically through the Institutional Delivery System (IDS), a customer data entry system, or any other similar electronic instruction system acceptable to Custodian. Custodian will not be liable for any failure to execute instructions or failure to receive Property due to incorrect, incomplete, conflicting or untimely instructions. Custodian, in its discretion, is authorized to accept and act upon orders from Customer, whether given orally by telephone or otherwise, which Custodian in good faith believes to be genuine. Customer shall cause all oral instructions to be confirmed in writing by a written Proper Instruction. Custodian's records will be conclusive as to the content of any such instruction, regardless of whether confirmation is received.

7. **REIMBURSEMENT FOR COSTS, EXPENSES**. Custodian is authorized to take all steps it deems necessary or advisable to complete a transaction and shall be reimbursed for all costs, losses and liabilities if settlement is not accomplished due to Customer's failure for any reason to follow Custodian's instructions with respect to the Property or the Account. Custodian is authorized to execute, in the name of Customer, any certificates of ownership, declarations or other certificates required under any tax or other laws or governmental regulation now or hereafter in effect. Custodian will have the right to setoff against the Property held by Custodian hereunder and upon any deposit account of Customer for the following: (i) compensation, expenses, commitments made by Custodian upon instructions of Customer or its authorized agent; (ii) reimbursement of taxes incurred by Custodian for the Account of Customer; and (iii) other liabilities of Customer to Custodian, however created.

8. **SETTLEMENT PRACTICES**. Custodian will settle trade orders as instructed by the Customer. Custodian will not be liable or accountable for any act or omission by, or for the solvency of, any broker or agent effecting such transaction.

9. **INDEMNIFICATION**. Custodian shall not be liable for, and Customer agrees to indemnify and hold harmless Custodian and any nominee appointed pursuant to the terms hereof, from and against any loss, damage, cost, expense (including attorneys' fees and disbursements), liability or claim of any third party arising directly or indirectly (a) from the fact that any of the Property is registered in the name of any such nominee, or (b) from any action or inaction by the Custodian or such nominee (i) at the request or direction of or in reliance on the advice of Customer, or (ii) upon Proper Instruction, or (c) generally, from the performance (or absence or lack thereof) of its obligations under this Agreement; provided, however, that neither Custodian nor any nominee shall be indemnified and held harmless from and against any such loss, damage, cost, expense, liability or claim arising from Custodian's or such nominee's

gross negligence or willful misconduct. If Customer requests Custodian to take any action with respect to Property that may, in the opinion of Custodian, result in Custodian or its nominee becoming liable for the payment of money or incurring liability of some other form, Custodian shall not be required to take such action until Customer shall have provided indemnity therefore to Custodian in an amount and form satisfactory to Custodian.

10. **LIMITATION OF WARRANTIES**. OTHER THAN THE EXPRESS WARRANTIES (IF ANY) MADE IN THIS AGREEMENT, CUSTODIAN DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER. Without limiting the foregoing, Custodian shall not be liable for lost profits, lost business or any incidental, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Custodian) suffered by Customer, its customers or any third party in connection with any of the products or services made available hereunder. Custodian's liability under this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Customer or (ii) an amount not to exceed one-half of the net fees paid to Custodian within the prior three calendar months immediately preceding the date on which Custodian received a written notice from Customer regarding such damages. In no event shall Custodian be liable for any matter beyond its reasonable control, or for damages or losses wholly or partially caused by the Customer, or its employees or agents, or for any damages or losses which could have been avoided or limited by Customer giving prompt written notice to Custodian. Customer shall bring no cause of action, regardless of form, more than one year after the cause of action arose.

11. **LIQUID FUNDS**. Custodian shall not be liable for, or considered to be the custodian of, any cash belonging to Customer or any money represented by a check, draft or other instrument for the payment of money, until Custodian or its agents actually receive such cash or collect on such instrument. So long as and to the extent that it is in the exercise of reasonable care, Custodian shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received or delivered by it pursuant to this Agreement. Custodian shall not be required to enforce collection, by legal means or otherwise, of any money or property due and payable with respect to any Property held in the Account if such Property is in default or payment is not made after due demand or presentation.

12. **CONFIDENTIAL RECORDS**. Custodian shall treat all records and information relating to Customer and the Account as confidential, except that it may disclose such information after prior approval of Customer, such approval not to be unreasonably withheld. Custodian will be authorized to disclose any information regarding Customer, the Property, and the Account that is required to be disclosed by any law, governmental regulation or court order in effect without having received Customer's prior approval.

13. **CONFIDENTIALITY**. Customer acknowledges that the Information is of a confidential nature, and is a valuable and unique asset of Custodian's business. During the term of this Agreement and following the expiration or termination thereof, Customer shall not make or permit disclosure of any Information to any person or entity (other than to those employees and agents of Customer who participate directly in the performance of this Agreement and need access to Information

14. **STATEMENTS**. Inquiries regarding any valuations or other reports must be submitted to Custodian within thirty days of the receipt of the Custodian's statement or report, and on expiration of this period, statements and reports shall be deemed correct and accepted by Customer. Express or tacit approval of such statement or report implies acceptance of the various entries listed therein and approval of any reservations made by Custodian. Thereafter, Customer assumes the responsibility to correct any and all errors.

15. **FEES**. Customer shall pay to Custodian when due all fees and expenses arising in connection with the Services and the Account in accordance with the Fee Schedule (as may be amended from time to time) and billed or charged according to Customer's customer profile schedule maintained at Custodian's place of business. Customer shall receive no less than thirty days prior notice of any changes in the Fee Schedule. If Customer fails to pay Custodian for any fees and expenses owed within thirty days after invoice, Custodian may charge such fees and expenses to any deposit account of Customer or in the name of Customer. Custodian may also assess usual and customary late payment fees for payments past due more than thirty days after invoice.

16. **NO WAIVER**. The failure of Custodian to insist on strict compliance, or to exercise any right or remedy under this Agreement, shall not constitute a waiver of any rights contained herein or estop Custodian from thereafter demanding full and complete compliance or prevent Custodian from exercising such remedy in the future.

17. **FORCE MAJUERE**. Custodian shall not be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes, acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that the Custodian in the event of a failure or delay shall endeavor to ameliorate the effects of any such failure or delay.

18. **INDEPENDENT CONTRACTOR**. This Agreement is not a contract of employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employment between the parties. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and their permitted transferees and assignees.

19. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, and representations regarding the subject matter of this Agreement. No amendment to this Agreement shall be valid, unless made in writing and signed by both parties; provided, however, Custodian may amend or otherwise modify this Agreement, and any addenda, amendments, exhibits or schedules thereto, provided such modification does not create any new obligation on the part of Customer and does not materially diminish any service being provided by Custodian hereunder. Custodian shall give Customer notice of such changes by ordinary mail. This Agreement is for the benefit of, and may be enforced only by, Custodian and Customer and their respective successors and permitted transferees and assignees, and is not for the benefit, of and may not be enforced by, any third party.

20. **VALIDITY AND BINDING EFFECT**. Customer hereby warrants and represents to Custodian: that Customer has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract, written or oral, to which Customer is bound; and that this Agreement is valid and enforceable against Customer in accordance with its terms and conditions.

21. **NO ASSIGNMENT**. Customer agrees not to sell, assign, sublet, pledge, hypothecate, suffer a lien upon or against, or otherwise encumber any interest in this Agreement, in whole or in part. Should Custodian assign this Agreement or should the fees due hereunder be assigned, no breach or default of this Agreement by Custodian to its assignee shall excuse performance by Customer of any provision hereof.

22. **SEVERABILITY**. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

23. **NO IMPLICIT DUTY**. Custodian shall have no duties or obligations whatsoever except such duties and obligations as are specifically set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against Custodian.

24. **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, and by the parties hereto on separate counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

25. **GOVERNING LAW**. This Agreement will be governed by and construed according to the laws of the State of Ohio. The parties hereby consent to service of process, personal jurisdiction, and venue in the state and federal courts located in Cincinnati, Hamilton County, Ohio, and select such courts as the exclusive forum with respect to any action or proceeding brought to enforce any liability or obligation under this Agreement.

26. **TERMINATION**. Customer or Custodian may terminate this Agreement upon thirty days prior written notice to the other party by registered, certified or express mail. Custodian will charge fees up to and including the last day of the billing period in which the effective date of termination occurs. Notice of termination shall be effective on the date of receipt thereof. If Customer fails to designate a successor custodian on or before the effective date of termination, then Custodian shall have the right to deliver all of the Property then held in the Account to Customer. Thereafter, Customer (or the designated replacement custodian) shall be custodian of the Property and Custodian shall be relieved of all obligations under this Agreement.

27. **SPECIFIC REQUIREMENTS OF THIS CUSTOMER.**

_____

_____

_____

_____

_____

_____

[signatures follow; the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CUSTOMER:

By:_____

Date:_____

Accepted:_____

CUSTOMER'S ADDRESS:

_____

_____

FIFTH THIRD BANK

By:_____

Title:

Date:_____

CUSTODIAN'S ADDRESS:

Fifth Third Bank
111 Lyon Street NW – MD# RMNR1A
Grand Rapids, MI 49503

Fifth Third Bank

Schedule 1

SCHEDULE OF CUSTODY SERVICES

Custodian shall perform the custody services set forth below (the "Custody Services") in connection with the maintenance of a custodial account in the name of and on behalf of Customer, in accordance with the terms and conditions of the Agreement. The Custody Services made available by Custodian are subject to change from time to time without notice; provided, however, Custodian shall endeavor to notify Customer of any changes to the below Custody Services that will affect Customer at least thirty days prior to the effective date of such changes. Capitalized terms used below have the meanings set forth in the Agreement.

A. **SAFEKEEPING.** Custodian will maintain in its vault or at a Depository, or sub-Custodian identified on its books as the property of the custodial account(s) of Custodian, all Property that it now or hereafter receives for the Account(s) of Customer.

B. **TRADING.** Custodian will, upon Proper Instructions, sell, assign, transfer, deliver, purchase or acquire securities or other property for the Account.

C. **DEPOSITS OR WITHDRAWALS.** Custodian will, upon Proper Instructions: (a) deliver or receive securities or other properties; and (b) transfer or make payments from the Account of such cash or securities to such person(s) specified by Customer. Unless Customer directs otherwise, excess cash will be invested in the Custodian's investment/sweep alternatives.

D. **INCOME.** Custodian will collect and receive all cash or property related to, associated with or earned by, the Property as interest, dividends, proceeds from transfer, and other payments for the Account of Customer. Custodian will convert cash distributions denominated in foreign currency into United States dollars at Custodian's then applicable rate for the account of Customer. In effecting such conversion, Custodian may use such methods or agencies as it deems necessary and appropriate at the current prevailing rates.

E. **CAPITAL CHANGES.** Custodian will notify Customer of capital changes, limited to those securities registered in a nominee's name and to those securities held at a Depository or sub-custodian acting as agent for Custodian. Custodian will be responsible only if the notice of such capital change is published by Xcitek, DTC, or received by registered mail from the agent. For market announcements not yet received and distributed by Custodian's services, Customer will provide Custodian with appropriate instructions. Custodian will, upon receipt of Customer's response within the required deadline, affect such action for receipt or payment for the Account of Customer. For those responses received after the deadline, Custodian will affect such action for receipt or payment, subject to the limitations of the agent(s) affecting such actions.

F. **PUTS.** Custodian will promptly notify Customer of put options only if the notice is received by registered mail from the agent. Customer will provide Custodian with all relevant information contained in the prospectus for any security that has unique put option provisions and provide Custodian with specific tender instructions at least ten business days prior to the beginning date of the tender period.

G. **SHAREHOLDER COMMUNICATIONS.** Custodian will, as set forth in the Customer Profile Schedule, either receive, execute or cause to be transmitted all shareholder communications. With regard to any temporary cash investment offered by Custodian, Custodian shall respond on behalf of the Customer.

H. **RECORD RETENTION.** Custodian will, at all times, maintain books and records relating to the Account in accordance with its normal and customary procedures and will reasonably make available for inspection such records to duly authorized officers, employees, or agents of Customer or by legally authorized regulatory officials who are then in the process of reviewing the Customer's financial affairs upon adequate proof to Custodian of such official status.

I. **REPORTS.** Custodian will provide such reports as set forth in the Customer Profile Schedule and notify the Customer of each transaction confirmation via a monthly statement of transactions and holdings.

J. **COMMUNICATIONS.** Custodian shall be authorized to rely upon the accuracy and genuineness of all data received through electronic means and initiated by any person authorized by Customer. In its employment of such devices, Customer will safeguard and maintain the confidentiality of all passwords or numbers and will disclose them only to those employees who are to have access to the Account. Custodian may electronically record any instructions or other telephone discussions. Custodian may electronically record any instructions given by telephone, and any other telephone discussions with respect to the Account or transactions pursuant to the Agreement.

K. **OVERDRAFTS.** At the discretion of Custodian in cases concerning overdrafts, the Account may be charged interest at a rate determined by Custodian in its discretion.

Schedule 2

Fee Schedule

DRAFT

OPERATING AGREEMENT

OF

DRAFT

OPERATING AGREEMENT
OF
[redacted]

TABLE OF CONTENTS

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OPERATING AGREEMENT
OF
[redacted]

THIS OPERATING AGREEMENT is made and entered into as of the ___ day of _____, 2008 ("Effective Date") by and among [redacted], a Michigan limited liability company, and the persons executing this Operating Agreement as Members of the Company as follows:

ARTICLE I - DEFINITIONS

1.1 Act. Act shall be defined as the Michigan Limited Liability Company Act, being Act No. 23, Public Acts of 1993, as amended.

1.2 Affiliate. Affiliate shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, through an employer and employee relationship, or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

1.3 Agreement. The Agreement shall be defined as the valid written Operating Agreement signed by the Members of the Company executing an organization or subscription agreement, which Agreement specifies the affairs and conduct of the Company, including any provision in the Articles pertaining to the affairs and conduct of the business of the Company.

1.4 Articles. Articles shall be defined as the Articles of Organization as filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division as required by the Act.

1.5 Assignment. Assignment shall include any type of sale or transfer of a Member's Membership Units in the Company.

1.6 Capital Accounts. Capital Account shall be as defined in paragraph 4.5 of this Agreement.

1.7 Code. Code is defined as the Internal Revenue Code of 1986, as amended.

1.8 Company. Company shall be defined as [redacted].

1.9 Contributing Member. Contributing Member shall be defined as a Member choosing to make additional contributions when another Member becomes a Noncontributing Member.

1.10 Contribution. Contribution shall mean anything of value that a person contributes to the Company as a prerequisite for, or in connection with, membership, including cash,

property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

1.11 Control. Control shall be defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management, activities or policies of any person through the ownership of voting securities, by contract, employment or otherwise.

1.12 FSC&S. FSC&S shall be defined as Foster, Swift, Collins & Smith, P.C., a Michigan professional corporation.

1.13 Indemnified Person. An Indemnified Person shall be any individual indemnified pursuant to the provisions of this Agreement.

1.14 Class A Member. The Class A Member is [redacted] ("[redacted]"). The Class A Member shall have all of the voting rights of Members.

1.15 Class B Member. Each Member who (1) contributes $500,000 to purchase one Unit of Membership Interest of the Company; (ii) executes a Subscription Agreement; and (iii) has the Company accept the Subscription Agreement shall become a Class B Member and as such shall have no voting rights as a Member since all voting rights are held by the Class A Member.

1.16 Member Representative. A Member Representative shall be defined as an individual designated by a Member who is authorized to act on behalf of said Member.

1.17 Membership Interest or Interest. Membership Interest or Interest shall be defined as a Member's rights in the Company, including, but not limited to, the right of a Member to receive distributions of the Company's assets and any right of a Member to vote or participate in the Management of the Company.

1.18 Membership Unit or Units. Membership Unit or Units shall be defined as units of equity ownership in the Company, which equal the Members' Membership Interest in the Company. Membership Units shall be uncertificated, unless the Managers determine in their discretion, that certificates shall be issued.

1.19 Noncontributing Member. Noncontributing Member shall be defined as any Member who does not make additional capital contributions according to the Member's pro rata ownership of all Membership Units as provided in this Agreement.

1.20 Offer. Offer shall be defined as a written offer made by a prospective buyer, assignee, or transferee of a Transferring Member's Membership Units in the Company.

1.21 Offered Membership Interest. An Offered Membership Interest shall be defined as that portion of a Membership Interest being sold, assigned, or transferred by a Transferring Member.

1.22 Offerees. Offerees shall be defined as the Members of the Company excluding the Transferring Member.

1.23 Person. Person shall mean an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

1.24 Resident Agent. The Resident Agent of the Company shall be as designated in the Articles or any amendment to the Articles. The Resident Agent may be changed from time to time and such change shall be made in accordance with the Act. If the Resident Agent shall ever resign, the Company shall promptly appoint a successor.

1.25 Registered Office. The Registered Office of the Company shall be as designated in the Articles or any amendment to the Articles. The Registered Office may be changed from time to time and such change shall be made in accordance with the Act.

1.26 Transferring Member. A Transferring Member shall be defined as a Member who sells, assigns, transfers, or exchanges some or all of said Member's Membership Interest in the Company.

ARTICLE II - ORGANIZATION

2.1 Formation. The Company has been organized as a Michigan limited liability company under and pursuant to the Act, by the filing of Articles with the Michigan Department of Energy, Labor and Economic Growth (DELEG), Bureau of Commercial Services, Corporation Division.

2.2 Name. The name of the Company shall be [redacted]. The Company may also conduct its business under one or more assumed names.

2.3 Purposes. The purposes of the Company are to engage in any activity for which Limited Liability Companies may be formed under the Act, including but not limited to holding investments. The Company shall have all the powers necessary or convenient to effect any purpose for which it is formed, including all powers granted by the Act.

2.4 Duration. The duration of the Company shall be perpetual and shall continue until the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

2.5 Intention for Company. The Members have formed the Company as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership (including, a limited partnership) or any other venture, but a Limited Liability Company under and pursuant to the Act. No Member or Manager shall be construed to be a partner in the Company or a partner of any other Member, Manager or person and the Articles, this Agreement and the relationships created thereby and arising therefrom shall not be construed to suggest otherwise. Notwithstanding the foregoing, however, the Members intend that the Company be treated as a partnership for federal income tax purposes.

2.6 Effective Date. The Agreement shall become effective upon the date this Agreement is fully executed, or the date the Articles are filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division, whichever is later.

2.7 Conflict between Articles and Agreement. If there is a conflict between the Company's Articles and the Agreement, the Articles shall control.

ARTICLE III - BOOKS, RECORDS AND ACCOUNTING

3.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act. Such books and records shall be kept at the Company's Registered Office or principal place of business. The books and records shall be open to inspection by any Member or a Member's authorized representative at any reasonable time during business hours.

3.2 Fiscal Year; Accounting. The Company's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Company shall be selected by the Managers from time to time.

3.3 Reports. The Managers shall provide reports concerning the financial condition and results of operation of the Company and the Capital Accounts of the Members to the Members in the time, manner and form as the Managers determine. Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction and credit.

3.4 Members' Capital Accounts. The Company shall maintain a Capital Account for each Member. Each Member's Capital Account shall be adjusted in accordance with the terms of paragraph 4.5.

3.5 Member Tax Treatment. No Member shall treat a Company tax item on such Member's federal, state or local income or other tax returns or permit an affiliate to treat a Company tax item on such affiliate's tax returns in a manner inconsistent with the treatment of such item on the Company's federal, state or local tax returns.

ARTICLE IV - CAPITAL CONTRIBUTIONS

4.1 Initial Commitments and Contributions. By the execution of this Agreement, the initial Members hereby agree to make the capital contributions for the Membership Units as set forth in their Subscription Agreement and which is also designated in the attached Exhibit A. The capital contributions represent each Member's contribution of $500,000.00 in exchange for one Member's Membership Unit. The Membership Units of the respective Members in the Company are also set forth in Exhibit A. Any additional Member (other than an assignee of a Membership Interest who has been admitted as a Member) shall make the capital contribution set forth in a separate written Subscription Agreement at the time of admission. No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution except as provided in this Agreement.

4.2 Additional Capital Contributions. In addition to the initial capital contributions, the Member may determine from time to time that additional capital contributions are needed to enable the Company to conduct its business and affairs. Such additional capital contributions are separate and distinct from amounts that each Member has committed to loan to the Company pursuant to the Funding Agreement described in paragraph 4.3, below.

a. Notice. Upon making such a determination that additional capital contributions are needed, notice shall be given to all Members in writing at least thirty (30) business days prior to the date on which such additional contributions are due. Such notice shall describe, in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is required.

b. Member Contribution. If the Class B Members agree to make additional capital contributions, the additional contributions shall be made by each Class B Member in the proportion that such Member's Membership Units bear to all issued and outstanding Membership Units.

c. If Member Does Not Make Additional Contribution. In the event a Member is a Noncontributing Member, the Contributing Member(s) shall be given the opportunity to make such Noncontributing Member's contribution in the proportion that each such Contributing Member's Membership Units bears to all Contributing Members' Membership Units.

d. Adjustment to Capital Accounts of Members. After the additional capital contributions have been made, each Contributing Member's Capital Account shall be increased to reflect the additional capital contributed to the Company.

4.3 Failure to Contribute.

a. Capital Contributions. If any Member fails to make a capital contribution when required in accordance with the Member's commitment to contribute initial or additional capital, the Company may, in addition to the other rights and remedies the Company may have under the Act or applicable law, take such enforcement action (including, the commencement and prosecution of court proceedings) against such Member as Class A Members considers appropriate.

4.4 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member and assignee.

a. Increases to Capital Accounts. Each Member's Capital Account shall be increased by:

i. the amount of any money actually contributed by the Member to the capital of the Company;

ii. the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of Code § 752); and

iii. the Member's share of net profits and of any separately allocated items of income or gain including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

b. Decreases to Capital Accounts. Each Member's Capital Account shall be decreased by:

i. the amount of any money actually distributed by the Company to the Member;

ii. the fair market value of any property distributed to the Member, as determined by the Company and the receiving Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of Code § 752); and

iii. the Member's share of net losses and of any separately allocated items of deduction or loss including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

4.5 Distribution of Assets. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the net profits or net losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

4.6 Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Member's Membership Interest in the Company by a Transferring Member, the Capital Account of the Transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the Membership Interest so transferred.

4.7 Compliance with Section 704(b) of the Code. The provisions of this Article IV relate to the maintenance of Capital Accounts, and are intended, shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Exhibit B (Internal Revenue Code § 704(b) Provisions) to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Article V and Article X and the Capital Contributions made pursuant to this Article IV. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the Initial Contribution.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations. Except as may be required by the Code or this Agreement, net profits, net losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated to each Member in the proportion that such Member's Membership Units bears to all issued and outstanding Membership Units.

5.2 Distributions.

a. Determination. Except for the Federal Tax Liability which shall be paid under paragraph 5.2.b. as a mandatory payment, the Managers may make other distributions to the Members from time to time only after the Managers determine, in their reasonable judgment,

that the Company has sufficient cash and/or property on hand which exceeds the current and the anticipated needs of the Company to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, reserves and mandatory distributions, if any).

b. Distributions to Members. All distributions shall be made to the Members in accordance with their Membership Units.

c. Types of Distributions. Distributions shall be in cash and/or property as determined by the Managers.

d. Distribution Not Allowed. No distribution shall be declared or made if, after giving it effect:

i. the Company would not be able to pay its debts as they become due in the usual course of business;

ii. the Company's total assets would be less than the sum of its total liabilities; or

iii. the Company would not have the amount needed if it were to dissolve at the time of the distribution to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

e. Liability of Member in Accepting a Distribution. A Member who accepts or receives a distribution with knowledge of facts indicating the distribution is in violation of the Act or the Agreement is liable to the Company for the amount the Member accepts or receives that exceeds the Member's share of the amount that could have been distributed without violating the Act or the Agreement.

f. Distributions to Cover Tax Liability. If the Company incurs some income that would generate tax liability for its Members, and there is sufficient cash available for distribution to Members, it is the intent of the Company to distribute to Members, based upon their Membership Units, sufficient cash to allow the Members to substantially pay the estimated federal income tax liability associated with the allocation of income to each Member.

ARTICLE VI - DISPOSITION OF MEMBERSHIP INTERESTS

6.1 General. Every sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other disposition of any Membership Interest shall be made only upon compliance with this Article. No Membership Interest shall be disposed of if:

a. the disposition would cause a termination of the Company as defined under the Code;

b. the disposition would be in violation of any applicable state or federal securities law or regulation; or

c. the assignee of the Membership Interest does not provide the Company with the information and agreements that the Members may require in connection with such

disposition. Any attempted disposition of a Membership Interest in violation of this Article is null and void.

6.2 Permitted Dispositions. Subject to the provisions of this Article, a Member may assign such Member's Membership Interest in the Company in whole or in part. The assignment of a Membership Interest does not itself entitle the assignee to participate in the management and affairs of the Company or to become a Member or to vote on any matters submitted to Members to vote upon. Such assignee is only entitled to receive, to the extent assigned, the distributions to which the assigning Member would otherwise be entitled.

An assignee of a Membership Interest shall be admitted as a substitute Member and shall be entitled to all the rights and powers of the assignor only if the Class A Member consents. If admitted, the substitute Member, has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member and therefore is subject to the terms and conditions of this Agreement.

6.3 Right of First Refusal. A Member may not sell, assign, transfer, or exchange any Offered Membership Interest unless the Transferring Member first notifies the Company and the Class A Member of the identity of the prospective buyer, assignee, or transferee and sends to the Company and the Class A Member a copy of the Offer, and the Transferring Member shall do the following:

a. The Transferring Member must first offer to sell the Offered Membership Interest in the Company to the Company, for the same price and on the same terms as those being offered to the Transferring Member in the Offer. The Company shall have thirty (30) days after receiving said offer to accept said offer.

b. Any Offered Membership Interest not purchased by the Company pursuant to paragraph 6.3.a. above shall then be offered to the Class A Member. The Class A Member shall have thirty (30) days after having received the offer to accept said offer.

c. If the Company or the Class A Member receiving said Offer does not elect to purchase the entire original Offered Membership Interest pursuant to paragraphs 6.3.a. or 6.3.b. above, the Transferring Member shall, for a period of ninety (90) days after the expiration of the option periods set forth above, be free to sell the remaining Offered Membership Interest to the person or entity who submitted the Offer for the exact price and upon the exact terms disclosed in the Offer. Such purchaser shall not become a substitute Member of the Company unless the express written unanimous consent of Class A Member is obtained. Otherwise, the purchaser shall become an assignee of a Membership Interest subject to the provisions of this Agreement.

6.4 Registration and Transfer of Interest. Each Member hereby acknowledges and represents that notwithstanding any provisions contained in this Agreement, no Company interest or Membership Interest may be offered or sold and no transfer of such interest will be made either by the Company or the Members unless such interest is registered under the Securities Act of 1933 and any applicable securities laws of the State of Michigan or an opinion of counsel for the Company, is obtained to the effect that there is no violation of applicable federal or state laws and the cost of such is reimbursed to the Company by the Member transferring the Membership Interest.

6.5 Entity Related Transfers. Anything in this Agreement to the contrary notwithstanding, with respect to each Member that is an entity, transfers (i) from the entity to one or more members; (ii) between individual equity owners of the Member, are permitted without triggering any right of first refusal, subject to compliance with securities registration laws as specified under paragraph 6.4 of this Agreement. No transfer under this paragraph is effective unless the transferee executes and becomes a party to this Agreement as a substitute Member. The members of each Member entity as of the date of this Operating Agreement have been provided to the Company.

ARTICLE VII - MEETING AND REPRESENTATIONS OF MEMBERS

7.1 Member Representative. Each Member who is not an individual may designate a Member Representative for purposes of meetings of Members and all decisions, actions and communications on behalf of such Member. A Member may designate a new Member Representative by written notice to the Company and the other Members executed by either the existing Member Representative of such Member or by the chairperson or President of such Member. Each Member Representative, when appointed and designated, and until terminated, shall be deemed to have full and complete authority to act on behalf of the Member the Member Representative represents, and to bind such Member in all matters relating to, arising out of, or in connection with this Agreement, and the management and operation of the Company. No Member Representative shall be personally liable to the Members by reason of said Member Representative's acts as such, except in the case of said Member Representative's gross negligence or actual fraudulent or dishonest conduct, or liable to any third party for the debts and obligations of the Company. If applicable, the Member Representative for a Member shall be set forth in Exhibit A.

7.2 Voting. The Class A Member has all rights to vote as a Member of the Company and shall manage the day to day affairs of the Company. The Class B Members do not have any voting rights under this Operating Agreement. An amended report may be sent to the Class B Members in lieu of any annual meeting of the Members.

7.3 Annual Meetings. An annual meeting of Members for the transaction of such business as may properly come before the Meeting may be held at such place, on such date, and at such time as the Class A Member shall determine.

7.4 Special Meetings. Special meetings of Members for any proper purpose or purposes may be called at any time by the Managers or any Member.

7.5 Notice of Meetings. The Company shall deliver or said written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given by e-mail or by mail through the postal service, not less than ten (10), nor more than sixty (60) days before the date of the meeting. All meetings of the Members shall be presided over by a Chairperson who shall be a Member so designated by the Managers. Presence at a meeting waives the required notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or the transacted business at the meeting.

7.6 Consent. Any action required or permitted to be taken at an annual or special meeting of the Class A Member may be taken without a meeting, without prior notice, and

without a vote, if consents in writing, setting forth the action so taken are signed by the Class A Member. Every written consent shall bear the date and signature of the Class A Member who signs the consent.

7.7 Quorum. The presence of the Class A Member is a quorum for the transaction of business.

7.8 Manner of Acting. The Class A Member may vote or may give its written consent and this shall be action on behalf of the Company and the Members.

7.9 Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member that if the Member is an organization, it is duly organized, validly existing, and in good standing under the laws of its state of organization and that it has full organizational power to execute and agree to the Agreement to perform its obligations hereunder.

7.10 Investment Considerations. Each Member hereby further acknowledges and represents that:

a. the Member has reviewed and understands the investment considerations described in the attached Exhibit C (Investment Considerations);

b. the Member has had the opportunity: (i) to investigate the business of the Company, the qualifications of the other Members, and the tax and financial implications of an investment in the Company, and the merits and risks of investment in the Company, and (ii) to ask questions of, and receive answers from the Company concerning the terms and conditions of membership, to obtain such supplemental information as the Member deemed desirable, and the Member acknowledges and represents that all such information has been made readily available to the Member by the Company;

c. in reaching the conclusion that the Member desires to invest in the Company, such Member has carefully evaluated his financial resources and the risks associated with the investment, including the risks described in subparagraph 7.10.a, above;

d. the Member is familiar with the Company's business, properties, prospects and financial condition; and

e. the Member has agreed to acquire a membership interest in the Company after evaluating these risks, and after obtaining the advice of such professional advisors as the Member deems necessary in the Member's sole discretion;.

7.11 Investment Decision. Each Member hereby further acknowledges and represents that:

a. the Member is acquiring the Membership Interests for investment for the Member's own account and not with a view to, or for, resale, in connection with any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), and the Member does not now have any reason to anticipate any change in his

circumstances or other particular occasion or event which could cause the Member to sell or transfer such Membership Interest;

b. The issuance of the Membership Interest will not be registered under the Securities Act or qualified under applicable state securities laws, including without limitation the Michigan Uniform Securities Act, on the grounds that the issuance of the Interests to such Member is exempt from registration under such laws. The Membership Interest may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements;

c. the Membership Interest is irrevocable, and except as provided in paragraph 6.6, must be held indefinitely by such Member unless the Membership Units are subsequently registered under applicable federal and state securities laws or an exemption from such registration is available;

d. there is no market for the Membership Interest, and it is not anticipated that such a market will develop;

e. the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of the Membership Interest and can bear the economic risk of an investment in the Membership Interest for an indefinite period of time;

f. the Member is an "accredited investor" as defined in Rule 501(a) of the Securities Act;

7.12 Electronic Meetings. The Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

ARTICLE VIII - MANAGEMENT

8.1 Management of Business. The Company shall be managed by the Class A Member. The initial Manager shall be:

_____

8.2 Duties of Class A Member. The Class A Member shall manage the day to day operations of the Company.

8.3 Management Vested with a Manager. Except as may be delegated to the officers of the Company or otherwise be provided in this Agreement, the business and affairs of the Company shall be managed by the Class A Member. The Class A Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including the power to:

a. purchase, lease or otherwise acquire any real or personal property;

b. sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal property;

c. open one or more depository accounts and make deposits into and checks and withdrawals against such accounts;

d. borrow money, incur liabilities, and other obligations;

e. enter into any and all agreements and execute any and all contracts, documents and instruments;

f. engage employees and agents, define their respective duties, and establish their compensation or remuneration;

g. establish pension plans, trusts, profit sharing plans and other benefit and incentive plans for Members, employees and agents of the Company;

h. obtain insurance covering the business and affairs of the Company and its property and on the lives and well being of its employees and agents;

i. commence, prosecute, or defend any proceeding in the Company's name; and

j. participate with others in partnerships, joint ventures or other associations and strategic alliances.

k. the sale, exchange, lease, or other transfer, of all or substantially all of the assets of the Company; and

l. after the sale or transfer of all or substantially all of the assets of the Company, the (i) investment of the proceeds of such sale in one or more investments or businesses; and (ii) the distribution of all or part of such proceeds to the Members.

8.4 Standard of Care; Liability. Class A Member shall discharge said Class A Member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Class A Member reasonably believes to be in the best interests of the Company. The Class A Member shall not be liable for any monetary damages to the Company for any breach of such duties except for receipt of a financial benefit to which the Class A Member is not entitled; voting for or assenting to a distribution to Members in violation of this Agreement or the Act, or a knowing violation of the law.

8.5 Tax Matters Partner. The Class A Member shall be the tax matters partner of the Company pursuant to Code § 6231(a)(7). Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Code § 6223.

8.6 Compensation. The Class A Member, acting on behalf of the Company, shall be reimbursed for reasonable expenses incurred while conducting the business of the Company.

ARTICLE IX - OFFICERS

9.1 Officers. The Class A Member of the Company may, in its sole discretion, elect officers of the Company to conduct the day to day affairs of the Company under the direction and supervision of the Managers. The officers elected by the Class A Member may consist of a President, a Secretary, a Treasurer, and if desired, a Chairman of the Board and one or more Vice Presidents. An officer shall hold office for the term for which said officer is elected or appointed and until said officer's successor is elected or appointed and qualified, or until said officer's resignation or removal. Two or more offices may be held by the same person, but an officer shall not execute, acknowledge or verify an instrument in more than one capacity, if the instrument is required by law or this Agreement to be executed and acknowledged or verified by two or more officers.

9.2 Duties of Officers. The officers of the Company may be charged with the daily operations of the Company and shall perform such duties as specified by Class A Member of the Company.

ARTICLE X - EXCULPATION OF LIABILITY; INDEMNIFICATION

10.1 Exculpation of Liability. Unless otherwise provided by law or expressly assumed, a person who is a Member or Officer, shall not be liable for the acts, omissions, representations, covenants, debts or liabilities of the Company.

10.2 Mandatory Indemnification by the Company. Except as otherwise provided in this Article, the Company shall indemnify any Member, and any officer of the Company, and may (in its sole discretion) indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, employee, or agent of the Company.

a. Indemnification Applied Against Expenses. Any Indemnified Person shall be indemnified against expenses, including attorneys fees, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with the action, suit or proceeding, only if the Indemnified Person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such Indemnified Person reasonably believed to be in the best interests of the Company and, with respect to a criminal action or proceeding, if such Indemnified Person had no reasonable cause to believe such Indemnified Person's conduct was unlawful.

b. Success of Person. To the extent that an Indemnified Person has been successful on the merits or otherwise in defense of an action, suit or proceeding or in defense of any claim, issue or other matter in the action, suit or proceeding, such Indemnified Person shall be indemnified against actual and reasonable expenses, including attorneys fees, incurred by such Indemnified Person in connection with the action, suit or proceeding brought to enforce the mandatory indemnification provided in this Agreement.

c. Events of Indemnification. Any indemnification permitted under this Article, unless ordered by a court, shall be made by the Company only as authorized in the specific case and upon:

i. a determination that the indemnification is proper under the circumstances because the Indemnified Person has met the applicable standard of conduct; and

ii. an evaluation of the reasonableness of expenses and amounts paid in settlement.

This determination and evaluation shall be made by the Class A Member or other members who are not parties or threatened to be parties to the action, suit or proceeding.

d. Events When Indemnification Shall Not Be Provided. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to any Member, employee, or agent of the Company for or in connection with:

i. the receipt of a financial benefit to which such person is not entitled;

ii. voting for or assenting to a distribution to Members in violation of this Agreement or the Act; and

iii. a knowing violation of law.

ARTICLE XI - DISSOLUTION AND WINDING UP

11.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events:

a. at any time specified in the Articles or this Agreement;

b. upon the happening of any event specified in the Articles or this Agreement;

c. by a vote of the Class A Member;

d. unless the Class A Member determines otherwise, fifteen (15) years from the Effective Date of this Agreement.; or

e. upon the entry of a decree of judicial dissolution.

11.2 Winding Up. Upon dissolution, the Company shall cease carrying on its business and affairs and shall commence winding up the Company's business and affairs as soon as practicable. Upon the winding up of the Company, the assets of the Company shall be distributed first to creditors to the extent permitted by law, in satisfaction of Company debts, liabilities, and obligations, and then to Members and former Members in satisfaction of Company liabilities to them, and then the balance of the net proceeds shall be distributed to the Members in accordance with their Membership Units.

ARTICLE XII - VOLUNTARY WITHDRAWAL OR DEATH OF A MEMBER

12.1 Voluntary Withdrawal of a Member. A Member may not voluntarily withdraw from the Company or voluntarily dissolve (if applicable), without the unanimous written consent of Class A Member.

12.2 Death of a Member.

a. Purchase or Liquidation. If an individual Member dies, then the Company has an option for ninety (90) days from the date notified of the death of the Member to either (i) purchase the Membership Interest from the deceased person's heirs or estate, or (ii) allow the deceased Members' heirs to become assignees of the Membership Interest represented by the Units held by the deceased Member. Such purchase shall occur within ninety (90) days.

b. Purchase Price. The purchase price for any deceased Member's Membership Interest where the Company has elected to purchase the Membership Interest shall be $500,000/Unit multiplied by the number of Membership Units owned by the deceased Member.

c. Terms of Payment and Purchase Price. The Company may elect to have the Company pay the purchase price plus interest at 5% per annum to the Member's estate in sixty (60) equal, consecutive monthly installments commencing within ninety (90) days of the date of notice of the death sent to the Company.

ARTICLE XIII - ADDITION OF NEW MEMBERS

13.1 Addition of New Members. The Class A Member may determine that it is in the best interest of the Company to admit additional Members subject to the terms of this Agreement, as amended to reflect the new ownership interests.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Nouns and Pronouns. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

14.2 Headings. The headings contained in this Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.

14.3 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

14.4 Entire Agreement. This Agreement and the Articles for the Company constitute the entire agreement among the parties hereto and contain all of the agreements among said parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

14.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

14.6 Amendment. In conjunction with the provisions of paragraph 7.2 of this Agreement, this Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Agreement. No change or modification to this Agreement shall be valid unless in writing and signed by all of the parties to this Agreement.

14.7 Notices. Any notice permitted or required under this Agreement shall be conveyed to the party at the address reflected in this Agreement on Exhibit A and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission or may be given by e-mail to the e-mail address also listed in Exhibit A or in the Subscription Agreement executed by the Member.

14.8 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

14.9 Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan, without giving effect to conflict of law principles. All actions or proceedings arising from or related to this Agreement shall be brought in a state court of competent subject matter jurisdiction in Ingham County, Michigan, or in the federal courts of competent subject matter jurisdiction in the Western District of Michigan, Southern Division. Each party expressly and irrevocably consents to personal jurisdiction and venue in such courts, and agrees not to object to such jurisdiction or venue on the ground of *forum non conveniens* or otherwise.

14.10 Arbitration. At the Company's election and in its discretion, any dispute, controversy, or claim arising out of or related to this Agreement or the breach thereof to which the Company is a party shall be submitted to and settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration will be conducted by private party administration consisting of either one or three arbitrators selected by the Company at its election, but shall not be conducted by AAA. The arbitrators shall produce a reasoned, written decision as the basis for any award. The parties agree that no awards of punitive damages may be made. Any counterclaims must be brought in the first filing by a party or shall be barred. The costs of such arbitration shall be paid equally by the parties, and each party shall be responsible for its own attorneys fees, costs and expenses. The arbitration award may be entered as a final judgment in any court having jurisdiction thereon. The arbitration shall be held in the metropolitan Lansing, Michigan area. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. This provision shall survive termination of this Agreement without limitation.

14.11 Advice of Counsel. The Members agree, stipulate, and acknowledge that FSC&S has prepared this Agreement on behalf of and in the course of its representation of _____; the Class A Member and that FSC&S has not represented the interest of any Class B Member in connection with this Agreement, and that:

a. each Member has been advised that a conflict of interest may exist between said Member's interest and those of the Company and/or the other Members;

b. each Member has been advised to seek the advice of independent legal counsel; and

c. each Member has had the opportunity to seek the advice of independent legal counsel.

14.12 Securities Legend. With respect to securities registration, each certificate (if any) evidencing a Membership Unit will carry the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THEREOF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date set forth above.

THE COMPANY:

CLASS A MEMBER

[redacted]

By: _____

Its Manager

CLASS A MEMBER:

[redacted]

By: _____

Its Manager

CLASS B MEMBER:
(see executed Subscription Agreements)

By: _____

DRAFT

EXHIBIT A

OPERATING AGREEMENT OF

____

Dated ______________, 2008

Class A Member Name and Address	Capital Contribution	Membership Units	Membership Interest
______________________	$1,000	5	20%
Class B Members Name and Address			
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
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	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
TOTALS:	$10,001,000	25 units	100%

DRAFT

EXHIBIT B
INTERNAL REVENUE CODE §704(B) PROVISIONS

ARTICLE B-I
DEFINITIONS

1.1 Company Minimum Gain. An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

1.2 Company Nonrecourse Liability. A Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in §1.752-2 of the Treasury Regulations) with respect to the liability.

1.3 Member Minimum Gain. An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease of Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code and Treasury Regulations issued thereunder, as the same may be issued and interpreted from time to time.

1.4 Member Nonrecourse Liability. Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor or a guarantor.

1.5 Net Losses. The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.6 Net Profits. The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.7 Nonrecourse Liabilities. Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.8 Offsettable Decrease. Any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation related attributable to depletion allowances under §1.704-1(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year, are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

ARTICLE B-II
CODE SECTION 704(b) PROVISIONS

2.1 Allocations of Net Profits and Net Losses from Operations. Except as may be required by §704(c) of the Code, and §§ 2.2, 2.3, and 2.4 of this Article B-II, net profits, net losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with Article V of the Operating Agreement.

2.2 Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument

causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.752-2 of the regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

2.3 Member Minimum Gain Chargeback. If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of §1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to §704(b) of the Code.

2.4 Qualified Income Offset. In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

2.5 Elections. The Company may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

2.6. Taxes of Taxing Jurisdictions. To the extent that the laws of any taxing jurisdiction requires, each Member requested to do so by the Company will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the, laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Agreement. The Company may, where permitted by the rules of any taxing jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the Members of the amount of such tax interest and penalties so paid.

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EXHIBIT C
INVESTMENT CONSIDERATIONS

An investment in the Company involves a high degree of risk. In addition to the risks described elsewhere in the Operating Agreement, the risks described below represent the material risks a Member should carefully consider before making an investment decision. If any of these risks occur, the Company's business, financial condition, liquidity and results of operations could be materially and adversely affected, in which case the value of the Membership Units could decline significantly and a Member could lose all or a part of his or her investment. The risk factors described below are not the only ones that may affect the Company. Additional risks and uncertainties not presently known to the Company may also adversely affect the Company's business, financial condition, liquidity and results of operations.

No Prior Business History. The Company has no prior business history.

No Tangible Assets. The Company has and will likely have no tangible assets other than miscellaneous office supplies and related materials.

Management Structure. Under the Operating Agreement of the Company, the authority to manage the operations and daily business of the Company is delegated to the Class A Member. Unless otherwise agreed, all decisions affecting the Company are to be made by the Class A Member in its discretion, including any decision to invest assets of the Company in another business. The Class B Members in their capacity as Members, will not be actively involved in the management of the Company.

Risks Associated with other Enterprises. The primary purpose of the Company is to invest in what is known as the [redacted]. Any decision to invest in such an enterprise will be made by Class A Members, based upon information available to it at the time. Although information regarding such Project will be compiled by the Company, it will be prepared by others who are beyond the Company's control. The Class A Member has evaluated the Project based upon certain information primarily supplied by the Seller of the Project. No assurance can be given that such information will be accurate or complete.

The performance of the Company depends on the performance of the Project. No assurance can be given that the Project specific performance projections or goals will be met.

Business Risk. The Company and the Project will be constructed within proposed timetables or under proposed costs, or tenants will take occupancy of the Project. This proposed time table is pursuant to proposed rents and it is unclear whether the Company will invest will also be subject to risks facing any other business, including economic downturns, competition, liability claims, and many other risks. If the Class B Member lives outside of the United States, their investments in the Company will be subject to currency fluctuations, and special circumstances attributable to the legal, political, economic and social structures unique to USA, and any restrictions which may be imposed by other _____ Country.

Restricted Securities. The Membership Units issued to Members will be restricted securities under the Securities Act and thus may not be resold except pursuant to registration or

an exemption from registration. The Operating Agreement (and if applicable, any certificate representing the Membership Units) will contain a legend (in addition to any specific legends required under applicable state securities laws) substantially as follows:

> THE SECURITIES REPRESENTED BY THIS [AGREEMENT/ CERTIFICATE] HAVE BEEN ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THERE OF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

To ensure that transfers of the Membership Units are made in strict accordance with all limitations upon transfers imposed by the federal and applicable state securities laws, the Company may require an opinion of counsel with respect to the applicability of such laws to a transfer. The books and records of the Company will include respective "stop transfer" notations to the effect that no transfer of any Membership Units shall be effective unless strict compliance with the applicable securities laws shall occur, the determination of which will be at the absolute discretion of the Company.

No Market. There is no present market for the Membership Units and no market for the Membership Units will develop. In addition, the transferability of Membership Units is subject to the terms of this Operating Agreement and each Member will have very limited rights to dispose of the Member's Membership Units prior to dissolution of the Company. Accordingly, an investment in the Membership Units will not be liquid and Members will likely have difficulty selling such Membership Units in the future. The purchase of the Membership Units should be considered only as a long term investment.

Not a Registered Offering. The Membership Units have not been registered under the Securities Act in reliance upon exemptions from registration. Prospective Members must recognize that they do not have the same protections afforded by fully registered securities offerings because they do not have the benefit of prior review by regulatory authorities. Accordingly, each Member must judge the adequacy of disclosure and the fairness of the terms of this venture on his or her own.

Forward Looking Statements. Because of their nature, predictions, forecasts, and projections about the future are inherently risky. In the case of a new company like the Company, such forward looking statements about Company operations are especially likely to be

imperfect, wrong, or unintentionally misleading. All predictions, forecasts, and projections are based on assumptions that may not prove to be accurate. In addition, the estimates and assumptions underlying the projections are based on numerous economic and competitive assumptions that are beyond the Company's control. Potential Members should realize that all such projections are good faith estimates only and that actual results will vary, and may vary significantly. Because of the limitations of these projections, Members are cautioned about placing undue reliance on them. This information was not prepared with a view to public disclosure or to compliance with published guidelines of the Securities and Exchange Commission or any state securities commission.

Foreshadowing statements, without limitation, statements relating to the profitability of a Membership Unit and adequacy of the Company's resources are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Members are advised that such foreshadowing statements involve risks and uncertainties, including without limitation, risks associated with the future economic conditions, and other risks and uncertainties indicated from time to time, many of which are beyond the control of the Company. In addition, when used herein, the words "will", "intends to", "anticipates", "expects", "likely" and other similar expressions are intended to identify foreshadowing statements.

Equity Investment. Investment in any equity unit of ownership such as the Membership Units is risky because there is no guaranteed return or growth, if any, on the investment and the amount and frequency of distributions, if any, and the amount of any growth, if any, is dependent upon the future financial success of the Company, which cannot be predicted with any certainty. Because of restrictions on the sale or other transfer of the Membership Units, no established market for the interests will develop. Members may not, therefore, be able to liquidate their investment in the event of an emergency or for any other reason and must continue to bear the economic risk of the investment for an indefinite period. Members are in no way guaranteed that they will experience gains or not suffer losses in the value of their investment.

Each prospective Member is urged to consult with his or her tax and financial advisors to determine if an investment in the Company is suitable for the Member.

Tax Classification of the Company. While the Company believes that it will be classified as a partnership for federal, state, and local tax purposes, the Company has not obtained (and does not intend to obtain) either an opinion of counsel or an advance ruling from the Internal Revenue Service ("Service"), the Michigan Department of Treasury, or any local tax authority that the Company will, indeed, be classified as a partnership for tax purposes, and not as an association taxable as a corporation. There is a risk the Service, the Michigan Department of Treasury, or a local tax authority will seek to classify the Company as an association taxable as a corporation for income tax purposes, which could have significant adverse tax and perhaps other consequences for Members. EACH PROSPECTIVE MEMBER IS URGED TO CONSULT HIS/HER TAX AND LEGAL ADVISOR(S) REGARDING THE TAX AND OTHER RISKS AND CONSEQUENCES OF AN INVESTMENT IN THE COMPANY.

Tax Risks. The federal income tax aspects of an investment in the Company are complex and their impact may vary depending on a Member's individual circumstances. Members should

consider the following tax risks, among others: (a) the Company has not obtained any opinion on material tax issues or the realization in the aggregate of all potential material tax consequences of an investment in the Company; (b) Members will be taxed currently on their allocable shares of the Company's taxable income, even if they receive no distributions of cash from the Company; (c) the Company was not formed with the intent to produce deductions in excess of income that could be used to offset income from other sources; (d) any losses allocated to a Member are likely to be subject to the limitations on deduction of passive activity losses and may be further limited under the at risk rules; (e) any income realized by a Member from the Company is likely to be taxed as ordinary income rather than as capital gain; (f) the Service may assert that the Company should be characterized as an association taxable as a corporation, which would deprive Members of tax benefits from operating in a partnership form; (g) Members might be deemed to have a status other than partners in a partnership for federal income tax purposes; (h) income allocated by the Company to retirement plans and accounts or other tax exempt investments may be taxable to them as unrelated business taxable income; (i) the Service may challenge the Company's allocation of income, gain, loss, deduction and credit; (j) Members may be precluded from claiming certain deductions by virtue of limitations on miscellaneous itemized deductions; (k) the Company may claim deductions or other tax benefits to which it believes it is entitled, but there can be no assurance that the deductions or other benefits will be allowed on audit; and (l) tax laws, rules, regulations and rulings may change, with or without retroactive effect. No advance ruling will be sought from the Service on any tax issue. EACH POTENTIAL MEMBER IS URGED TO CONSULT HIS TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF INVESTING IN THE COMPANY, WITH SPECIFIC REFERENCE TO HIS OWN TAX SITUATION.

Determination of the Price for Membership Units. The price for the Membership Units was arbitrarily determined by the Company and may have no relationship to book value, assets, earnings or any other generally accepted criteria of value.

Liability of Members. In general, Members in the Company will not be liable for obligations of the Company. However, their capital contributions, and respective shares of the Company's assets and retained profits are subject to the risk of the Company's business and claims of Company creditors.

Return of Distributions and Contributions. If the Company were unable otherwise to meet its obligations, a Member might be obligated to return cash distributions previously received by him or her where the distribution is in violation of the operating agreement or the Michigan Limited Liability Company Act. Under the Michigan Limited Liability Company Act, a member may not receive a distribution from the Company to the extent that, at the time of the distribution and after giving effect to the distribution, all liabilities of the Company, other than liabilities to members on account of their interest in the Company, would exceed the fair value of the Company's assets.

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

JENNIFER M. GRANHOLM
GOVERNOR

STANLEY "SKIP" PRUSS
DIRECTOR

December 30, 2008

Mr. Ken Szymusiak
Lansing Economic Development Corporation
401 S. Washington Sq., Suite. 100
Lansing, MI 48933

Mr. Szymusiak:

I am writing to inform you that per your request, the Michigan Department of Labor and Economic Growth (MDLEG) has determined that the city of Lansing fits the criteria of a "Target Employment Area" in regards to the EB-5 Immigration Regional Center Program.

Due to the nature of the statistical analysis of unemployment the only true comparison between municipalities and the nation is through the comparison of year end data. For our determination, we have utilized seasonally adjusted year end figures from 2007 for the nation and the city of Lansing. The results are as follows:

2007 Year End Seasonally Adjusted Unemployment:

National	4.6%
City of Lansing	8.3%

Data source is the Michigan Department of Labor and Economic Growth and the Bureau of Labor Statistics. The data reflects the official employment and unemployment values as calculated using the methodology outlined by the Bureau of Labor Statistics (BLS) for the Local Area Unemployment Statistic (LAUS) program and supports the INS requirement for calculating unemployment levels to meet qualifications.

Utilizing these figures, the city of Lansing qualifies as a "Target Employment Area" within the EB-5 Immigration Regional Center Program due to the fact that the city's unemployment rate exceeds 150% of the national average.

Sincerely,

Richard H Waclawek, Director
Bureau of Labor Market Information & Strategic Initiatives

3032 W. GRAND BOULEVARD • SUITE 9-100 • DETROIT, MICHIGAN 48202
www.michigan.gov • (313) 456-3100

JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN D. CHERRY, JR.
LT. GOVERNOR

December 23, 2008

Ms. Barbara Q. Veldarde
Chief, Service Operations
201 Massachusetts Avenue, NW, Room 2123
Washington, D.C. 20529

Dear Ms. Veldarde:

I have designated the Michigan Department of Energy, Labor, and Economic Growth (DELEG) as the state agency responsible for determining whether the city of Lansing meets the high unemployment rate necessary for designation as an EB-5 "Target Employment Area." In this capacity, DELEG will issue a letter on behalf of the Lansing Economic Development Corporation declaring the city is an area of high unemployment and indicating the methodology used in this determination.

Any correspondence regarding this determination should be directed to:

Rick Waclawek, Director
Labor Market Information and Strategic Initiatives
Cadillac Place
3032 W. Grand Boulevard
Suite 9-100
Detroit, MI 48202

Sincerely yours,

Jennifer M. Granholm
Governor

JMG/pd
c: Ken Szymusiak, Lansing Economic Development Corporation
Harry Whalen, Michigan Economic Development Corporation

LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Virg Bernero, Mayor

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Ms. Barbara Q. Velarde
Chief
Services Operations
201 Massachusetts Avenue, NW, Room 2123
Washington, D.C. 20529

I wanted to take a moment to provide you with the latest details regarding the Market Place development, which will be overviewed in subsequent pages.

Market Place, along with Ball Park North, is part of a duo of projects proposed by Lansing developer, Pat Gillespie. Market Place will occupy the land southwest of Shiawassee St. & Cedar St., down to Museum Drive. This land is currently occupied by the Lansing City Market, which will be demolished and reconstructed next to its current location. As outlined within the development agreement, the project is to include multiple (4-5) mixed-use buildings ranging from 2-4 stories. The two floor buildings, on the east half of the site will include underground parking with ground floor retail and upstairs residential. The four floor buildings will include four floors of residential housing and underground parking.

- **Height** - 2-4 floors
- **Size (sq ft)** - 140,000 in 4-5 buildings
- **Developer** - Pat Gillespie, Gillespie Group
- **Parking Spaces** - Underground/Unknown
- **Cost** - $24-$30 million
- **Construction** - Spring 2009 Start
- **Incentives** – Brownfield Tax Increment Financing, Brownfield Michigan Business Tax Credits

After months of public meetings and deliberation, construction is slated to begin on the new Lansing City Market in Spring 2009. The construction of Market Place will begin shortly after completion of the new Lansing City Market.

It is the intent of the Lansing Regional Center to recruit investors to serve in an equity partnership in this terrific mixed-use development opportunity.

Sincerely,

Ken Szymusiak
Director, International Initiatives
Lansing Economic Development Corporation


MARKET PLACE
Changing the FACE of Downtown
GILLESPIE GROUP
A New City Market - Downtown Lansing

GILLESPIE group

2501 Coolidge Rd., Ste. 501
East Lansing, MI 48823
(517) 333-4123

MARKETPLACE and *BALL PARK NORTH*

~ Written Narrative ~

In an effort to continue the positive momentum the City of Lansing has experienced over the past couple of years, Gillespie Group is pleased to present the following detail as it pertains to the proposed revitalization of one of our city's most underutilized and yet greatest potential sites. Located on the Grand River, the site will encompass several acres and be constructed in two phases.

Marketplace

The ***Marketplace*** site contains the existing Lansing City Market which is in poor condition and underutilized. We feel this is "***THE***" site if you're going to be on the river in downtown Lansing, Michigan. We believe this development will help change the river scape and set the tone for additional downtown development.

Our vision is to raze the existing market building and replace it with a new market closer to the river's edge and next to the existing River Walk (paved pathway for bicycles/pedestrians/roller bladers, etc.). Proposed venues in the new market include a coffee shop, wine bar, and ice creamery with organic fruits and vegetables being sold and outdoor seating provided as well. All of this will entice people to the water's edge to enjoy the new diverse market place.

In addition to this activity, we envision semi-motorized and non-motorized boats that will be docked at this site when "in season" and available for rent. A few boat slips will be available for people to utilize so they may enjoy the downtown area. The green, grassy knoll to the east of this building can serve as overflow for seasonal flats of flowers and festive tents for various events the market plans to hold.

We also propose to house a restaurant (with large patio facing the river) 14,000 square foot day spa and 25 (+/-) condominiums in a building just to the northeast of the new market that shares a high-end, eclectic main lobby area. Covered parking will be provided for resident vehicles with surface parking available for patrons and guests.

Ball Park North

On the half block directly to the north of Oldsmobile Park, we would like to construct a building looking down into the stadium, with the outdoor patio seating to provide a view into the ballpark. We propose two levels of parking under this structure and three to four levels above.

We believe this will be a massive structure and need to consist of two or three different structures that are either attached or look as though they are attached. Two different hotel (brand) products may play off

each other well in this format (one in left field and one in right field). There may be a few floors of hotel rooms and a floor or two of condominiums and/or apartments.

This building could also be a very unique use for a corporate headquarters or office, using just a portion of the building. The balance of this phase can be a multitude of things such as office, residential, retail, entertainment or a mix of all.

Elevation

We prefer an urban-edge elevation with a flat roof look but are not opposed to a pitched roof with the right parapet walls and pitch. We envision a roof top that allows 5,000 square feet of roof top dining, entertainment and the like.

Why Lansing will be a very Different City 36 Months from Today

- ***The Stadium District*** development will be up and operating in April 2008
  - 100,000 square foot mixed-use building w/36,000 square feet of retail, 30 apartments, 20 for-sale condominiums
- The new **State Police Headquarters,** located at northeast corner of Grand Avenue and Kalamazoo Street, will be open with an estimated 500+ new jobs
- Board of Water and Light (BWL) defunct power plant will have been transformed into the new corporate headquarters for **The Accident Fund**. Approximately $170 million will be spent on this redevelopment project. Between our development and the BWL development, this part of the river will be a star of the Midwest. Estimated 1,200 jobs upon completion.
- Kalamazoo Gateway - $12 million LEED-certified retail and residential complex, 32 apartments and 10 condominiums
- Capitol Complex – A mixed-use development offering 5,000 square feet of commercial space and for-sale condominiums ranging from 1,000 square feet at an estimated $136,000 each to 2,000 square feet at an estimated $272,000 each
- The Arbaugh – A mixed-use development with commercial space on the first floor and 48 loft apartments on the upper levels
- Capitol Club Tower – 12 to 24 story high-rise housing 80-160 living units, restaurants, a gym, perhaps even a grocery store and swimming pool.
- Prudden Place – An upper-scale full service rental community currently featuring 72 units with another 60 units scheduled for Phase II of this premier property.

We feel that as the developments within the City of Lansing continue to unfold, demand for hotel space will grow immensely. In early 2009 we would hope to have a hotel operation or two on board and ready to proceed with **Phase II – *Ball Park North*** and its mixed uses.

Additional Downtown Lansing Attributes

- **Michigan State Capitol** – Only .63 miles from our developments
- **City of Lansing** government offices – in very close proximity to our developments and employing over 11,400 associates
- Over 32,000 people are in downtown Lansing daily
- **Cooley Law School** – largest law school in the country with 2,300 students in the downtown area and located just .7 miles from our developments
- **Davenport University** – 900-1000 students and located .7 miles from our developments
- **Michigan State University** – Located just 2.9 miles from our developments with a student population of 44,000
- **Entertainment Express Trolley** – The newest addition to our transportation system, this trolley links downtown Lansing and downtown East Lansing, making seven stops every 30 minutes and runs on Thursday, Friday and Saturday evenings.
- **Sparrow Hospital** – Located just three quarters of a mile from our developments, Sparrow Hospital employs 7,800 health care workers and cares for over 567,000 patients each year. This hospital just opened a new 10-story addition that features the region's first and only ER for children, operating rooms that support breakthrough procedures, including robotic surgery, new adult ER with 62 all-private treatment rooms, 4 high-technology trauma rooms and a rooftop helicopter landing pad. It is also the region's only Certified Trauma Center. There is also an expanded oncology facility, 29-bed orthopedic unit and the Heart and Vascular Center of Excellence featuring Stereotaxis technology – the most advanced a safest cardiac catheterization technology available.
- **Lansing Community College** – located in downtown Lansing with 1,634 employees, 14,000+ students and located .69 miles from our developments
- **Lansing Center** – Adjacent to our developments, The Lansing Center is mid-Michigan's premier facility for meetings, hosting many of the greater Lansing area's most prominent events. Featuring over 100,000 square feet of state-of-the-art meeting, exhibit and ballroom space, the Lansing Center hosts nearly 300,000 persons at more than 850 event days on a yearly basis, providing in excess of $13 million dollars of economic impact to the Greater Lansing business community.

- **Oldsmobile Park** – Home of our Lansing Lugnuts, a Single A minor league affiliate of the Toronto Blue Jays and located adjacent to our developments with 350,000+ patrons each year. This stadium is also a venue for many concerts and community events.

- **Impression 5 Science Museum** – ¼ mile from our developments, Impression 5 is a hands-on learning environment that challenges its visitors to experience, discover and explore the world in which they live. Approximately 84,000+ people visit each year with attendance increasing annually.

- **Riverwalk Theater** – This local theater is the home of the Community Circle Players and located on the banks of the Grand River, just three blocks east of the Capitol in downtown Lansing. The theater produces outstanding dramas, comedies, musicals and children's shows and draws over 14,000 guests each year.

Festivals, Races and Special Events

Common Ground Festival – Is a seven day event attracting approximately 90,000 attendees throughout the week. It is mid-Michigan's largest music festival and has featured national recording artists: Steve Miller, Poison, John Legend, Bonnie Raitt, ZZ Top, Alice Cooper, Crosby, Stills & Nash, Beach Boys, Gavin DeGraw, Third Eye Blind, Gladys Knight, Charlie Daniels, Martina McBride, Smokey Robinson and many more! Special events such as the Common Crit and various other athletic events are held throughout Lansing during the festival.

St. Patrick's Day Event – Hosted by the local downtown businesses, the first annual event drew numerous people downtown to celebrate this holiday.

Blues on the Square - This event hosts Blues acts from around the country every Thursday evening beginning in mid-June. The seven-week series runs from 6:00 p.m. to 10:00 p.m. and is held close to the corner of Washtenaw Street and Washington Avenue, drawing people from all areas of the region. 1-2,000

Be a Tourist in Your Own Town Event – This annual event draws over 15,000 "tourists" to the downtown area. Local businesses and entertainment venues open their doors to these tourists, stamp their passport booklet and provide refreshments, tours, information packets, and lots of fun activities for their guests.

Silver Bells in the City – This annual event, which attracted 100,000 people in 2006, is held in mid-November and runs from 5:00 to 9:00 pm. An Electric Light Parade steps off at 6:10 pm at the corner of Lenawee and South Washington Square, followed by the lighting of State of Michigan Official Christmas Tree in front of the State Capitol and a five minute fireworks show over the State Capitol.

The Fitness Festival – This newly created event will be held on September 29th and 30th in 2007. The Capital City ½ Marathon and 5K has partnered with LEPFA and Healthy and Fit Magazine to host a weekend filled with exciting healthy activities and a trade show. We are anticipating over 3,000 runners and cyclist throughout the weekend. Michigan Ave, the Lansing Center, Oldsmobile Park and Adado Riverfront Park will be filled with athletes from around the region and country.

Races –Numerous races, parades and walk-a-thons are held downtown every year, each attracting thousands of attendees. A sampling of events includes: the Michigan Mile, the Memorial Day Parade, the American Cancer Society Relay for Life, the Michigan Pride Parade and Festival, the July 4th Parade, the Annual African American Parade & Festival, the REO Transportation Museum Car Capitol Celebration, and the Capitol Area Mustangs Car Show "Cruisin' for a Cause."

Festival of the Sun/Festival of the Moon: Sponsored by the Old Town Commercial Association and held over the course of two days, this annual wine tasting event draws over 6,000 patrons annually.

Hopefully this narrative has allowed you to see what we are striving to achieve with this proposed development and we encourage you to contact us with any questions.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 03-08]

RIN 1557-AC06

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R-1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2003- 16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks.

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: **Effective Date:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874-3295.

Board: Enforcement and Special Investigations Sections at (202) 452-5235, (202) 728-5829, or (202) 452-2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898-3671.

OTS: Compliance Policy Division at (202) 906-6012.

NCUA: Office of General Counsel at (703) 518-6540; or Office of Examination and Insurance at (703) 518-6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905-3590; Office of the General Counsel (Treasury) at (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622-0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107-56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to

facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2) and (c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to

the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the Federal Register (67 FR 48290) applicable to (a) any financial institution defined as a "bank" in 31 CFR 103.11(c)[1] and subject to regulation by one of the Agencies; and (b) any foreign branch of an insured bank. On the same date, Treasury separately published an identical, proposed rule for credit unions, private banks, and trust companies that do not have a Federal functional regulator (67 FR 48299).[2] Treasury and the Agencies proposed general standards that would require each bank to design and implement a customer identification program (CIP) tailored to the bank's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all banks.[3]

Treasury and the Agencies collectively received approximately five hundred comments in response to these proposed rules (collectively referred to as the "proposal" or the "proposed rule" for "banks"), although some commenters sent copies of the same letter to Treasury and to each of the Agencies. The majority of comments received by

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[1] This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

[2] In the preamble for this proposed rule, Treasury explained that a single final regulation would be issued for all financial institutions defined as "banks" under 31 CFR 103.11(c), with modifications to accommodate certain differences between Federally regulated and non-Federally regulated banks. See 67 FR 48299, 48300.

[3] At the same time, Treasury also published (1) together with the SEC, proposed rules for broker-dealers (67 FR 48306) and mutual funds (67 FR 48318); and (2) together with the CFTC, proposed rules for futures commission merchants and introducing brokers (67 FR 48328).

Treasury and the Agencies were from banks, savings associations, credit unions, and their trade associations. Most of these commenters agreed with the largely risk-based approach set forth in the proposal that allowed each bank to develop a CIP based on its specific operations.

Some commenters, however, criticized the specific requirements in the proposed rule and suggested that Treasury and the Agencies issue a final rule containing an entirely risk-based approach without any minimum identification and verification requirements. According to some of these commenters, such a thoroughly risk-based approach would give banks appropriate discretion to focus their efforts and finite resources on specific, high-risk accounts most likely to be used by money-launderers and terrorists.

Other commenters, especially those representing credit card banks and credit card issuers, asserted that the proposed minimum identification and verification requirements should be eliminated because they did not take into account the unique nature of credit card operations. They warned that these requirements, if implemented, would have a chilling effect on credit practices important to U.S. consumers and would impose significant compliance costs on their industry with little benefit to law enforcement.

By contrast, some smaller banks criticized the flexibility of the proposal and stated that a risk-based approach would leave too much room for interpretation by the Agencies. These commenters urged Treasury and the Agencies to issue a final rule establishing more specific requirements. For example, some commenters suggested that the rule prescribe risk assessment levels for each customer type and type of account, along with a specific description of acceptable forms of identification and methods of verification appropriate for each bank's size and location.

While commenters representing various segments of the industry differed on the approach that should be taken in the final rule, the vast majority concluded that Treasury and the Agencies had underestimated the compliance burden that would be imposed by certain elements of the proposal. Commenters were especially concerned about the proposed requirements that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed.

Some commenters also suggested that banks be given greater flexibility when dealing with established customers and urged that banks be permitted to rely on identification and verification of customers performed by a third party, including an affiliate. Other commenters asked for additional guidance regarding the lists of known and suspected terrorists and terrorist organizations that must be checked, and regarding what will be deemed adequate notice to customers for purposes of complying with the final rule. Many commenters requested that the final rule contain a delayed implementation date that would provide banks with the time needed to design a customer identification program, obtain board approval, alter existing policies and procedures, forms and software, and train staff.

Several comments were received from companies engaged in the sale of technology or services that could be used to identify and verify customers, retain records, and check lists of known and suspected terrorists and terrorist organizations. Many of these companies recommended that the proposed rule be modified to make clear that use of specific products and services would be permissible. Some of these commenters urged

that the rule require banks to authenticate any documents obtained to verify the identity of the customer through the use of automated document authentication technology.

A small number of comments were received from individuals. Some of these individuals criticized the proposed requirement that banks obtain a social security number from persons opening an account as an infringement upon individual liberty and privacy. Some individuals were concerned that this requirement would expose them to an added risk of identity theft. Other individuals supported the proposal and concluded that its verification requirements might diminish instances of identity theft and fraud. A few commenters suggested that the government develop a separate national identification number or require that social security cards bear photographs and or other safeguards.

A variety of commenters applauded the efforts of Treasury and the Federal functional regulators to devise a uniform set of rules that apply to banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers.[4] They noted that, without uniformity, customers of financial institutions may seek to open accounts with institutions that customers perceive to have less robust customer identification requirements. These commenters also suggested revisions that would enhance the uniformity of the rules.

Treasury and the Agencies have modified the proposed rule in light of the comments received. A discussion of the comments, and the manner in which the proposed rule has been modified, follows in the section-by-section analysis.

In addition, as suggested by a number of commenters, Treasury and the Agencies expect to issue supplementary guidance following issuance of the final rule.

C. Joint Issuance by Treasury and the Agencies

The final rule implementing section 326 is being issued jointly by Treasury, through FinCEN, and by the Agencies. It applies to (1) a "bank," as defined in 31 CFR 103.11(c), that is subject to regulation by one of the Agencies, and (2) to any non-Federally insured credit union, private bank or trust company that does not have a Federal functional regulator (collectively referred to in the final rule as "a bank").

The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, each of the Agencies is concurrently publishing a provision in its own regulations[5] to cross-reference this final rule in order to clarify the applicability of the final rule to the banks subject to its jurisdiction.

Regulations governing the applicability of section 326 to certain financial institutions that are regulated by the SEC and the CFTC are the subject of separate rulemakings. Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all joint rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

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[4] See footnote 3, supra.

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

D. Compliance Date

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided

[5] 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis of Final Rule Implementing Section 326

Section 103.121(a) Definitions.

Section 103.121(a)(1) Account. The proposed rule defined "account" as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an "account."[6] The proposal also explained that the term "account" was limited to formal banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of "account" was either too broad or needed clarification. Some commenters suggested that the definition of "account" be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of "account."

[6] The definition of "account" in the proposed rule was based on the statutory definition of "account" that is used in section 311 of the Act.

Most commenters requested that the final rule provide additional examples of the relationships that would constitute an "account." Many commenters requested that the rule clarify the meaning of "ongoing services." These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an "account." Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal -- which commenters characterized as the "transfer exception" – be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term "business relationship" has been deleted from the definition of "account." This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general "business" dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an "account."

The definition of "account" also has been changed to include a list of products and services that will not be deemed an "account." The preamble for the proposed rule had used the term "ongoing services" to define accounts covered by the final rule, and had referred to the exclusion of "occasional" transactions and "infrequent" purchases

(which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that "account" excludes products and services where a formal banking relationship is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.[7] Treasury and the Agencies note that part 103 already requires verification of identity in connection with many of these products and services. See, e.g., 31 CFR 103. 29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for $3000 or more); 31 CFR 103.33 (funds transfers of $3000 or more).

In addition, the final rule codifies and clarifies the "transfer exception." Under the final rule, the definition of "account" excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.[8] Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for "verifying the identity of any person seeking to open an account." Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.[9]

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[7] This exclusion is consistent with legislative history indicating that by referencing the term "customers," Congress intended "that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined 'customers' and 'customer relationship' for purposes of the financial privacy rules." H.R. Rep. No. 107-250, pt. 1, at 62 (2001). The definitions of "customer" and "customer relationship" in the financial privacy rules apply only to a consumer who has a "continuing relationship" with a bank, for example, in the form of a deposit or investment account, or a loan. See .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

[8] In many cases, these third parties are themselves "financial institutions" for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

[9] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of "account" for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements.

Section 103.121(a)(2) Bank. The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a "bank" in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included "any foreign branch of an insured bank" to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.[10] As

[10] All insured depository institutions currently must have a BSA compliance program. See 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, i.e., the requirement to

described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a "bank" in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, "bank" includes all financial institutions covered by both of the proposals described above, except that "bank" does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,[11] Treasury and the Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-

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implement a BSA compliance program. See 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. See 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

[11] See, e.g., 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled "Anti-Money Laundering Requirements –Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for Foreign Banks" implementing sections 313 and 319(b) of the Act).

specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

Section 103.121(a)(3) Customer. The proposal defined "customer" to mean any person[12] seeking to open a new account. In addition, the proposal defined a "customer" to include any signatory on an account. The preamble for the proposal explained that the term "customer" included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a "customer," regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that "customer" does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define "customer" to mean "a person who opens a new account," as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines

[12] The proposed rule defined "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal

a "customer" as "a person that opens a new account."[13] For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.[14] In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether "customer" includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that "customer" means "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."

A few banks stated that defining "customer" to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business

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personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

[13] Therefore, each person named on a joint account is a "customer" under this final rule unless otherwise provided.

[14] However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves – many of whom simply work as employees for firms with corporate accounts -- and would outweigh any benefit.[15] One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

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[15] Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. See 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

After revisiting the issue of whether a signatory should be a "customer," Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining "customer" to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)-(iv).[16] Section 103.22(d)(2)(iv) exempts such companies only to the

[16] Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. See 31 CFR 103.22(d)(1).

extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

Treasury and the Agencies acknowledge that the proposed rule might have had unintended consequences for bank-customer relationships and that the risk-based approach suggested by commenters would avoid these consequences. Accordingly, the final rule excludes from the definition of "customer" a person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[17]

[17] As a foreign branch of an insured U.S. bank is no longer a "bank" for purposes of this rule, a customer of a bank's foreign branch will no longer be "a person who has an existing account with the bank." Therefore, the bank must verify the identity of a customer of its foreign branch in accordance with its CIP if such a customer opens a new account in the U.S.

Section 103.121(a)(4) Federal functional regulator. The proposed rule defined "Federal functional regulator" by reference to § 103.120(a)(2), meaning each of the Agencies, the SEC, and the CFTC. There were no comments on this definition, and Treasury and the Agencies have adopted it as proposed.

Section 103.121(a)(5) Financial institution. The final rule includes a new definition for the term "financial institution" that cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

Section 103.121(a)(6) Taxpayer identification number. The proposed rule repeated the language from § 103.34(a)(4), which states that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes "a taxpayer identification number." There were no comments on this approach, and Treasury and the Agencies have adopted it substantially as proposed, with minor technical modifications.

Section 103.121(a)(7) and (8) U.S. Person and non-U.S. person. The proposed rule provided that "U.S. person" is an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States. A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.

As described in greater detail below, a bank is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the bank may obtain

an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Several commenters suggested that it would be less confusing to bankers if "U.S. person" meant both a U.S. citizen and a resident alien, consistent with the definition of this term used in the Internal Revenue Code (IRS definition).[18] A few commenters criticized the proposed definition because it would require banks to establish whether a customer is or is not a U.S. citizen.

Treasury and the Agencies believe that the proposed definition of "U.S. person" is a better standard for purposes of this final rule than the IRS definition. Adoption of the IRS definition of "U.S. person" would require bank staff to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a bank will not necessarily need to establish whether a potential customer is a U.S. citizen. The bank will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification. For these reasons, the definition is adopted as proposed.

Section 103.121(b)Customer Identification Program: Minimum Requirements.

Section 103.121(b)(1) General Rule. The proposed rule required each bank to implement a CIP that is appropriate given the bank's size, location, and type of business. The proposed rule required a bank's CIP to contain the statutorily prescribed procedures, described these procedures, and detailed certain minimum elements that each of the

[18] 26 U.S.C. 7701(a)(30)(A).

procedures must contain. In addition, the proposed rule required that the CIP be written and that it be approved by the bank's board of directors or a committee of the board.

The proposed rule also stated that the CIP must be incorporated into the bank's BSA[19] compliance program and should not be a separate program. A bank's BSA compliance program must be written, approved by the board, and noted in the bank's minutes. It must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The preamble for the proposal explained that the CIP should be incorporated into each of these four elements of a bank's BSA program.

Most commenters agreed with the proposal's approach of allowing banks to develop risk-based programs tailored to their specific operation, though some of these commenters recommended that Treasury and the Agencies adopt an entirely risk-based approach without any minimum requirements while others recommended a more prescriptive approach. Many commenters suggested that Treasury and the Agencies clarify the extent to which a bank could rely on a third party, especially an affiliate, to perform some or all aspects of its CIP.

Other commenters focused on the requirement that a bank's board of directors approve the CIP. These commenters urged Treasury and the Agencies to adopt a regulation that states that the role of a bank's board of directors need only be to approve broad policy rather than the specific methods or actual procedures that will be a part of a bank's CIP. One commenter recommended that the governing body of a financial institution be permitted to delegate its responsibility to approve the CIP.

The final rule attempts to strike an appropriate balance between flexibility and detailed guidance by allowing a bank broad latitude to design and implement a CIP that is tailored to its particular business practices while providing a framework of minimum standards for identifying each customer, as the Act mandates. Following the description of the procedures and minimum requirements for each element of a bank's CIP (identity verification, recordkeeping, comparison with government lists, and customer notice), the final rule contains a new section describing the extent to which a bank may rely on a third party to perform these elements, described in detail below.

The final rule removes the requirement that the bank's board of directors or a committee of the board must approve the bank's CIP because this requirement is redundant. A bank's BSA compliance program must already be approved by the board. Treasury and the Agencies regard the addition of a CIP to the bank's BSA compliance program to be a material change in the BSA compliance program that will require board approval. The board of director's responsibility to oversee bank compliance with section 326 of the Act is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

[19] See footnote 10, supra.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.[20] Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.[21]

Section 103.121(b)(2) Identity Verification Procedures. The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide "an affidavit of identity" on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures "that enable the bank to form a reasonable belief that it knows the true identity of the customer" as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

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[20] See footnote 10, supra.

[21] The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

The final rule provides that a bank's CIP must include risk-based procedures for verifying the identity of each customer[22] to the extent reasonable and practicable. The final rule also states that the procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer. As section 326 of the Act states, a bank's affirmative obligation to verify the identity of its customer applies to "any person" rather than only to a person whose identity is suspect, as suggested by one commenter. Furthermore, Treasury and the Agencies have determined that the statutory obligation to "verify the identity of any person" requires the bank to implement and follow procedures that allow the bank to have a reasonable belief that it knows the true identity of the customer.

Given the flexibility built into the final rule, Treasury and the Agencies believe that it is not appropriate to provide special treatment for new customers known to bank personnel. In addition, permitting reliance on bank personnel to attest to the identity of a customer may be subject to manipulation. Accordingly, the final rule does not establish different rules for customers who are known to bank personnel.

The final rule requires the identity verification procedures to be based upon relevant risks, including those presented by the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the types of identifying information available. In addition to these risk factors, which are specifically identified in section 326, the final rule states that the procedures should take into account

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[22] Other elements of the bank's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.[23]

Section 103.121(b)(2)(i) Customer Information Required. The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3) date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

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[23] H.R. Rep. No. 107-250, pt. 1, at 62 and 63 (2001).

Other commenters stated that the rule should not require a bank to obtain the minimum identifying information prior to account opening in every instance. Some of these commenters suggested that a bank be permitted to obtain the required information within a reasonable time after the account is opened. Some commenters suggested that the rule permit banks to obtain identifying information from a party other than the customer. This would arise, for example, when a bank offers a credit card based on information obtained from a credit reporting agency. Other commenters suggested that a bank also be required to obtain information about a customer's occupation, profession or business, as this information is needed by a bank that intends to file a report of transactions in currency or a suspicious activities report on the customer.

Consistent with the proposal, the final rule provides that a bank's CIP must contain procedures that specify the identifying information that the bank must obtain from each customer prior to opening an account. In addition, the rule specifies the four basic categories of information that a bank must obtain from the customer prior to opening an account. Treasury and the Agencies believe that requiring banks to gather these standard forms of information prior to opening an account is not overly burdensome because such identifying information is routinely gathered by most banks in the account opening process and is required by other sections of 31 CFR part 103. Of course, based upon an assessment of the risks described above, a bank may require a customer to provide additional information to establish the customer's identity.

Treasury and the Agencies acknowledge that imposing this requirement on banks that offer credit card accounts is likely to alter the manner in which they do business by requiring them to gather additional information beyond that which they currently obtain

directly from a customer who opens an account at the point of sale or by telephone. Treasury and the Agencies are mindful of the legislative history of section 326, which indicates that Congress expected the regulations implementing this section to be appropriately tailored for accounts opened in situations where the account holder is not physically present at the financial institution and that the regulations should not impose requirements that are burdensome, prohibitively expensive, or impractical.[24]

Therefore, Treasury and the Agencies have included an exception in the final rule for credit card accounts only, which would allow a bank broader latitude to obtain some information from the customer opening a credit card account, and the remaining information from a third party source, such as a credit reporting agency, prior to extending credit to a customer. Treasury and the Agencies recognize that these practices have produced an efficient and effective means of extending credit with little risk that the lender does not know the identity of the borrower.

Treasury and the Agencies also received comments on the advisability of requiring banks to collect the specific identifying information (name, date of birth, address, and identification number), as would have been required under the proposed rule. With respect to obtaining the customer's name, one commenter recommended that based on Texas law and banks' experience, a bank should be required to obtain the name under which the customer is doing business and the customer's legal name. The final rule continues to require that the bank obtain the customer's name, meaning a legal name that can be verified. As noted above, this is a minimum requirement, and a bank may also need to obtain the name under which a person does business in order to establish a reasonable belief it knows the true identity of the customer.

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[24] H.R. Rep. No. 107-250, pt. 1, at 63 (2001).

One trade association suggested that banks be permitted to make a risk-based determination before requiring a customer to provide date of birth because many customers would prefer not to share this information. One commenter stated that date of birth is not an important identifying characteristic and should be deleted. Another commenter stated that credit card issuers do not request this information because it can raise fair lending issues. Finally, a few commenters noted that standardized mortgage applications require age rather than date of birth and would have to be altered.

The final rule provides that a bank must obtain the date of birth for a customer who is an individual. Treasury and the Agencies believe that date of birth is an important identifying characteristic and can be used to provide a bank or law enforcement with an additional means to distinguish between customers with identical names. However, the required collection and retention of information about a customer's date of birth does not relieve the bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of age or other prohibited classification. Banks collecting date of birth from individual customers should be able to take reasonable measures to convert this information into age for purposes of the forms used in the secondary mortgage market given the delayed compliance date for the final rule.

Many commenters criticized the requirement that a bank obtain both the customer's physical and mailing address, if different. Most commenters urged Treasury and the Agencies to eliminate the requirement that the customer provide a physical address. Some of these commenters stated that this requirement could interfere with the

ability of certain segments of the population to obtain a bank account, such as members of the military, persons who reside in mobile homes with no fixed address, and truck drivers who do not have a physical address. Banks that offer credit card accounts and card issuers stated that the address requirement would be extremely burdensome because they would have to change the manner in which they do business, and in some cases, credit card banks currently do not have the capacity to collect both addresses. Some of these commenters stated that new credit card customers are reluctant to give more than one address and, therefore, it would be difficult to obtain this information from customers. A trade association representing credit card banks asserted that customers may have a legitimate reason for handling correspondence through post office boxes and should not have to provide a physical address. This commenter asserted that requiring the customer to provide a physical address will discourage the provision of financial services to the unbanked and will prevent a victim of identity theft from using an alternative to an unsecured home mailbox. Another commenter noted that the physical address of a customer's principal place of business may not be relevant if the bank is working with a customer's local office. This commenter recommended that the rule simply permit the bank to obtain the customer's street address. Credit card banks and issuers urged Treasury and the Agencies to make the requirement that a bank obtain the customer's physical address optional.

Section 326 of the Act requires Treasury and the Agencies to prescribe regulations that require financial institutions to implement "reasonable procedures." Accordingly, under the final rule, a bank will not be required to obtain more than a single address for a customer. Nonetheless, Treasury and the Agencies believe that the

identification, verification, and recordkeeping provisions of the Act, taken together, should provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing. The final rule therefore provides that a bank generally must obtain a residential or business street address for a customer who is an individual because Treasury and the Agencies have determined that law enforcement agencies should be able to contact an individual customer at a physical location, rather than solely through a mailing address. Treasury and the Agencies recognize that this provision may be impracticable for members of the military who cannot readily provide a physical address, and other individuals who do not have a physical address but who reliably can be contacted. Accordingly, the final rule provides an exception under these circumstances that allows a bank to obtain an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual. For a customer other than an individual, such as a corporation, partnership, or trust, the bank may obtain the address of the principal place of business, local office, or other physical location of the customer. Of course, a bank is free to obtain additional addresses from the customer, such as the customer's mailing address, to meet its own or its customer's business needs.

The proposal required that banks obtain an identification number from customers. For U.S. persons, a bank would have been required to obtain a U.S. taxpayer identification number. For non-U.S. persons, a bank would have been required to obtain a number from various alternative forms of government-issued identification.

One commenter stated that this requirement would not be burdensome. Commenters representing certain consumer advocacy groups commended Treasury and

the Agencies for providing banks with the discretion to accept alternative forms of identifying information from non-U.S. citizens. These commenters stated that this position would assist low-income immigrants in gaining financial stability. By contrast, some commenters stated that the final rule should not permit a bank to open an account for a customer using only a foreign identification number when the customer provides a U.S. address. Other commenters asked for guidance on whether a bank is permitted to accept a number from the identification document issued by a foreign government. A few commenters urged the government to require a national identification document for all individuals.

Other commenters, primarily credit card banks, stated that the requirement that a bank obtain a U.S. taxpayer identification number from U.S. persons would create considerable hardship. They stated that new credit card customers are reluctant to give out their social security numbers, especially over the telephone. They urged that banks be given the discretion to collect identifying information, other than social security numbers, when appropriate in light of consumer privacy and security concerns. In the alternative, they recommended that banks be permitted to obtain a U.S. taxpayer identification number for U.S. persons from a trusted third party source, such as a credit reporting agency.

Some commenters questioned what number to use for accounts opened in the name of a bowling league or class reunion, or to accept donations for a special cause. Other commenters questioned what number could be obtained from foreign businesses and enterprises that have no taxpayer identification number or other government-issued documentation.

The final rule provides that a bank must obtain an "identification number" from every customer. As discussed above, under the definition of "customer," the final rule permits a bank to obtain the identification number of the individual who opens an account in the name of an individual who lacks legal capacity, such as a minor, or a civic group, such as a bowling league.

After reviewing the comments, Treasury and the Agencies have determined that requiring a bank to obtain a customer's identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks' current practices and could alienate many potential customers. Accordingly, Treasury and the Agencies have adopted an exception for credit card accounts that will permit a bank offering such accounts to acquire information about the customer, including an identification number, from a trusted third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

The final rule also provides that for a non-U.S. person, a bank must obtain one or more of the following: a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This standard provides a bank with some flexibility to choose among a variety of identification numbers that it may accept from a

non-U.S. person.[25] However, the identifying information the bank accepts must permit the bank to establish a reasonable belief that it knows the true identity of the customer.

Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself, based upon appropriate risk factors, including those discussed above (the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the other types of identifying information available, and the bank's size, location, and customer base), whether the information presented by a customer is reliable.

Treasury and the Agencies recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore, the final rule notes that when opening an account for such a customer, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposal also contained a limited exception to the requirement that a bank obtain a taxpayer identification number from a customer opening a new account. The exception permitted a bank to open an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number (EIN), provided that the bank obtains a copy of the application before it opens the account and obtains the EIN within a reasonable period of time after the account is established. The preamble for the proposed rule explained that

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[25] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a bank. See Treasury Department, "A Report to Congress in Accordance with

this exception was included for a new business that might need access to banking services, particularly a bank account or an extension of credit, before it has received an EIN from the Internal Revenue Service.

Some commenters questioned this limited exception for certain businesses. A few commenters suggested expanding the exception to include individuals who have applied for, but have not yet received a taxpayer identification number. Another commenter stated that the exception provided no added benefit and would add to a bank's recordkeeping and monitoring burden.

Treasury and the Agencies have determined that a bank should be afforded more flexibility in situations where a person, including an individual, has applied for, but has not yet received, a taxpayer identification number. Therefore, the final rule states that instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a taxpayer identification number.[26] To lessen the recordkeeping burden for a bank that elects to use this exception, the final rule also provides that the bank's CIP need only include procedures requiring the bank to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened. Thus, a bank will be able to exercise its discretion[27] to determine how to confirm that a customer has filed an

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Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[26] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting–TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (i.e., interest and dividends) on certain accounts. See 26 CFR 31.3406(g)-3.

[27] For example, the bank may wish to examine a copy of the application filed.

application for a taxpayer identification number rather than having to keep a copy of the application on file.

Section 103.121(b)(2)(ii) Customer Verification. The proposed rule provided that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened.[28] The proposed rule also described when a bank is required to verify the identity of existing customers.

Several commenters asked Treasury and the Agencies to underscore that these verification procedures may be risk-based by noting that a bank may verify less than all of the identifying information provided by the customer. Many commenters noted that there is currently no reliable, efficient, or effective means of verifying a customer's social security number. Some of these commenters asked the government to establish a method that would permit banks to establish the authenticity and accuracy of a customer's name and taxpayer identification number.

Treasury and the Agencies recognize that there currently is no method that would permit a bank to verify, for example, a taxpayer identification, passport or alien identification number through an official source. Accordingly, the final rule provides that a bank's CIP must contain procedures for verifying the identity of the customer, "using the information obtained in accordance with paragraph (b)(2)(i)," namely, the identifying information obtained by the bank. Thus, a bank need not establish the accuracy of every

[28] The preamble for the proposed rule noted that, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provided the bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.

element of identifying information obtained but must do so for enough information to form a reasonable belief it knows the true identity of the customer.

Some commenters stated that they appreciated the flexibility of the proposal permitting an institution to determine how soon identity must be verified. Other commenters asked Treasury and the Agencies to clarify what is a "reasonable period of time." As stated in the preamble for the proposal, Treasury and the Agencies believe that the amount of time it will take an institution to verify a customer's identity may depend upon various factors, such as the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. For the same reasons, the final rule provides banks with the flexibility necessary to accommodate a wide range of situations by stating that the bank must verify the identifying information within a reasonable time after the account is opened.[29]

As discussed above in the definition section, many commenters criticized the proposed approach regarding verification of existing customers that open new accounts. The final rule addresses these concerns by modifying the definition of "customer" to exclude a person who has an existing account with the bank if the bank has a reasonable belief that it knows the true identity of the person.

Many commenters urged that the final rule continue to allow, but not mandate, documentary verification. A few commenters requested that the final rule provide additional guidance on verification. Some commenters asked that the final rule clarify that a bank may choose to use only documentary methods and may refuse to open an

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[29] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. See, e.g., 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control (OFAC) prohibiting transactions involving designated foreign countries or their nationals).

account using other methods.

The final rule addresses these comments by stating that a bank's CIP's verification procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.

Section 103.121(b)(2)(ii)(A) Verification Through Documents. The proposed rule provided that the CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. It then gave examples of documents that could be used to verify the identity of individuals and other persons such as corporations, partnerships, and trusts.

Most commenters noted that banks do not have the means to authenticate or validate documents provided by their customers and urged Treasury and the Agencies to clarify that document authentication is not a CIP requirement. Treasury and the Agencies wish to confirm that once a bank has obtained and verified the identity of the customer through a document such as a driver's license or passport, the bank will not be required to take steps to determine whether the document has been validly issued. A bank generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the bank must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Some commenters also asked that Treasury and the Agencies provide more examples and discuss appropriate types of documentary identification in the final rule or in separate guidance that banks may easily access. Commenters asked whether a utility bill, or library card addressed to the same physical address and name of the person

seeking the account, or a foreign identification card, such as a foreign voter registration card or driver's license, would be acceptable. Some commenters questioned whether copies of documents would suffice.

Given the recent increases in identity theft and the availability of fraudulent documents, Treasury and the Agencies agree with a commenter who suggested that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, a bank is encouraged to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, banks are encouraged to use a variety of methods to verify the identity of a customer, especially when the bank does not have the ability to examine original documents.

The final rule attempts to strike the appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement by providing that a bank's CIP must state the documents that a bank will use. This will require each bank to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.

The final rule continues to provide an illustrative list of identification documents. For an individual, these may include an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. For a person other than an individual, these may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Some commenters questioned whether the examples of identification documents

given for persons other than individuals would be reliable. One commenter questioned whether trust documents alone would be sufficient verification of identity. Another commenter suggested allowing banks to rely on a certification by the trustee, or an appropriate legal opinion, rather than the trust instrument to verify the existence of a trust. Someone else suggested that banks should be allowed to rely on documentation consisting of evidence that a business is either publicly traded or is authorized to do business in a state or the United States.

The examples provided in the final rule were intended only to illustrate the documents a bank might use to verify the identity of a customer that is a corporation, partnership, or trust. A bank may use other documents, provided that they allow the bank to establish that it has a reasonable belief that it knows the true identity of its customer. Accordingly, the final rule makes no significant changes to the examples.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. Recognizing that some accounts are opened by telephone, by mail, and over the Internet, the proposed rule provided that a bank's CIP also must contain procedures describing what non-documentary methods the bank will use to verify identity and when the bank will use these methods (whether in addition to, or instead of, relying on documents). The preamble for the proposed rule also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.

The proposed rule gave examples of non-documentary verification methods that a bank may use, including contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is

associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The preamble for the proposed rule stated that a bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).

The proposal required that the procedures address situations where an individual, such as an elderly person, legitimately is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction, for example over the phone, by mail, or through the Internet; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Several commenters asked for additional guidance regarding when non-documentary verification methods should be used in addition to documentary verification methods and the circumstances in which only one or all of the non-documentary verification methods listed are necessary. Commenters also asked for guidance on audit methodology, and an explanation of the due diligence required for verification of accounts opened by telephone, mail, and through the Internet. A few commenters suggested that reference to verification, where a bank compares information provided by

the customer with information from trusted third party sources, be expressly mentioned in the final rule.

As the large number of comments on this section illustrates, a rule that attempted to address every scenario and combination of risk-factors that a bank might confront would be extremely complex and invariably would fail to address many situations. Rather than adopt a lengthy and potentially unwieldy rule that still would not address every situation, Treasury and the Agencies have concluded that it would be more effective to adopt general principles that are fleshed out through examples. Therefore, the final rule states that for a bank relying on non-documentary verification methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

The final rule generally retains the illustrative list of non-documentary methods contained in the proposal. Treasury and the Agencies have clarified that one method is "independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source," rather than verifying "documentary information" through such sources.

The final rule also retains the variety of situations that the procedures must address that were identified in the proposal, with the following two changes. First, because "transaction" is a defined term in 31 CFR part 103, instead of using the term "face-to-face transaction," the final rule states that the procedures must address the situation where a customer opens an account without appearing in person at the bank. Second, the final clause of this provision provides that the CIP must include procedures

to address situations where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents. This clause acknowledges that there may be circumstances beyond those specifically described in this provision when a bank should use non-documentary verification procedures.

As stated in the preamble for the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the Agencies encourage banks to use non-documentary methods even when the customer has provided identification documents.

Section 103.121(b)(2)(ii)(C) Additional Verification for Certain Customers. As described above, the proposed rule required the identification and verification of each signatory for an account. Most commenters objected to this requirement as overly burdensome, and, upon consideration of the points raised by the commenters, Treasury and the Agencies agree that it is appropriate to delete it. For the reasons discussed below, however, the rule does require that a bank's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the Agencies believe that while the majority of customers may be verified adequately through the documentary or non-documentary verification methods described in paragraphs (b)(2)(ii)(A) and (B), there may be instances where this is not possible. The risk that the bank will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that

has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. Treasury and the Agencies believe that a bank must identify customers that pose a heightened risk of not being properly identified, and a bank's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the entity in whose name such an account is opened when standard documentary and non-documentary methods prove to be insufficient.

For these reasons, the requirement to verify the identity of signatories has been replaced by a new provision in the final rule that requires that a bank's CIP address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank also will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This additional verification method will only apply when the bank cannot adequately verify the customer's identity using the documentary and non-documentary verification methods described in (b)(2)(ii)(A) and (B). Moreover, a bank need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity using standard documentary and non-documentary verification methods.

Section 103.121(b)(2)(iii) Lack of Verification. The proposed rule stated that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. The

preamble for the proposed rule listed what these procedures should include. In addition, the proposal stated that a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[30]

The final rule retains the general requirement that a bank's CIP include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the customer. However, the rule text itself now states that the procedures should describe the following: when a bank should not open an account for a potential customer; the terms under which a customer may use an account while the bank attempts to verify the customer's identity; when the bank should close an account after attempts to verify a customer's identity have failed; and when the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

One commenter stated that requiring a bank to close an account if it cannot verify a customer's identity would conflict with state laws and would subject the bank to legal liability. The commenter urged that if this provision is retained, the final rule also should shield banks from state regulatory and borrower liability in these circumstances. Other commenters asked that Treasury and the Agencies clarify that further investigation that results in failure to open an account will not trigger adverse action requirements under the FCRA, 15 U.S.C. 1681 et seq. or the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq.

[30] The preamble also explained that there are some exceptions to this basic rule. For example, a bank may maintain an account at the direction of a law enforcement or intelligence agency, even though the bank does not know the true identity of the customer.

The final rule does not specifically require a bank to close the account of a customer whose identity the bank cannot verify, but instead leaves this determination to the discretion of the bank. Treasury and the Agencies have determined that there is no statutory basis to create a safe harbor that would shield banks from state regulatory or borrower liability if a bank should choose to close a customer's account. Any such closure should be consistent with the bank's existing procedures for closing accounts in accordance with its risk management practices. Treasury and the Agencies also note that a bank must comply with other applicable laws and regulations, such as the adverse action provisions under ECOA and the FCRA, when determining not to open an account because it cannot establish a reasonable belief that it knows the true identity of the customer.[31]

Section 103.121(b)(3) Recordkeeping.

Section 103.121(b)(3)(i) Required Records. The proposed rule set forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank would have been required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the proposal would have required the bank to maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain. The bank also would have been required to record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the

[31] See 12 CFR 202.9(b) (Federal Reserve Regulation B that prescribes the form of ECOA notice and statement of specific reasons); 15 U.S.C. 1681m (FCRA provision that provides for duties of users taking adverse actions on the basis of information contained in consumer reports from other third parties or affiliates).

bank would have been required to record the resolution of any discrepancy in the identifying information obtained.

This section of the proposed rule prompted the most comment. Though one commenter felt that the recordkeeping requirements in the proposed rule were weak, almost all other commenters identified the proposed documentation and record retention requirements as overly burdensome. Commenters urged Treasury and the Agencies to permit a bank to record the information from the documents obtained rather than requiring banks to maintain copies of these documents for the life of the account. Commenters generally argued that it would be difficult and very burdensome to store and retrieve copies of documents used to verify the identity of the customer. In addition, some commenters noted that many kinds of identification documents, particularly some new driver's licenses, have security features that prevent them from being copied legibly. Other commenters stated that copies of documents would be difficult to safeguard and could facilitate identity theft.

Commenters stated that requiring banks to keep copies of documents would substantially deviate from current banking practice and would violate certain states' laws. Banks offering credit card accounts through retailers, who require the customer to provide identifying documents at the point of sale, strenuously opposed this requirement if it were interpreted to cover documents presented to the merchant. These commenters stated that copy machines are not usually available at the point of sale, and that the rule as proposed would require merchants to purchase large numbers of additional copy machines. The commenters also anticipated that consumers would be greatly inconvenienced by this requirement and might have to endure lengthy waits during any

busy shopping season. These commenters questioned whether the risks of money-laundering and the financing of terrorism through retail store credit cards, which generally have relatively low credit limits, restrictions on pre-payment, and other features to detect fraud, warrant the imposition of these additional costs.

Other commenters stated that requiring banks to keep copies of documents that have pictures, such as driver's licenses, could expose the bank to allegations of unlawful discrimination, even if the retention of this information were not prohibited under ECOA. Some banks objected to this requirement on the grounds that it directly conflicted with the position that the Agencies have traditionally taken on this issue, including the criticism of banks that have retained such information in their files when extending credit.

Other commenters asked that a bank be permitted to record the processes and procedures generally used for verification rather than being required to keep records of the methods used and the resolution for each and every account, especially where the bank uses standardized procedures for all customers and could demonstrate that these procedures were applied. Some commenters suggested that the final rule permit banks to use a risk-based approach for recordkeeping.

In light of the comments received, Treasury and the Agencies have reconsidered and modified the recordkeeping requirements of the proposed rule. The final rule provides that a bank's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a bank develop and implement a CIP. However, the final rule affords banks significantly more flexibility than did the recordkeeping provisions contained in the proposal. Under

the final rule, a bank's records are to include "a description," rather than a copy, of any document upon which the bank relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. The final rule also clarifies that the record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.

As Treasury and the Agencies indicated in the preamble for the proposal, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this final rule, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(3)(ii) Retention of Records.

The proposal required a bank to retain all of the records specified in the recordkeeping provision for five years after the date the account is closed.

This requirement prompted strenuous objections. Assuming that copies of the documents used to verify the identity of the customer would have to be retained, commenters asserted that retaining records until five years after the account is closed would be very burdensome. Some commenters noted that imaging is not a routine practice for community banks and could be costly. Banks offering credit card accounts stated that the record retention requirement would require a change in forms, processes,

and systems, while also increasing storage costs. As credit cards do not have a specific term, commenters noted that banks would be required to keep these records forever, unless they are culled manually. Some commenters suggested that the retention period be shortened, with suggestions ranging from one to three years after the account is closed, while other commenters suggested that the period be shortened to five years from when the account is opened. Many commenters stated that two years from when the information is obtained would be consistent with other regulatory requirements, such as the record retention requirements for an application for an extension of credit subject to ECOA (12 CFR 202.12(b)).

By eliminating the requirement that a bank retain copies of the documents used to verify the identity of the customer, Treasury and the Agencies believe that the final rule largely addresses the main concern of these commenters. However, Treasury and the Agencies also have determined that, while the identifying information provided by the customer should be retained, there is little value in requiring banks to retain the remaining records for five years after an account is closed because this information is likely to have become stale. Therefore, the final rule now prescribes a bifurcated record retention schedule that is consistent with the general five-year retention requirement in 31 CFR 103.38. First, the bank must retain the information referenced in paragraph (b)(3)(i)(A) (that is, information obtained about a customer), for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. Second, the bank need only retain the records that it must make and maintain under the remaining parts of the recordkeeping provision, paragraphs

(b)(3)(i)(B), (C), and (D) (that is, information that verifies a customer's identity) for five years after the record is made.

Section 103.121(b)(4) Comparison with Government Lists. The proposed rule required a bank to have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any Federal government agency. In addition, the proposal stated that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists.

Most commenters were concerned about how a bank would be able to determine what lists should be checked for purposes of this provision and how these lists would be made available. Some commenters asked that the final rule confirm that a bank will not have an affirmative duty to seek out all lists compiled by the Federal government and would only be required to check lists provided to it by the Federal government. Some commenters noted that lists published by OFAC are published but are not provided to financial institutions.[32] Many commenters urged that all lists within the meaning of section 326 of the Act, be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single website that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

[32] Nevertheless, the legislative history for this provision indicates that the lists Congress intended financial institutions to consult "are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon." H.R. Rep. No. 107-250, pt. 1, at 63 (2001).

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to when a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

Section 103.121(b)(5) Customer Notice. The proposed rule would have required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued "shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures" that satisfy the statute. Based upon this statutory

requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's customers when provided in accordance with the requirements of this final rule.

Section 103.121(b)(6) Reliance on Another Financial Institution. Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution

having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a

customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks[33] will be subject to regulation and examination by the Agencies under other applicable laws and regulations. See, e.g., 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

Section 103.121(c) Exemptions. The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The

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[33] Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.

proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of "account" and "customer" for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

Section 103.121(d) Other Information Requirements Unaffected. The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the

customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons[34] opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

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[34] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number)." Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the

exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule -- rather than withdrawing § 103.34(a) – amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.[35]

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." The definition of "customer" in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

[35] Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

Section 103.11(j), which defines the term "deposit account," contains an obsolete reference to the definition of "transaction account," which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[36] See 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[37]

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[36] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. See 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87-2, developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

[37] See footnote 10.

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.[38] Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. See 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists[39] and already use identity verification software, both as part of their customer due diligence obligations under existing BSA compliance program requirements and to detect fraud.

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[38] See, e.g., identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

[39] We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be de minimis.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of "customer," no longer requires a bank to keep copies of documents used to verify a

customer's identity, and reduces the universe of records that must be kept for five years after an account is closed. Treasury and the Agencies have taken other steps that significantly reduce the scope of the rule and burdens of the rule. Many of these burden-reducing actions are described in the Paperwork Reduction Act discussion below.[40] As a result of these changes, the final rule is far more flexible and less burdensome than the proposed rule while still fulfilling the statutory mandates enumerated in section 326 of the Act.

Finally, Treasury and the Agencies did consider whether it would be appropriate to exempt small banks from the requirements of the rule. We do not believe that an exemption for small banks is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of banks, as well as the

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[40] In addition to the burden-reducing measures discussed in the Paperwork Reduction Act discussion, other changes include:

- A clarification that a bank must verify the customer's identity using the identifying information obtained. The proposed rule would have required the bank to verify all identifying information.
- The elimination of the requirement that a bank must obtain a physical and a mailing address from a customer opening an account. Under the final rule, the bank is only required to obtain a physical address.
- A new provision that permits a bank to rely on another financial institution to perform its CIP under certain conditions. This provision allows financial institutions that share a customer to share customer identification and verification obligations and to reduce the cost of maintaining duplicative records required by the recordkeeping provisions of the final rule.
- A revised provision that extends to customers who are individuals the exception that permits a bank to open an account for a customer that has applied for, but has not received, a taxpayer identification number.
- A new exemption for credit card accounts from the requirement that a bank obtain identifying information from the customer prior to opening an account. In connection with credit card accounts, a bank is permitted to obtain identifying information from a third party source prior to extending credit.
- A clarification stating that the government will provide lists of known or suspected terrorists and terrorist organizations to banks. Banks will not be required to seek out this information. In addition, the rule now states that the bank may determine whether a customer appears on the list within a reasonable time after the account is opened, unless it is required to do so earlier by another Federal law, regulation, or directive.
- A transition period that permits banks a period of several months to comply with the final rule.

importance of the statutory goals and mandate of section 326. Money laundering can occur in small banks as well as large banks.

B. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury submitted the final rule to the OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506-0026.

Collection of Information Under the Proposed Rule

The proposed rule applied only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c);[41] and any foreign branch of an insured bank. The proposed rule required each bank to establish a written CIP that must include recordkeeping procedures (proposed § 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed § 103.121(b)(5)).

The proposed rule required a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. It also required these records to be maintained at the bank for five years after the date the account is closed (proposed § 103.121(b)(3)).

The proposed rule also required a bank to give its customers "adequate notice" of the identity verification procedures (proposed § 103.121(b)(5)). The proposed rule stated that a bank could satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice.

Collection of Information Under the Final Rule

The final rule, like the proposed rule, requires banks to implement reasonable procedures to (1) maintain records of the information used to verify a customer's identity, and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act. However, the final rule greatly reduces the paperwork burden attributable to these requirements, as described below.

The final rule also contains a new recordkeeping provision permitting a bank to rely on another financial institution to perform some or all its CIP, under certain circumstances. Among other things, the other financial institution must provide the bank with a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

Response to Comments Received

We received approximately 500 comments on the proposed rule. Most of the commenters specifically mentioned the recordkeeping burden associated with the proposed rule. Some commenters also asked Treasury and the Agencies to clarify the meaning of "adequate notice" and requested that a sample notice be provided in the final rule.

[41] This definition includes banks, thrifts, and credit unions.

Only a few commenters provided burden estimates of additional burden hours that would result from the proposed rule. However, these burden estimates did not necessarily focus on the recordkeeping and disclosure requirements in the proposal and ranged from 200 extra hours per year to 9,000 additional hours. Treasury and the Agencies believe that the final rule substantially addresses the concerns of the commenters. Specific concerns about paperwork burden have been addressed as follows:

First, the recordkeeping and disclosure burden are minimized in the final rule because Treasury and the Agencies reduced the entire scope of the final rule, by:

- narrowing and clarifying the scope of "account." The final rule specifically excludes accounts that (1) a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from a third party, and (2) accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. It also specifically excludes wire transfers, check cashing, and the sale of travelers checks, and any other product or service that does not lead to a "formal banking relationship" from the scope of the rule;
- narrowing the definition of "bank" covered by the rule to exclude a bank's foreign branches; and
- limiting and clarifying who is a "customer" for purposes of the final rule. The final rule now defines "customer" as "a person that opens a new account" making clear that a person who does not receive banking services, such as a person whose deposit or loan application is denied, is not a customer. The definition of customer also excludes signatories from the definition of "customer." Moreover,

the final rule excludes from the definition of "customer" the following readily-identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)-(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[42]

Second, recordkeeping burden was further reduced by:

- eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include "a description" of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include "a description" of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and
- reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

[42] The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term "adequate notice."

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (see, e.g., 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and provided in accordance with the final rule, will be deemed adequate notice. In addition, it continues to permit banks to choose among a variety of low-cost methods of providing adequate notice and to select the least burdensome method, given the circumstances under which customers seek to open new accounts.

Treasury and the Agencies also believe that nominal burden is associated with the new recordkeeping requirement in § 103.121(b)(6). This section permits a bank to rely on another financial institution to perform some or all its CIP under certain conditions, including the condition that the financial institution enter into a contract with the bank providing that it will certify annually to the bank that it (1) has implemented its anti-money laundering program and (2) will perform (or its agent will perform) the specified requirements of the bank's CIP. Not all banks will choose to rely on a third party. For

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proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

those that do, the minimal burden of retaining the certification described above should allow them to reduce net burden under the rule by such reliance.

Burden Estimates

Treasury and the Agencies have reconsidered the burden estimates published in the proposed rule, given the comments stating that the burdens associated with the paperwork collections were underestimated. Having done so, and considering the reduction in burden taken in this final rule, Treasury and the Agencies have adjusted their estimates of the paperwork burden of this rule. The burden estimates that follow are estimates of the incremental burden imposed upon banks by this final rule, recognizing that some of the requirements in this rule are a usual and customary practice in the banking industry, or duplicate other regulatory requirements.

The potential respondents are national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); Federally insured credit unions (NCUA financial institutions); and certain non-Federally regulated credit unions, private banks, and trust companies (FinCEN institutions).

Estimated number of respondents:

OCC: 2207.

Board: 1240.

FDIC: 5,500.

OTS: 962.

NCUA: 9,688.

FinCEN: 2,460.

Estimated average annual recordkeeping burden per respondent: 10 hours.

Estimated average annual disclosure burden per respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 242,627 hours.

Treasury and the Agencies invite comment on the accuracy of the burden estimates and invite suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506-0026), Washington, DC 20503 (or by the Internet to jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

Executive Order 12866

Treasury, the OCC, and OTS have determined that the final rule is not a "significant regulatory action" under Executive Order 12866 for the following reasons.

The rule follows closely the requirements of section 326 of the Act. Moreover, Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the final rule because the procedures are a matter of good business practice. In addition, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this final rule.

At the proposed rule stage, Treasury, the OCC, and OTS invited national banks, the thrift industry, and the public to provide any cost estimates and related data that they

think would be useful in evaluating the overall costs of the rule. Most of the cost estimates provided by commenters related to the requirements in the proposed rule that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed. As described in the preamble, the final rule eliminates signatories from the definition of "customer," and no longer requires a bank to keep copies of documents used to verify a customer's identity. The final rule also reduces the universe of records that must be kept for five years after an account is closed. Treasury, the OCC and the OTS have taken other steps that significantly reduce the scope of the rule and the burden of the rule. These burden-reducing measures are described in the Paperwork Reduction Act discussion and Regulatory Flexibility Act discussion, above. [43]

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

[43] For these same reasons, and consistent with section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Treasury, the OTS and the OCC have also determined that this final rule will not result in expenditures by
State, local, and tribal governments in the aggregate, or by the private sector of $100 million or more in any one year, and therefore the rule is not subject to the requirements of section 202 of that Act.

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and Recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 748

Credit unions, Crime, and Security measures.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements,
Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103-FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107-56, 115 Stat. 307.

§ 103.11 [Amended]

2. Section 103.11(j) is amended by removing "paragraph (q)" and adding "paragraph (hh)" in its place.

§ 103.34 [Amended}

3. Section 103.34 is amended as follows:

a. By amending the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "May 31, 1978" and after the words "June 30, 1972";

b. By amending paragraph (b)(11) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number;" and

c. By amending paragraph (b)(12) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number."

2. Subpart I of part 103 is amended by adding new §103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) Definitions. For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3) (i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii)-(iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) Customer Identification Program: minimum requirements.

(1) In general. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's

assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) Customer information required. (A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or

number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) Credit card accounts. In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a bank may use the following sample language to provide notice to its customers:

> IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
>
> To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.
>
> What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) Exemptions. The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) Other requirements unaffected. Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions

concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: _____

_____

James F. Sloan,
Director, Financial Crimes Enforcement Network.

Dated: _____

In concurrence:

_____

John D. Hawke, Jr.,
Comptroller of the Currency.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Governors of the Federal Reserve System, _____, 2003.

_____

Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Directors of the Federal Deposit Insurance Corporation this _____ day of _____.

_____

Valerie J. Best,
Assistant Executive Secretary.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

Dated: _____

In concurrence:

_____

James E. Gilleran,
Director, Office of Thrift Supervision.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

Dated: _____

In concurrence:

_____

Becky Baker,
Secretary of the Board, National Credit Union Administration.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 21– MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

SUBPART C-PROCEDURES FOR MONITORING BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881-1884 and 3401-3422; 31 U.S.C. 5318.

2. In § 21.21:

A. Revise the section heading; and

B. Revise § 21.21(b) to read as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations

issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated:

John D. Hawke, Jr.,
Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Revise § 208.63(b) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(b) Establishment of BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., and 3901 et seq.; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

2. In § 211.5, add new paragraph (m) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Each Edge or agreement corporation is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

3. In § 211.24, add new paragraph (j) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

By order of the Board of Governors of the Federal Reserve System, April ___, 2003.

Jennifer J. Johnson,
Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set out in the preamble, the FDIC amends title 12, chapter III of the Code of Federal Regulations, as set forth below:

PART 326 – Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

1. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881-1883; 31 U.S.C. 5311-5314 and 5316-5332.2.

2. Revise § 326.8(b) to read as follows:

§ 326.8 Bank Secrecy Act compliance.

* * * * *

(b) Compliance procedures. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the Bank Secrecy Act compliance program required under this section.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation this __ day of April 2003.

Valerie J. Best,
Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set out in the preamble, OTS amends title 12, chapter V of the Code of Federal Regulations, as set forth below:

PART 563 - SAVINGS ASSOCIATIONS - OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

2. In § 563.177:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 563.177 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) Customer identification program. Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OTS and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: _____

James E. Gilleran,
Director, Office of Thrift Supervision.

National Credit Union Administration

12 CFR Chapter VII

For the reasons set out in the preamble, NCUA amends title 12, chapter VII of the Code of Federal Regulations, as set forth below:

PART 748 – SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

2. In § 748.2:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each federally-insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR Part 103. The compliance program must be written, approved by the credit union's board of directors, and reflected in the minutes of the credit union.

(2) Customer identification program. Each federally-insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * *

Dated: April ___, 2003.

Becky Baker,
Secretary of the Board, National Credit Union Administration.

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8 ☐ FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

83 ☐ FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

* Call for Confirmation: | ** To most locations.

5 Packaging

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34 ☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. *Fee applies.*

520

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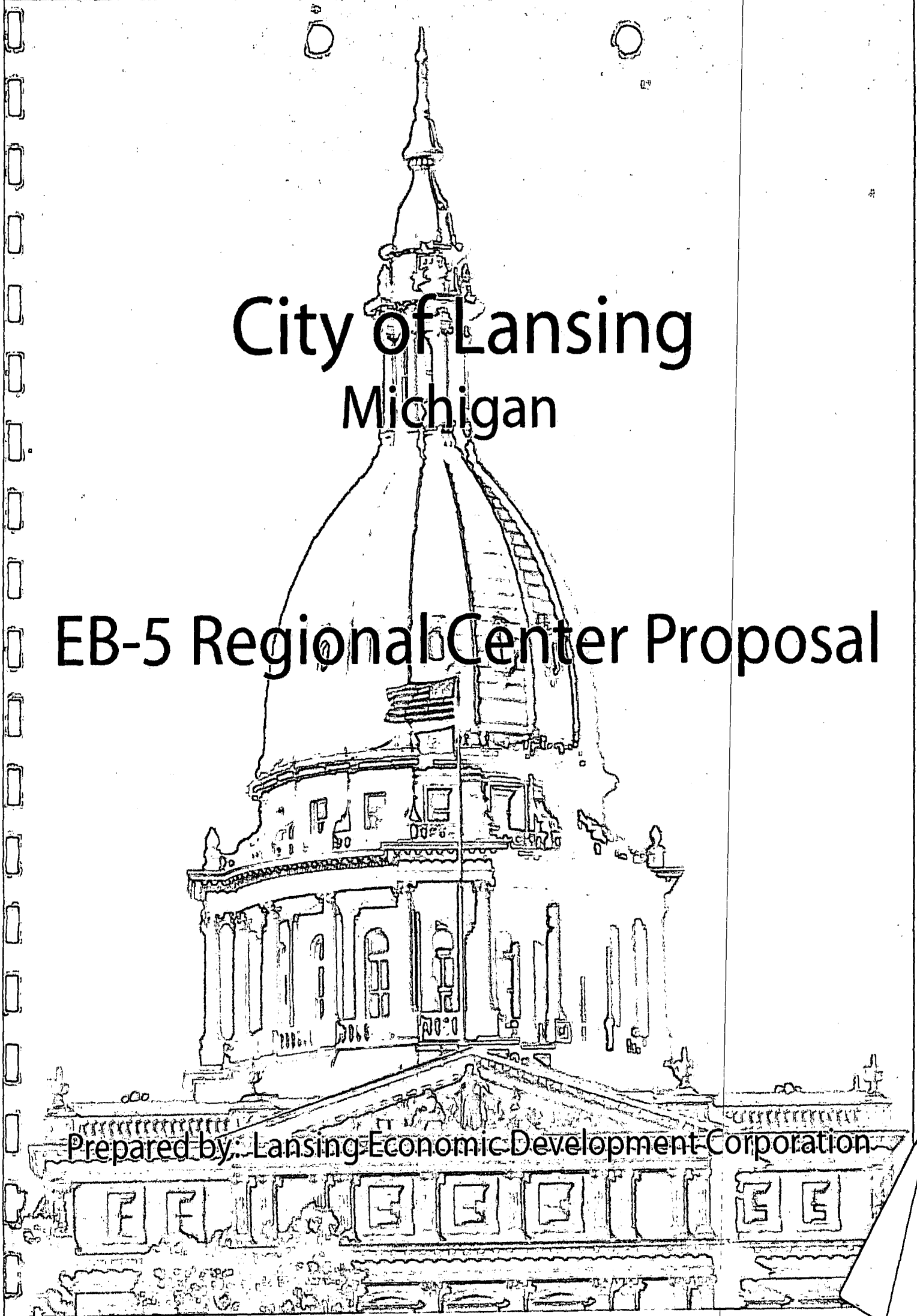


City of Lansing

Michigan

EB-5 Regional Center Proposal

Prepared by: Lansing Economic Development Corporation

LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Virg Bernero, Mayor

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Ms. Barbara Q. Velarde
Chief, Office of Service Center Operations
20 Massachusetts Ave., NW
Room 2123
Washington, D.C. 20529

Dear Ms. Velarde:

It is the objective of the Lansing Economic Development Corporation (LEDC) to obtain an EB-5 Regional Center designation for the city of Lansing, with the intent of utilizing foreign investment to spur economic development within the city and the entire Greater Lansing region. Michigan's recent economic struggles and those related to the automotive industry have had a profound impact on Lansing's economic makeup. The LEDC feels that by utilizing the EB-5 investment program the city can better leverage our assets and position Lansing as a leader in Michigan's economic rebound.

Like most mid-western industrial cities, the core community of Lansing has been decimated by urban sprawl of surrounding townships, high unemployment, aging infrastructure, contaminated properties, declining public school systems, and high property taxes. Additionally the city has seen unemployment rates grow to over 150% of the national average.

However, even with the many challenges the city faces there is plenty of optimism. In the past two years there has been a renewed interest in downtown development and the city has made huge strides:

- New private investment exceeding $600 million dollars over the past two years.
- 897% increase in private investment since 2005.
- 443% increase in private job creation since 2005.
- 277% increase in job retention since 2005.

The LEDC Regional Center intends to capitalize on recent momentum by focusing foreign investment toward target markets and industries that have proven successful track records and a demonstrated need in our community. These markets include:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism

- Manufacturing / Warehousing
- Info-, Bio-, & High- Technology Companies
- Higher Education

Lansing continues to emerge as a true urban destination as well as a hub for technological innovation. Increased demand for investment capital has presented unprecedented opportunities and the implementation of the EB-5 Regional Center program will allow the city to open its doors to international capital and position itself as a city that is receptive to the global economy. I appreciate your consideration of our request and look forward to your concurrence with our proposal.

Sincerely,

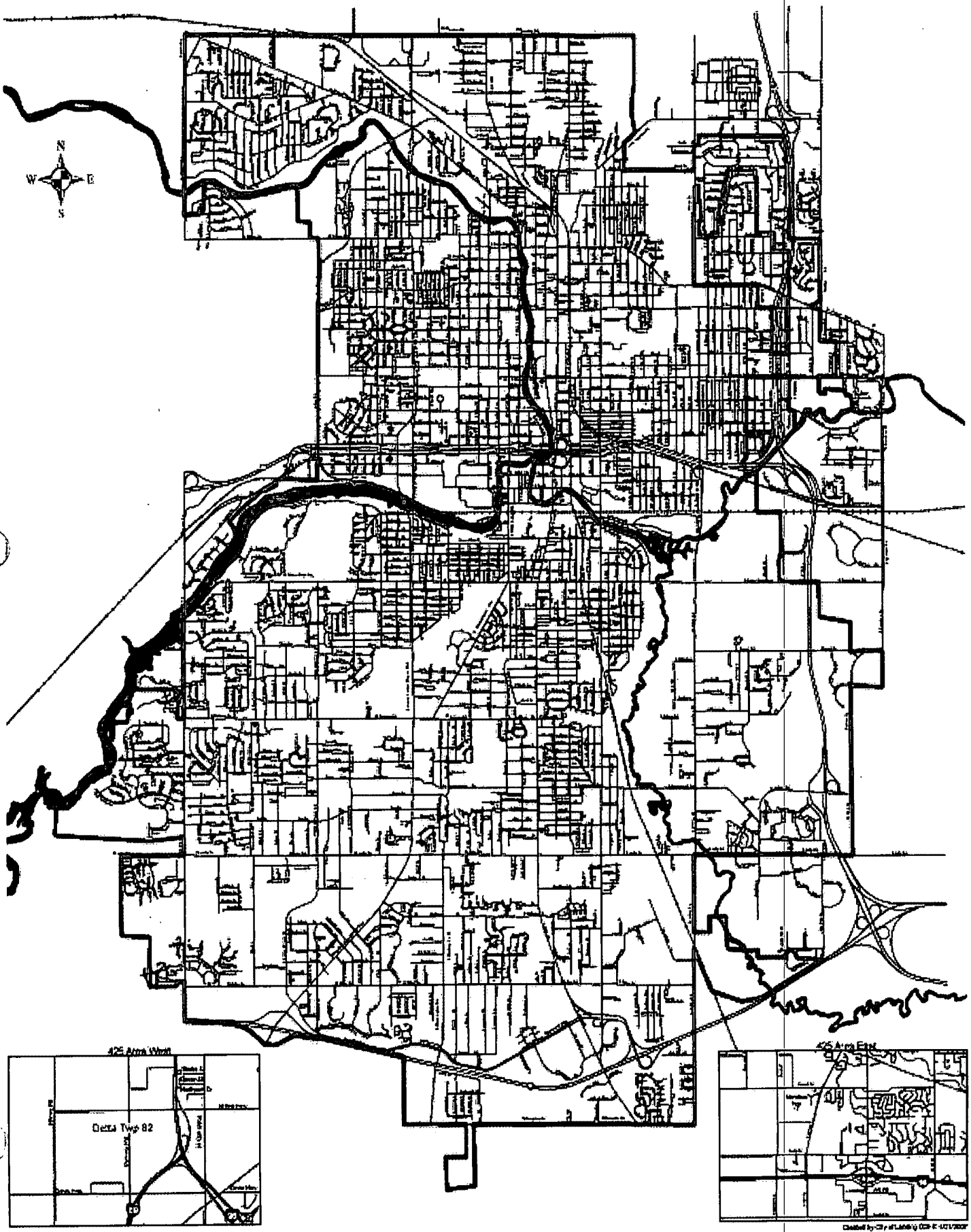
Robert L. Trezise, Jr.
President & CEO
Lansing Economic Development Corporation

Table of Contents

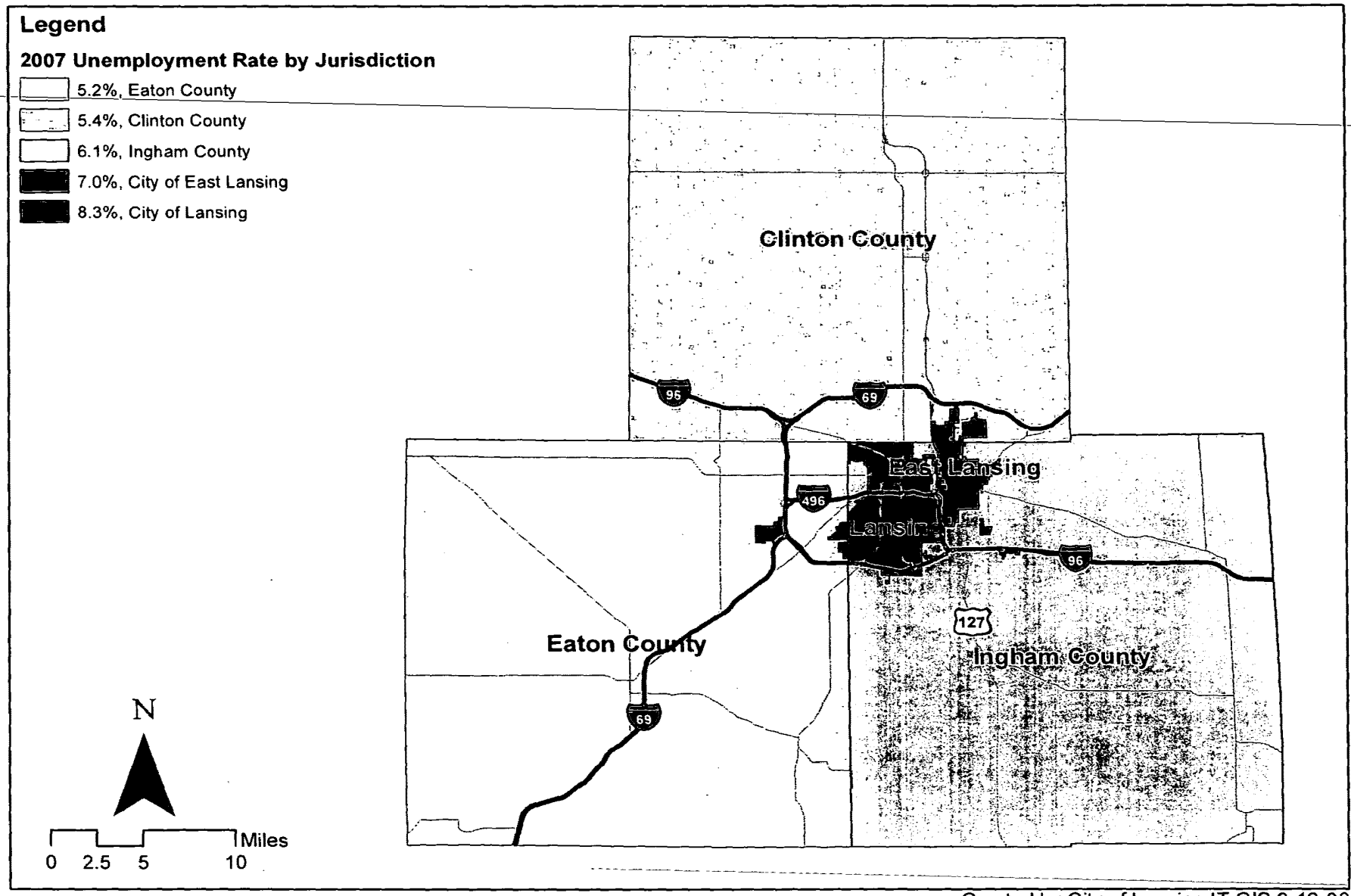
Description of Geographical Boundary

The Lansing Regional Center will invest all EB-5 funds within the geographic boundaries of the city of Lansing including all applicable properties subject to State of Michigan Public Act 425 agreements. The boundary of the proposed Regional Center is graphically represented in the attached map.

City of Lansing



2007 Year End Unemployment



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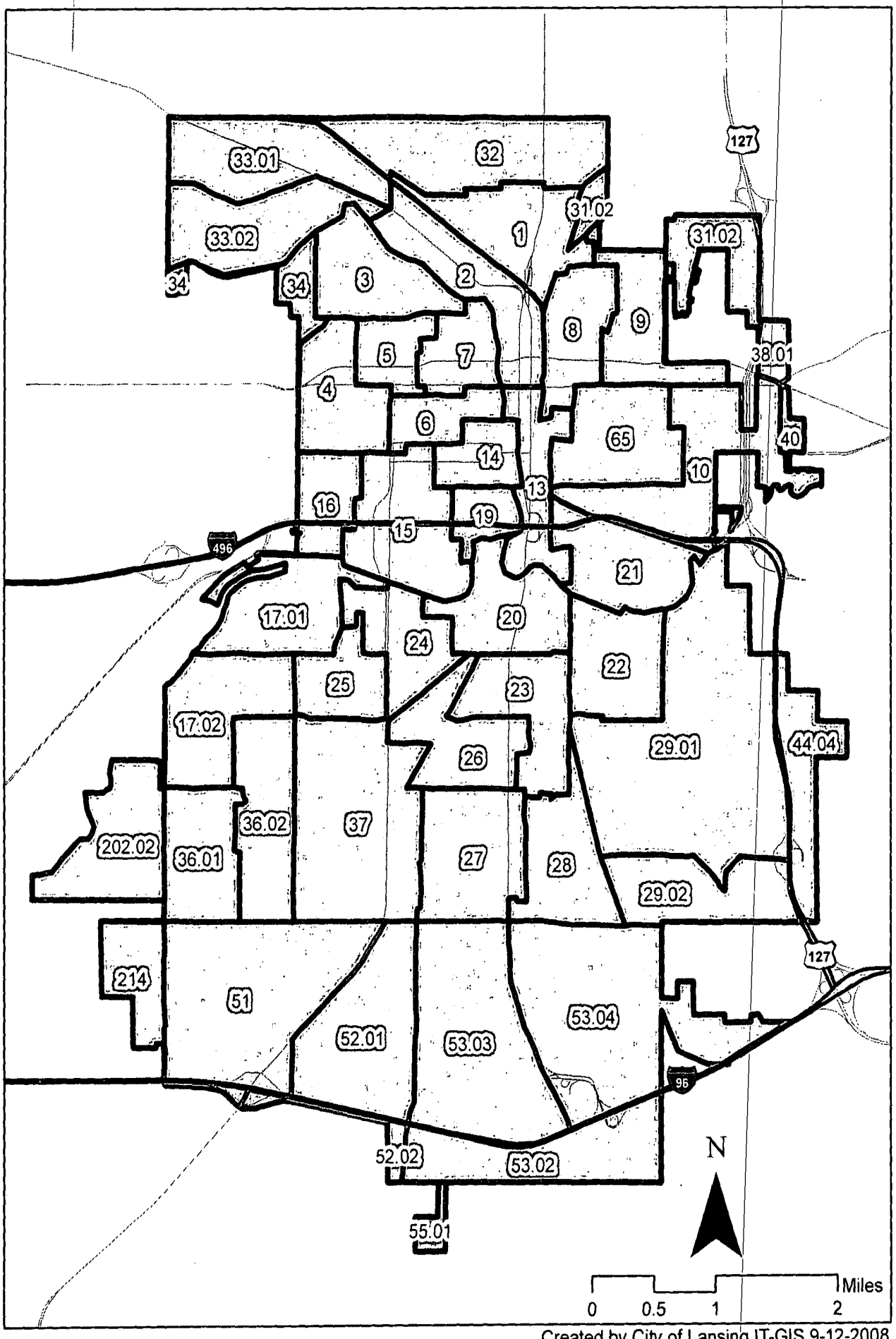
City of Lansing 2000 Census Tracts



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Investment Objectives & Target Industries

Investment Objectives:
It is the intent of the Lansing Regional Center to serve as an equity partner in qualified companies or projects which will provide investors with minimized risk, and favorable return on investment while contributing to the economic growth of the City of Lansing and subsequently the Greater Lansing Region.

Target Investments:

Business investment and development in the City of Lansing through the Lansing Regional Center will focus on key industries which show strong indications of growing market demand, expansion capabilities, growing employment demand and high returns on investment. The Lansing Regional Center will focus on investing in projects within the following target markets:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism
- Manufacturing / Warehousing
- Info-, Bio-, & High-Technology
- Higher Education

Mixed-use Urban Real Estate Development: In the past 3 years downtown Lansing has emerged as the premier urban live / work destination in mid-Michigan and has yet to meet capacity in this regard. The central business district continues to regain market share in regards to commercial office space as companies seek to abandon ubiquitous sprawling township office parks for true urban offices that are essential to attracting today's young urban oriented talent. In fact the majority of the city's new residential and retail units, 450 units in 3 years, have been brought online with almost 100% absorption and the trend is not slowing. The Lansing Regional Center looks to accelerate this progress by partnering with real estate developers to transform downtown with new projects that will meet and appeal to the demand currently created by the city's large student population and growing young professional crowd. The presence of three world class higher education providers in Michigan State University, Cooley Law School, and Lansing Community College have provided the region with an unbelievable talent pool and a population searching for new urban living and entertainment options. Examples of such projects include loft condominiums and apartments, street level bars and restaurants, new class A office space, cutting edge entertainment venues, and entrepreneurial incubator space. As the global economy continues to expand, new opportunities are being created that encourage our young talent pool to stay and grow the city and state, and the Lansing Regional Center will be a key component in creating a true vibrant urban community essential to the retention of these talented

individuals and entrepreneurial businesses.

Hospitality / Tourism: Recently the city of Lansing has also become a true entertainment and conference mecca, which is no wonder given the region's abundant resources:

- The 120,000 s.f. municipally owned Lansing Center is the region's premier conference and banquet facility and host to plethora of meetings, trade shows, and special events.
- The enormously successful Lansing Lugnuts baseball franchise, the Class A Midwest League affiliate of the Toronto Blue Jays; and their magnificent Oldsmobile Park Stadium constructed in 1996.
- The nationally recognized week long Common Ground Music Festival with over 30 bands on 3 stages, which has doubled in attendance to nearly 100,000 spectators over the past 5 years.
- The Wharton Center for the Performing Arts located at Michigan State University, which in 2006 ranked #5 in attendance among global theater venues ahead of some of the world's most storied venues including the Radio City Music Hall and Royal Albert Hall.

The city, working in tandem with the Greater Lansing Convention and Visitors Bureau, and the Lansing Entertainment & Public Facilities Authority plans to continually invest in marketing a strong tourism and convention industry supported by new real estate development, expanding entertainment opportunities, and a centralized location. The Lansing Regional Center will target specific tourism related projects including downtown hotels, convention center expansion plans, a new performing arts center, and the creation of a state of the art movie studio soundstage to accommodate Michigan's rapidly growing film industry.

Manufacturing / Warehousing: From the founding of Oldsmobile to the two most advanced and new manufacturing plants in the General Motor's portfolio, Lansing has a deep history in manufacturing. In addition to GM, Lansing is home to some the world's largest manufacturing companies including Barnes Aerospace, Pratt & Whitney, and Johnson Controls. Yet, like many mid-Western cities, Lansing has also faced the problems of a manufacturing dependent economy and the growing pains associated with increased global competition. However, through entrepreneurship, university research, and utilization of the city's highly trained workforce; new niche market high-tech manufacturing opportunities are arising. Innovative companies such as Demmer Corporation and Niowave Inc, are each respectively leading the way in defense contracting and particle accelerator technologies. In fact, through diversification, as well as aggressive action by the Lansing EDC, Demmer Corporation has added over 1,000 new employees in the last 3 years! And the future of manufacturing in Lansing continues to brighten as new innovative manufacturing companies utilizing Michigan State University patents and research are continuously emerging

with technologies the world has never seen before. These companies present tremendous growth opportunities as well as the potential for enormous international product export potential. The Lansing Regional Center will invest in projects related to the growth of this rapidly diversifying sector including investment in product warehousing, manufacturing incubators, company expansion, and capital for university patented technology start-ups.

Info-, Bio-, High- Technology: In recent years Lansing has quickly become a hub of growth in the fields of information and bio-technology. Between 1998 and 2004, the greater Lansing Information Technology industry grew by 20 percent, which is about seven times faster than the rate for all jobs. This continued growth can be attributed to the number of institutions of higher learning and the availability of talent in the Lansing region. This growth potential has led to recent announcements that will not only transform Greater Lansing's regional economy, but possibly the world. It was recently announced that Michigan State University will serve as the home of the Facility for Rare Isotope Beams (FRIB) furthering MSU's prowess as the nation's premier institution for particle acceleration research. Additionally, IBM recently announced the creation of a new Global Data Center at MSU, the first of its kind in the United States. Even with all of the success, when compared to other regions Lansing has yet to reach full potential for growth in this sector. Lansing Regional Center funds will focus investment to encourage entrepreneurship and assist rapidly growing companies. Investments may include high-tech incubator development, university/student entrepreneur incubator development, start-up capital investment, as well as storage and laboratory services.

Higher Education: The greater Lansing region is home to a very large number of higher education institutions which continue to gain global influence. The Lansing Regional Center will be uniquely positioned to assist these institutions with the expansion of educational and research related facilities. Potential projects would involve the following institutions:

- Michigan State University – One of the world's largest universities (42,000+ students) and home of some of the world's leading research including the newly awarded site for the Facility for Rare Isotope Beams (FRIB) which further enhances MSU's prowess as the leader in atomic research.
- Lansing Community College – Home of 20,000+ students, a provider of outstanding vocational degrees and certifications, as well as a feeder for Bachelors degree programs to the State of Michigan's finest universities.
- Thomas M. Cooley Law School - The nation's largest and most diverse law school with a student base of approximately 3,000.

Economic Impact Modeling

The Lansing Regional Center will utilize the United States Bureau of Economic Analysis RIMS II modeling system as the primary mechanism for determining indirect job creation associated with immigrant invested funds. However, it is important to note that, depending on the target industry, it is the intent of the Lansing Regional Center to invest in projects that will be able to reflect direct employment creation figures that will satisfy EB-5 Regional Center requirements.

Due to the diversity of target industries to which investment will flow through the Lansing Regional Center it is our conclusion that the RIMS II modeling system will provide the most accurate depiction of the investments within our regional economy. Each investment will be analyzed thoroughly prior to fund disbursement to ensure that employment growth expectations will be attained. For example, sectors such as mixed-use real estate development projects may require the use of industry specific ratios associated with employment and square footage. When these ratios are utilized, all sources of information will be obtained from leading industry resources and all citation and contacts will be provided with EB-5 verification reports.

Information regarding the use of RIMS II multipliers as well as applicable multipliers for the Greater Lansing Region can be found on immediately following pages.

Greater Lansing RIMS II Economic Multipliers

INDUSTRY	Multiplier					
	Final Demand				Direct Effect	
	Output (dollars)	Earnings (dollars)	Employment (jobs)	Value-added (dollars)	Earnings (dollars)	Employment (jobs)
Agriculture, forestry, fishing, and hunting						
1 Crop and Animla Production	1.7922	0.2667	15.7506	0.7795	2.6219	1.6602
2 Forestry and Fishing and related activities	1.9029	0.7725	36.0869	0.9631	1.411	1.2619
Mining						
3 Oil and gas extraction	1.3974	0.3443	6.4346	0.86	1.4303	1.983
4 Mining, except oil and gas	1.4103	0.2784	5.3944	0.8379	1.591	2.2288
5 Support activities for mining	1.5358	0.2681	5.9544	0.8328	2.3206	2.6867
Utilities						
6 Utilities	1.2917	0.2088	3.563	0.7735	1.576	2.7917
Construction						
7 Construction	1.7612	0.5283	14.6427	0.9368	1.6191	1.7722
Manufacturing						
8 Wood product manufacturing	1.6151	0.2984	8.3259	0.6644	2.0124	2.0842
9 Nonmetallic mineral product manufacturing	1.6939	0.4245	9.4985	0.8248	1.7179	2.1508
10 Primary metals manufacturing	1.4964	0.3217	6.7138	0.551	1.6718	2.2166
11 Fabricated metal product manufacturing	1.5853	0.3467	8.3438	0.7416	1.7581	1.922
12 Machinery manufacturing	1.6245	0.4269	9.1841	0.7429	1.6323	2.036
13 Computer and electronic product manufacturing	1.6376	0.403	8.7283	0.7307	1.7491	2.1982
14 Electrical equipment and appliance manufacturing	1.525	0.3639	7.532	0.6783	1.6079	2.0699
15 Motor vehicle, body, trailer, and parts manufacturing	2.0233	0.299	6.6231	0.609	3.028	4.8381
16 Other transportation equipment manufacturing	1.4425	0.3082	6.0647	0.7052	1.6101	2.223
17 Furniture and related product manufacturing	1.7042	0.3159	7.847	0.7521	2.2403	2.5685
18 Miscellaneous manufacturing	1.6943	0.5506	10.7663	0.8572	1.4978	2.0207
19 Food, beverage, and tobacco product manufacturing	1.8604	0.3157	9.1893	0.6888	2.676	3.57
20 Textile and textile product mills	1.5375	0.3249	8.6956	0.5825	1.7616	1.8489
21 Apparel, leather, and allied product manufacturing	1.6099	0.4527	13.7619	0.8624	1.5809	1.5929
22 Paper manufacturing	1.4545	0.2519	5.6124	0.5764	1.9417	2.4672
23 Printing and related support activities	1.6368	0.4599	11.7742	0.8341	1.5809	1.732
24 Petroleum and coal products manufacturing	1	0	0	0	0	0
25 Chemical manufacturing	1.552	0.2637	5.0432	0.6315	2.1253	3.6404
26 Plastics and rubber products manufacturing	1.6051	0.257	6.1267	0.6552	2.1934	2.4269
Wholesale Trade						
27 Wholesale Trade	1.6381	0.4584	10.0223	1.0328	1.5921	2.0622
Retail Trade						
28 Retail Trade	1.721	0.4858	19.5613	1.0496	1.6155	1.393
Transportation & Warehousing						
29 Air transportation	1.5292	0.3618	8.2959	0.6543	1.6921	2.4061
30 Rail transportation	1.3601	0.1882	3.9612	0.7856	2.065	3.1778
31 Water transportation	1	0	0	0	0	0
32 Truck transportation	1.7979	0.464	12.4267	0.9155	1.8328	1.9883
33 Transit and ground passenger transportation	1.752	0.5475	24.6993	0.9177	1.5708	1.3314
34 Pipeline transportation	1.4715	0.2409	5.0892	0.6125	2.2323	3.5516
35 Other transportation and support actitivites	1.6927	0.6538	15.6905	1.175	1.3804	1.6005
36 Warehousing and storage	1.7588	0.6671	18.9673	1.2117	1.3893	1.4734
Information						
37 Publishing including software	1.7662	0.4406	9.9805	0.9795	1.8789	2.5901
38 Motion picture and sound recording	1.7177	0.4339	18.1524	0.8699	1.744	1.4724
39 Broadcasting and telecommunications	1.606	0.2917	6.7644	0.7972	2.1413	2.8483
40 Information and data processing services	1.7975	0.3486	9.7329	0.8976	2.5657	2.9658
Finance and Insurance						
41 Federal Reserve banks, credit intermediation and related services	1.4555	0.3326	7.557	1.0366	1.5731	1.9725
42 Securities, commodity contracts, investments	1.8851	0.6584	18.1622	1.0453	1.5516	1.6312
43 Insurance carriers and related actiivities	2.2097	0.5395	12.3695	1.0737	2.2495	2.6908
44 Funds, trusts, and other financial vehicles	1.6004	0.3734	8.2568	0.5798	1.8892	2.5757
Real estate and rental and leasing						
45 Real estate	1.3804	0.1496	5.0332	0.9229	2.7249	2.2475
46 Rental and leasing services and lessors of tangible assets	1.758	0.255	8.0042	0.8334	4.0137	3.5711
Professional, scientific, and technical services						
47 Professional, scientific, and technical services	1.8215	0.6314	13.9678	1.1083	1.5304	1.98

Management of companies and enterprises						
48 Management of companies and enterprises	1.9009	0.6401	11.3205	1.1328	1.5604	2.4951
Administrative and waste management services						
49 Administrative and support services	1.7623	0.5828	21.7553	1.0665	1.5277	1.4242
1 Waste management and remediation services	1.7841	0.4313	11.0674	0.9108	1.8586	2.1906
Educational services						
51 Educational services	1.8925	0.658	28.0063	1.1162	1.4825	1.338
Health care and social assistance						
52 Ambulatory health care services	1.8192	0.6525	15.84	1.1498	1.4943	1.7531
53 Hospitals and nursing and residential care facilities	1.8478	0.6009	17.0924	1.0446	1.5613	1.6854
54 Social assistance	1.8683	0.6878	42.8046	1.109	1.4743	1.1961
Arts, entertainment, and recreation						
55 Performing arts, museums, and related activities	1.7942	0.5945	25.7107	1.149	1.5351	1.3694
56 Amusements, gambling, and recreation	1.6959	0.4616	20.3168	1.0421	1.5916	1.3502
Accomodation and food services						
57 Accomodation	1.6652	0.4583	20.2805	1.0045	1.597	1.352
58 Food services and drinking places	1.6995	0.4379	26.9427	0.8853	1.5965	1.2382
Other services						
59 Other services	1.8712	0.5386	20.7486	0.9914	1.6864	1.4896
Households						
60 Households	1.1215	0.2912	9.8777	0.6526	0	0

RIMS II Multipliers for Output, Earnings, and Employment

RIMS II provides users with five types of multipliers: Final-demand multipliers for output, for earnings, and for employment and direct-effect multipliers for earnings and for employment. These multipliers measure the economic impact of a change in final demand, in earnings, or in employment on a region's economy.[6] This section defines the RIMS II multipliers and gives brief examples of their use. (For a detailed discussion of the source data and methods used in the derivation of the RIMS II multipliers, see appendix A.)

Final-Demand Multipliers for Output

The final-demand multipliers for output are the basic multipliers from which all the other RIMS II multipliers are derived. They are presented in the final-demand output multiplier table. (For a sample of this table, designated as table 1.1, see appendix D.) In this table, each column entry indicates the change in output in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional output is calculated by multiplying the final-demand change in the column industry by the sum of all the multipliers for each row except the household row.[7]

For example, suppose that final demand in the food products machinery industry in the Kansas City BEA economic area (hereafter called the Kansas City economic area) increases by $1 million.[8] The effect of this increase in output on output in each industry in the economic area is calculated from the column of final-demand output multipliers for the food products machinery industry (summarized in column 1 in table A).[9] According to these calculations, the output of the farm products and agricultural, forestry, and fishing services industry increases by $15,000 (0.0150 times $1 million); the output of the industrial machinery and equipment industry, which includes the food products machinery industry, increases by $1.0393 million (1.0393 times $1 million); and total output in the economic area increases by $2.0655 million (2.0655 times $1 million).

Table A.—Final-Demand Multipliers for the Food Products Machinery Industry, Kansas City, MO-KS Economic Area

Industry	Output (dollars)	Earnings (dollars)	Employment[1] (jobs)
	(1)	(2)	(3)
Farm products and agricultural, forestry, and fishing services	0.0150	0.0036	0.2846
Industrial machinery and equipment	1.0393	.3072	9.8743
All other industries	1.0112	.2983	14.1743
Total	2.0655	.6091	24.3332

1. The employment multiplier is measured on the basis of a $1 million change in output delivered to final demand.

Multipliers for Earnings

RIMS II provides two types of multipliers for estimating the impacts of changes on earnings: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for earnings can be used if data on final-demand changes are available. In the final-demand earnings multiplier table, each column entry indicates the change in earnings in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact

6. The term "change in final demand," rather than the "change in output delivered to final users," is used in this handbook because of its widespread use in regional impact analysis.

The impact of an increase in final demand, earnings, or employment differs from that of a decline only by the sign of the impact.

7. The household row is excluded to avoid double counting, because each of the other row entries already includes earnings paid to households.

8. For a listing of the 172 1A BEA economic areas and associated metropolitan areas, see appendix E . For a discussion of the procedure used to define the BEA economic areas, see Kenneth P. Johnson, "Redefinition of the BEA Economic Areas." SURVEY OF CURRENT BUSINESS 75 (February 1995): 75–81.

9. For the complete final-demand output multiplier table for this economic area, see RIMS table 1.1 in appendix D.

on regional earnings is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on earnings in each industry in the Kansas City economic area is calculated from the multipliers for earnings in column 2 in table A . According to these calculations, earnings in the farm products and agricultural, forestry, and fishing services industry increases by $3,600 (0.0036 times $1 million); earnings in the industrial machinery and equipment industry increases by $307,200 (0.3072 times $1 million); and total earnings in the economic area increases by $609,100 (0.6091 times $1 million).

The direct-effect multipliers for earnings can be used if data on the initial changes in earnings by industry are available. In the direct-effect earnings multiplier table, each entry indicates the total change in earnings in the region that results from a $1 change in earnings in the row industry. The total impact on regional earnings is calculated by multiplying the initial change in earnings in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that workers in the industry will have additional annual earnings of $1 million. The effect of this increase on total earnings in the economic area is calculated by multiplying the initial change in earnings of $1 million by the multiplier in the row for the food products machinery industry in the direct-effect earnings multiplier table. The multiplier is 2.0829, so the total impact on the economic area is an earnings increase of $2.0829 million (2.0829 times $1 million).[10]

Multipliers for Employment

RIMS II provides two types of multipliers for estimating the impacts of changes on employment: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for employment can be used if data on final-demand changes are available. In the final-demand employment multiplier table, each column entry indicates the change in employment in each row industry that results from a $1 million change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional employment is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on employment in each industry in the Kansas City economic area is calculated from the multipliers for employment in column 3 in table A . According to these calculations, employment in the farm products and agricultural, forestry, and fishing services industry increases by 0.2846 jobs (0.2846 times 1 for each $1 million change in final demand); employment in the industrial machinery and equipment industry increases by 9.8743 jobs (9.8743 times 1); and total employment in the economic area increases by 24.3332 jobs (24.3332 times 1).

The direct-effect multipliers for employment can be used if data on the initial changes in employment by industry are available. In the direct-effect employment multiplier table, each entry indicates the total change in employment in the region that results from a change of one job in the row industry. The total impact on regional employment is calculated by multiplying the initial change in employment in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that 1,000 new jobs in the industry are created. The effect of this increase on total employment in the economic area is calculated by multiplying the initial change in employment of 1,000 jobs by the multiplier in the row for the food products machinery industry in the direct-effect employment multiplier table. The multiplier is 2.601, so the total impact on the economic area is 2,601 new jobs (2.601 times 1,000).[11]

Choosing a Multiplier

The choice of multiplier for estimating the impact of a project on output, earnings, and employment depends on the availability of estimates of the initial changes in final demand, earnings, and employment. If the estimates of the initial changes in all three measures are available, the RIMS II user can select any of the RIMS II multipliers. To assess the reasonableness of the impact estimates based on the multiplier selected, the user can compare these estimates with the estimates based on the other multipliers. In theory, all the impact estimates should be consistent.[12]

10. The multiplier is from RIMS table 1.4, which is not included in this handbook.

11. The multiplier is from RIMS table 1.4, which is not included in this handbook.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect

In theory, all the impact estimates should be consistent.[12] If the available estimates are limited to initial changes in final demand, the user can select a final-demand multiplier for impact estimation. If the available estimates are limited to initial changes in earnings or employment, the user can select a direct-effect multiplier.[13]

In some instances, such as estimating the impact of shutting down an industry in a region, the user must select the output-driven multiplier for impact estimation.[14] The output-driven multiplier measures the change in output in each row industry that results from a $1 change in total industry output in the column industry under study. Using the output-driven multiplier instead of the final-demand output multiplier ensures that the impact of the industry's shutdown on its own output will not exceed that output.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect national average relationships between output and earnings (or employment). In contrast, the impact estimates based on the product of the initial change in earnings (or employment) and the direct-effect multiplier for earnings (or employment) reflect regional relationships between output and earnings (or employment). If the regional relationships differ from the national relationships, the two sets of estimates will differ and the estimates based on the direct-effect multipliers are preferable.

13. In this instance, the user typically estimates earnings or employment impacts. However, by converting the initial changes in earnings or employment into final-demand changes, the user can also estimate output impacts. For the conversion method, see the section "Initial Changes."

14. This multiplier, though not a part of RIMS II, can be derived from the final-demand output multiplier table. See appendix A.

Lansing Regional Center Operational Finances

It is the intent of the Lansing Economic Development Corporation to incorporate the expenses of Lansing Regional Center activities within the fiscal year 2008-2009 into the LEDC's current budget (see attached) ending June 30th, 2009. This funding will be continued with subsequent budgets.

Operating Budget (Application – June 30, 2009)

Director's Salary (20 hrs / week):	$10,750
Marketing / Promotions:	$ 8,000
Legal / Audit:	$ 3,000

The LEDC will be requesting a $38,590 budget increase for fiscal year 2009-2010, and the program has the support of the administration in this request.

Operating Budget (July 1, 2009 – June 30, 2010)

Director's Salary (fulltime):	$ 58,000
Marketing / Promotions:	$ 25,000
Legal / Audit:	$ 15,000

Funds related to the EB-5 Regional Center will be allocated from the LEDC's yearly services contract with the city of Lansing.

Additionally, the LRC plans to assess a $30,000 non-refundable application fee in addition to an investors required capital investment which will be used for administrative and legal costs. Understanding that marketing and staff costs will accrue prior to the receipt of immigrant investment funds, the LRC plans to utilize the LEDC budget as previously stated.

The allocated funds will sustain the EB-5 Program with sufficient emphasis on marketing and legal, as well as adequate staffing expenses.

The LEDC has the sole discretion over the use of all allocated budget funds. Because the LEDC will serve as director of the EB-5 Regional Center all funds will be secure.

LANSING ECONOMIC DEVELOPMENT CORPORATION FY 2009 BUDGET

OPERATIONAL REVENUES

Account Code	Description	FY 2008 Budget	As of 5/27/08 FY 2008 Actual Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.600002	Parking System Revenue	12,000	2,550	14,576	2,576	12,000	-
280.616101	Application Fees (Non-Brownfield)	19,500	18,000	18,500	(1,000)	13,000	(6,500)
280.616102.	Brownfield Application Fees	7,500	34,500	34,500	27,000	14,000	6,500
280.635003	Contract Service LBRA (Admin Fee)	62,319	72,051	72,051.00	9,732	66,638	4,319
280.635004	Contract Service EPA Admin (BCRLF, Petro, HazSub)	2,750	151	151	(2,599)	100	(2,650)
280.635006	Contract Service City	241,300	241,300	241,300	-	339,160	97,860
280.635008	EDA/SmartZone	20,000	-	-	(20,000)	5,000	(15,000)
280.670000	Interest Income	27,000	65,683	58,434	31,434	36,893	9,893
280.670301	Loan Interest Income	33,504	26,106	42,788	9,284	34,282	778
280.679100	From Fund Balance (Includes $10,000 Federal Public Affairs Council for 2008 and $4,196 LCMF Loan Default Contingency for 2009)	20,000	-	10,000	(10,000)	4,196	(15,804)
280.680000	Miscellaneous Revenue	-	2,380	2,380	2,380	100	100
280.680002	Annual Issuer's Fees	4,600	-	4,600	-	4,600	-
280.696282	Operating Transfer - TIFA	273,399	-	282,467	9,068	290,614	17,215
	Subtotal	723,872	462,721	781,747	57,875	820,583	96,711

PROGRAM REVENUE (PASS THRU)

280.547003	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
280.547004	Cool Cities Grant	65,000	61,725	61,725	(3,275)	35,000	(30,000)
280.635012	Façade Grant (Michigan Interfaith Trust Fund)	23,500	37,189	37,189	13,689	-	(23,500)
280.679100	Fund Balance ($12,110 IT Initiative/$81,564 Façade Grant Funds)	93,674	-		(93,674)	58,753	(34,921)
	Subtotal	192,174	106,340	106,340	(85,834)	93,753	(98,421)
	Total Revenue	**916,046**	**569,061**	**888,087**	**(27,959)**	**914,336**	**(1,710)**

OPERATIONAL EXPENSES

Account Code	Description	FY 2008 Budget	FY 2008 Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.172650.702000.	Salaries	383,600	333,129	376,991	(6,609)	389,700	6,100
280.172650.715000.	Fringe Benefits	9,000	8,278	7,941	(1,059)	9,000	-
280.172650.715002.	Fringe Benefit Cafeteria Plan	161,100	123,922	146,820	(14,280)	163,700	2,600
280.172650.741000.	Miscellanious Operating (Includes $10,000 Public Affairs Council in 2008	35,000	18,108	23,019	(11,981)	15,000	(20,000)
280.172650.741200.	Promotions/Marketing	68,219	45,133	55,209	(13,010)	150,452	82,233
280.172650.741810.	Dues and Subscriptions	1,325	1,100	1,145	(180)	2,205	880
280.172650.743000.	Contractual Services (Audit & Legal Fees)	22,500	17,752	17,752	(4,748)	23,300	800
280.172650.744000.	Utilities	10,300	8,449	8,955	(1,345)	15,180	4,880
280.172650.745100.	Building Rental	20,028	20,028	20,028	-	20,028	-
280.172650.747000.	Training/Conference	10,000	5,893	7,886	(2,114)	25,000	15,000
280.172650.748000.	Insurance & Bonds	2,800	2,506	2,506	(294)	2,822	22
000.000000.000000	LCMF Loan Default	-	-	-	-	4,196	4,196
	Subtotal	723,872	584,298	668,252	(55,620)	820,583	96,711

PROGRAM EXPENSE (PASS THRU)

280.172650.743020	Fund Balance (Michigan Interfaith Trust Fund Grant Funds)	23,500	15,000	37,189	13,689	-	(23,500)
280.172650.743020	Fund Balance (12,110 IT Initiative/$81,564 /Façade Grant Funds)	93,674	34,921	58,753	(34,921)	58,753	(34,921)
280.172650.743021	Cool Cities Grant	65,000	98,925	61,725	(3,275)	35,000	(30,000)
280.172650.974020	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
	Subtotal	192,174	156,272	165,093	(27,081)	93,753	(98,421)
	Total Expenses	**916,046**	**740,570**	**833,345**	**(82,701)**	**914,336**	**(1,710)**
	Difference between Revenue and Expense	**0**	**(171,509)**	**54,742**	**54,742**	**0**	**0**

Revised April 24, 2008 Revised April 24, 2008

Escrow & Custodial Financial Services

The Lansing Regional Center has entered into agreement with Fifth Third Bank to serve as escrow and custodial agent with all funds related to the Lansing Regional Center EB-5 Immigration through investment program.

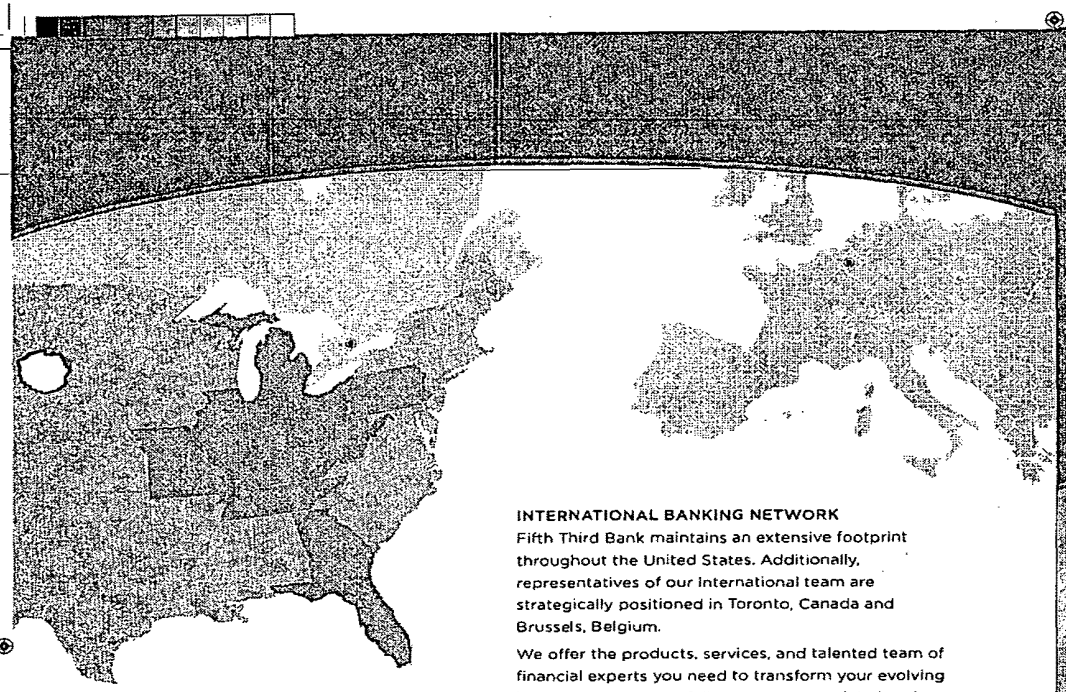
Fifth Third will perform custodial services for all escrowed funds and will serve as the primary contact for all funds related to the Regional Center. Invested funds will undergo a comprehensive due diligence process performed by Fifth Third Bank to certify all invested funds were obtained legally and in adherence with the U.S. Patriot Act Section 326 as provided in *Appendix 1* of this application.

In addition to the performance of escrow and custodial services Fifth Third Bank will handle all foreign currency exchange and provide all interested applicants with a full suite of ***expatriate banking services*** to assist with all aspects of financial planning when locating to the United States. A description of these services is provided in subsequent pages.

Contact Info:

Bill Christenson, CISP, CTFA
Vice President
Senior Private Client Administrator
2501 Coolidge Rd., Ste. 102
MD RLANIC
East Lansing, MI 48823
william.christensen@53.com

Curtis D. Ballast, Vice President
Fifth Third Bank - Institutional Services
111 Lyon Street NW
MD #RMNR1C
Grand Rapids, MI 49503
PH: 616-653-5235
curt.ballast@53.com



FIFTH THIRD BANK

International Banking

INTERNATIONAL BANKING NETWORK

Fifth Third Bank maintains an extensive footprint throughout the United States. Additionally, representatives of our international team are strategically positioned in Toronto, Canada and Brussels, Belgium.

We offer the products, services, and talented team of financial experts you need to transform your evolving business and successfully operate on a global scale.

Fifth Third Bank Contacts

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For more information on Fifth Third Bank's International Banking Solutions, please visit www.53.com

FIFTH THIRD BANK

150 Years of Banking Experience

As one of the oldest and most successful Financial Institutions in the United States, Fifth Third Bank has been serving the needs of the International Banking community for several decades. The Bank's success can be traced to our commitment to understanding and meeting the unique needs of our clients. Our proud heritage is deeply rooted in personalized service and a dedication to building lasting partnerships with our international clients.

Our team understands the importance and necessity of operating in a global marketplace. Success in this environment is often predicated on selecting the right financial partner. Fifth Third Bank is well positioned to fulfill that role and we look forward to introducing you to our International team and the products and services they manage.

FIFTH THIRD BANK

Fifth Third Bank's International Team

Our commitment to the International community is supported by a large team of specialized International Bankers whose primary focus is understanding and meeting your specific needs in the financial marketplace.

At a glance, our team is...

- Strategically dispersed to better understand local economies and have direct access with the clients they serve.
- Easily accessible to European parent companies through our office in Brussels, Belgium.
- Supported by a full service Canadian branch in Toronto.
- Currently servicing the needs of more than 1,200 foreign-owned corporate clients and 5,000 expatriate banking customers.
- Backed by one of the largest foreign exchange trading desks in the United States.
- Comprised of International Relationship Managers that serve as a primary contact within Fifth Third Bank.
- Fluent in several European languages.

BANKING SOLUTIONS

Fifth Third's International Banking Team has the experience, insight and resources to deliver a complete package of financial solutions to meet our clients' specific needs. We provide customized financial solutions to minimize risk and maximize opportunities in the international marketplace.

Fifth Third Bank's broad array of banking services include:

- **Cash Management** and depository services for U.S. and foreign parent companies.
- **Internet Banking** provides a secure channel facilitating balance reporting, funds transfers, and receivable and payable solutions.
- **Lockbox/Imaging** service for U.S. check collection potentially reducing float and increasing cash flow.
- **Financing/Leasing** for U.S. subsidiaries of foreign owned companies including lines of credit, term loans and equipment financing.
- **Credit Card** payment solutions through issuance and merchant services.
- **Expatriate Banking** including depository and savings accounts, credit cards, vehicle and home loans. A staff of bilingual expatriate bankers is on hand to assist with all your banking needs.
- **Global Treasury Management** services including foreign currency exchange, multi-currency accounts, wires and drafts.
- **Trade Services** including export financing, letters of credit, and documentary collections.

Key Data Points

Fifth Third Bank ranks in the Top 15 (top 1%) of all bank holding companies in the United States.

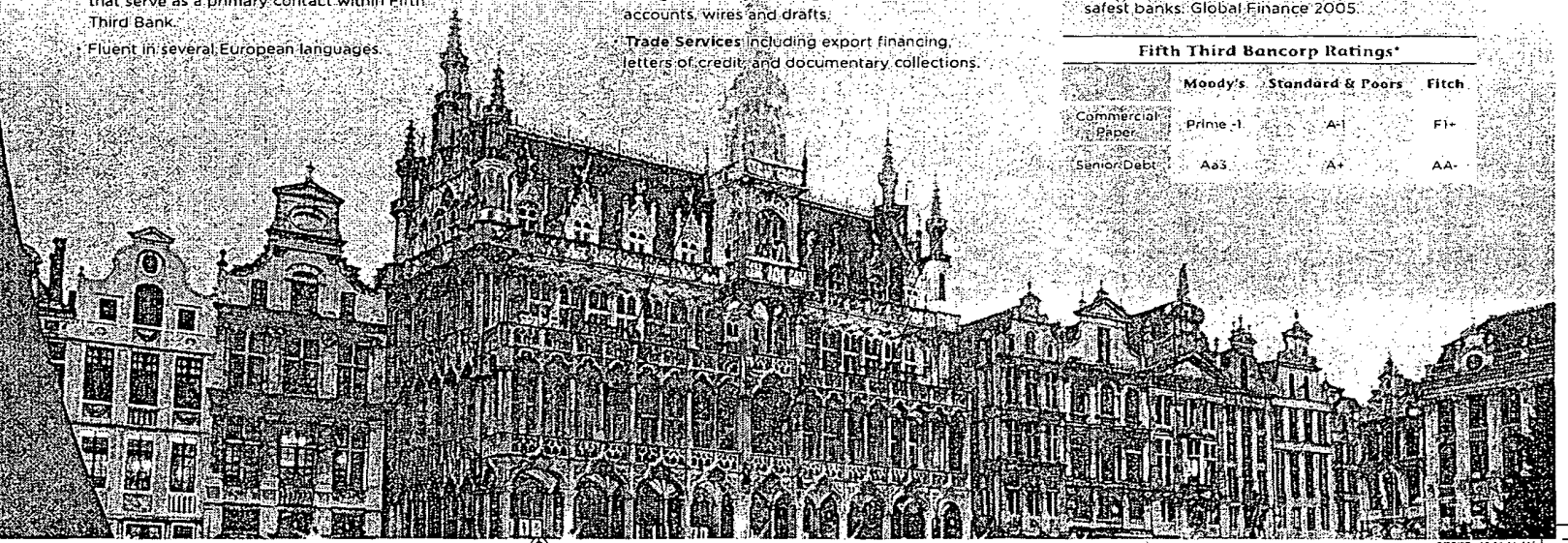
- More than $100 Billion in assets
- Extensive network of foreign exchange trading desks
- 22,000 Employees
- Strategically located throughout the manufacturing corridor of the United States
- European representative office established in 1996

Additional Worthy Accolades

- **Fortune 500 Company**
  Ranked in the top 300 of the largest U.S. Corporations
- **Forbes Global 2000**
  Ranked in the top 350 of the world's largest public companies
- **Most trusted Retail Banks**
  Fifth Third Bank ranked second in the list of most trusted U.S. Banks for safeguarding customer data. 2006 Privacy Trust Study
- **World's Safest Banks**
  Fifth Third ranked in the top 50 of the world's safest banks. Global Finance 2005.

Fifth Third Bancorp Ratings*

	Moody's	Standard & Poors	Fitch
Commercial Paper	Prime-1	A-1	F1+
Senior Debt	Aa3	A+	AA-



Legal Services

Legal services for the Lansing Regional Center will be provided by Foster, Swift, Collins and Smith, P.C. a Michigan based multi practice law firm which was established in 1902. Foster Swift will be handling all administrative work regarding immigration documents as well as overseeing the execution of all escrow and partnership agreements related to Lansing Regional Center projects.

Contact Info:

Gary J. McRay
Shareholder
Foster, Swift, Collins and Smith, P.C.
313 S. Washington Sq.
Lansing, MI 48933
517-371-8285
gmcray@fosterswift.com

All Lansing Regional Center applicants will be encouraged to obtain personal immigration consul prior to the transfer of funds to ensure compliance with United States Immigration law and that all obligations are met with the Office of Home Land Security.

Marketing / Promotional Efforts

Lansing is an international community. The city has large immigrant and refugee populations as well as a significant international student body. Additionally the city is continuing to build upon its assets through its continually evolving Sister & Friendship City program, which is helping to elevate Lansing's international reputation to cultural and economic exchange in the global economy.

The Lansing Regional Center plans to implement a multi-level marketing strategy to generate interest in open investment opportunities. Marketing strategies tend to evolve as a campaign unfolds. However, the Lansing Regional Center plans to implement the following techniques upon receiving the regional center designation.

1.) Reliance on Existing Business Relationships

The Lansing EDC has forged a number of relationships with many international and immigrant businessmen whom now call Lansing home yet are still very connected to the business communities in their respective home cities, and have volunteered to assist with the distribution of print materials as well as organize small symposiums for interested investors to gather information about the program.

2.) Michigan Economic Development Corporation - Shanghai Office

The Lansing EDC has permission to distribute marketing materials through the Michigan EDC's Shanghai office in regards to the Lansing Regional Center. The MEDC is deeply entrenched within the Chinese business community recruiting companies to invest in Michigan and also assisting Michigan based companies with their expansions into China. Due to the nature of their daily operations, utilization of the MEDC will be critical in getting promotional materials in front of our target market.

Contact Info:

Harry C. Whalen
Manager International Business Development
State of Michigan
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913 U.S.A.
Tel: (1) 517.241.4554
Fax: (1) 517.241.3689
e-mail: whalenh@michigan.org

3.) Consulate General of the People's Republic of China

The Consulate General has agreed to assist the city of Lansing in marketing the Lansing Regional Center. This connection will allow a direct link to the Lansing Regional Center from the Consulate General's website, and provide a unique opportunity to foreign investors interested in Mid-west prospects.

Contact info:

Ping Huang
Consul General
Consulate-General of the People's Republic of China
Chicago, IL

4.) Fifth Third Bank International Offices

Fifth Third Bank has committed the company's International Desk, located in Brussels, Belgium, for distribution of marketing materials. In addition, Fifth Third has agreed to market the program to clients who will be potential users. This will be a key partnership as Fifth Third is seeking to expand their global presence and the Lansing Regional Center will be at the forefront of this expansion.

5.) Website

The Lansing Regional Center will also be marketed heavily on the internet through the Lansing EDC's website. The website design and deployment is being coordinated by Spartan Internet Consulting, which is a leading company in the field of internet marketing and strategic implementation. By utilizing cutting edge analytical tracking tools the website will be enabled to seek out potential investors and provide the Lansing Regional Center with unprecedented global exposure.

6.) EB-5 Brokers

When necessary, the Lansing EB-5 Regional Center will work with brokers in countries where this type of process is customary. Through the broker network the Lansing Regional Center will gain true global exposure.

7.) Greater Lansing Office of New Americans

Under the guidance of Lansing Mayor Virg Bernero, Michigan State University, and the Lansing Economic Area Partnership (LEAP) an initiative has been created that will position the greater Lansing region as a true international community. The Office of New Americans (ONA) is a new program under development that will coordinate all of the community's international assets to ensure that greater Lansing has a unified voice to the global community. The following are just a few of the office's ambitious objectives: leverage regional business assets into global economic growth, assist in the welcoming of refugee populations including employment initiatives to ensure that we do not under-employ the population's vast intellect, implementation of new international business associations, and many other innovative programs to cater to the international community.

In an effort to securing funding for the launch of this initiative the Lansing EDC along with our partner organizations presented the initiative to Mr. Rick Foster, VP for Programs, W.K. Kellogg Foundation. The presentation was led by Dr. Soji Adelaja, Director of Michigan State University's Land Policy Institute, and was very well received by the W.K. Kellogg Foundation. So much so, that the Foundation has asked for a formal proposal and suggested that several hundred thousand dollars would be made available to launch a pilot program. The formal proposal is being drafted for submittal at this time.

Lansing Regional Center Operational Structure

Overview of the Lansing EDC:
The Lansing Economic Development Corporation (LEDC) is a nonprofit organization established in 1976 for the purpose of attracting, expanding and retaining business and industry in the City of Lansing.

Our goals are:

1.) Diversify our city's economy by assisting the private sector in the creation of jobs and investment.

2.) Create a sense of place that attracts the knowledge-based economy, entrepreneurial businesses, and young professionals to live and work in our global city.

Detail of Services

- Local Advocate for Business
  The LEDC acts as an ombudsman and business advocate on behalf of a private business with City agencies, as needed. We conduct a full-time pro-active business retention program, play a leadership role and serve as a liaison with local, regional and state organizations.
- Business Assistance
  The LEDC assists manufacturers and high technology firms in applying for tax relief on construction or new equipment investments. We also have the ability to issue tax exempt revenue bonds to finance or refinance private industrial or not-for-profit development projects. The LEDC supports the development of business related projects including assisting in the submission of grant and loan applications for infrastructure development.
- Sites & Brownfield Redevelopment
  The LEDC provides confidential site search assistance for businesses looking for a new location, as well as supporting documentation for businesses to make informed real estate decisions. Additionally the LEDC operates the City's Brownfield Redevelopment Authority which has the ability to offer financial and tax incentives to businesses for cleaning up and redeveloping contaminated and obsolete sites within the City. The LEDC also maintains an inventory of Brownfield sites and can apply for State and Federal grants and loans to fund redevelopment efforts on Brownfield properties.
- Residential Development
  The LEDC administers the Lansing Renaissance Zone program which offers exemption from most local and state taxes for business and residential development located in the zone. The LEDC also administers Neighborhood Enterprise Zones within the City that provide

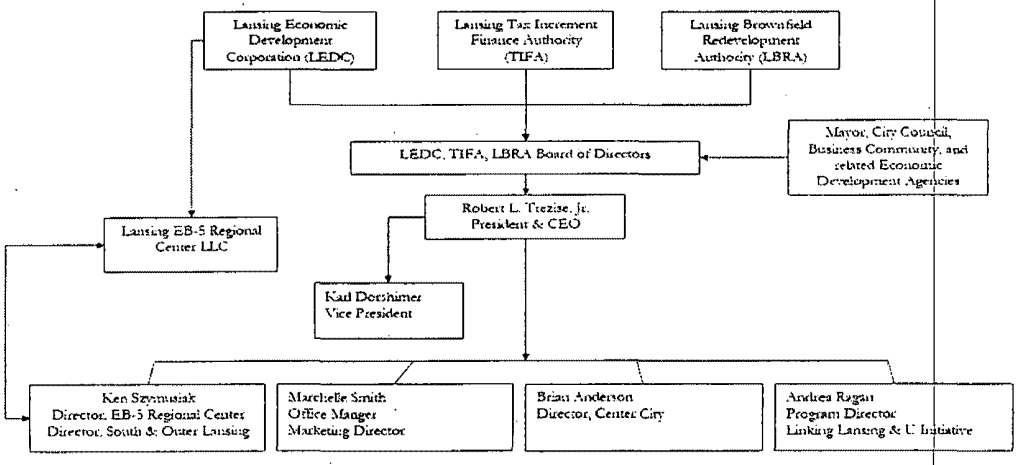
tax incentives for the rehabilitation or new construction of residential housing.

- Downtown Development
  The LEDC offers a matching grant and a loan program to encourage redevelopment in the core downtown area. Our "Building Facade Improvement" program offers up to $5,000 in matching grant funds to encourage property owners and tenants to make needed exterior building facade improvements. Additionally the LEDC's Business Finance Assistance Program can provide loans to help business development and expansion.

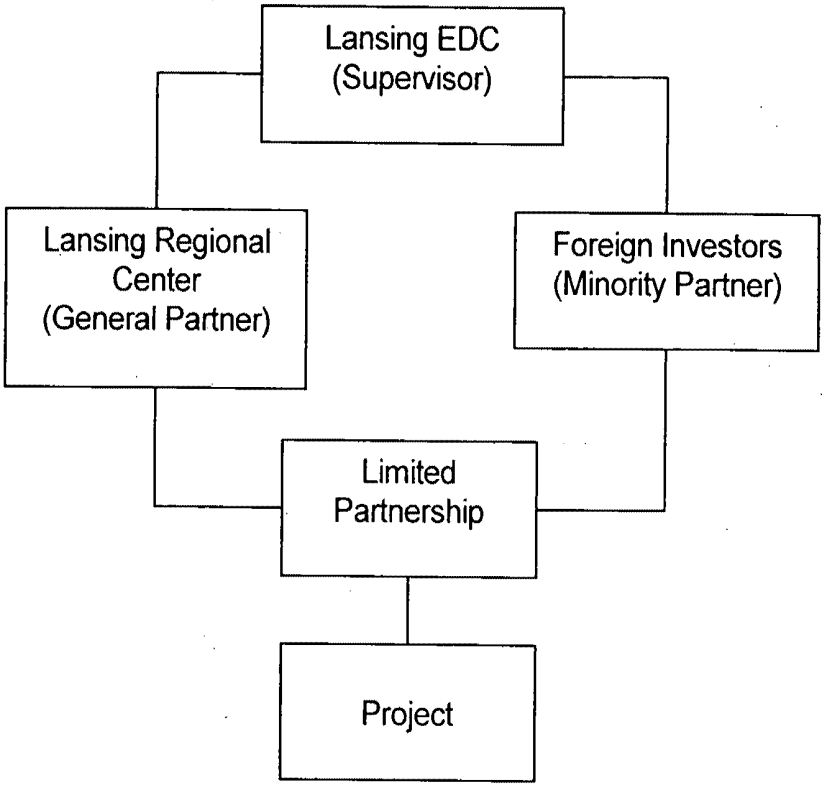
- Linking Lansing & U Initiative
  In 2006 Mayor Virg Bernero launched a new pro-active initiative, titled "Linking Lansing & U," with the sole purpose of developing programming and out-reach efforts to engage Lansing's student population. Programming revolves around three distinct focuses: employment / internships, housing, and entertainment. Since its launch "Linking Lansing & U" has engaged over 1,000 students in a multitude of events including wildly successful job shadow days, networking events, and student volunteer opportunities.

The LEDC is also actively involved in workforce development and economic development initiatives on both the state and regional levels. These close ties bring access to additional resources and expertise including: vocational and employment training, utilities, transportation, research and higher education and intergovernmental cooperation.

Lansing Economic Development Corporation
Organizational Chart



Lansing Regional Center Project Flow Chart:



Role of Lansing Economic Development Corp. (LEDC):
The LEDC will be retained as council pursuant to any advisory agreements entered into by the General Partner on behalf of each limited partnership to provide administrative services as follows:

- Identifying qualifying investments
- Completing due diligence in regards to proposed investments
- Monitoring qualifying investments for job creation and other EB-5 compliance requirements
- Providing accounting and reporting services for qualifying investments
- Assisting qualifying businesses in obtaining future financing

Role of Lansing Regional Center (LRC):
The LRC will operate as a limited liability company under the supervision of the Lansing EDC Board of Directors. LRC will have a separate independent board of

directors which will provide oversight of the fund and direction to the LRC Manager. The LRC Director will be an employee of the Lansing EDC and will be in charge of day-to-day management of each limited partnership. Management responsibilities shall include:

- Marketing qualifying investments to limited partners
- Determining that qualified investments meet minimum criteria
- Assuring that investments generate job creation criteria set forth by the EB-5 Program
- Supervise investment to insure financial performance and continued EB-5 Program qualification
- Providing detailed financial reports to Limited Partners
- Maintenance of accounting books and records for each Limited Partnership
- Retaining all professional services that may be deemed necessary for each Limited Partnership
- Providing detailed financial and status reports to LRC & LEDC Boards of Directors

Fifth Third Bank

CUSTODY SERVICES AGREEMENT

This CUSTODY SERVICES AGREEMENT (collectively with all schedules, exhibits, amendments, and addenda hereto, this "Agreement") is made effective as _____, by and between **FIFTH THIRD BANK,** 111 Lyon Street NW, MD # RMNR1C, Grand Rapids, Michigan 49503 ("Custodian"), and _____, _____, _____("Customer"). Custodian and Customer hereby agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below.

"Account" means the custodial account maintained by Custodian pursuant to this Agreement established in the name of and on behalf of Customer.

"Agreement" means this Custody Services Agreement and all schedules, exhibits, amendments and addenda hereto.

"Class Actions" means lawsuits initiated by or on behalf of a corporation that entitle the shareholders of such corporation to participate in such lawsuit by electing to so participate.

"Corporate Action Information" means all information communicated to Customer related to Corporate Actions when securities related to such Corporate Actions are held in the Account.

"Corporate Actions" means any actions undertaken by an issuer corporation that have an effect upon shareholders or entitlement holders of the corporation's securities (so long as such securities are held in the Account) including, without limitation, the inception of Class Actions.

"Custodian" means Fifth Third Bank, an Ohio banking corporation, acting pursuant to this Agreement.

"Customer ID" means a Customer-specific user identification code.

"Customer" means the party executing this Agreement for which the Custodian is performing the Services.

"Depository" means the Depository Trust Company, the Federal Reserve or such other sub-custodian as Custodian may from time to time nominate.

"Information" means the methods, techniques, programs, devices and operations of Custodian arising in connection with the services and products provided in connection therewith.

"Instructions" means the data messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by the Workstations, which requests that a task be performed on behalf of Customer or its customers regarding trust and/or demand deposit account funds maintained in the Account.

"Mandatory Corporate Actions" shall mean those Corporate Actions for which the effect on the shareholders or entitlement holders may not be modified by the Customer, including but not limited to, cash dividends, stock dividends, mergers, name changes, mandatory calls, and other mandatory corporate reorganizations.

"Other Instructions" means the messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by Custodian, which request that a task be performed on behalf of Customer or its customers regarding stock or other securities held in Customer's Account that does not relate to Voluntary Corporate Actions or the Customer's Voluntary Election Instructions.

"Proper Instruction" means the written and manually signed instructions of the person(s) identified in writing by Customer as being duly authorized by Customer to have authority over the Property.

"Property" means the property listed on a certain receipt(s) or as indicated on the confirmation separately supplied by Custodian to Customer in connection with this Agreement, which may include, without limitation, common and preferred stocks, bonds, debentures, notes, money market instruments or other obligations, and any certificates, receipts, warrants or other instruments or documents representing rights to receive, purchase or subscribe for any of the foregoing, or evidencing any other rights or interests therein.

"Services" means the custody services specified in the Custody Services Schedule attached hereto as **Schedule 1**.

"Transactions" means the Custodian's performance of certain tasks pursuant to Proper Instructions.

"Voluntary Corporate Actions" means those Corporate Actions for which shareholders or entitlement holders are entitled or required to make an election or decision among alternative courses of action such as, among other things, certain tender offers, conversions, distributions or exchanges that are voluntary by their terms.

"Voluntary Election Instructions" means those messages timely delivered from Customer to Custodian identifying Customer's election or decision among alternative courses of action triggered by the occurrence of a Voluntary Corporate Action.

2. **DEPOSIT OF PROPERTY**. Customer has deposited the Property, or may deposit additional Property, with Custodian. The purpose of such deposit is to obtain from Custodian the Services. The Services shall include those normally and customarily provided by Custodian with respect to Property including safekeeping, trading, deposits, withdrawals, income, corporate actions, puts, calls, overdrafts, record retention, reports and such other related services as Custodian may offer from time to time.

3. **DESCRIPTION OF PROPERTY**. Customer represents and acknowledges that the description of the Property listed on the receipt(s) or confirmation is an accurate description of the Property. Custodian shall not be responsible for any Property until actually received by Custodian. Securities held by Custodian shall, unless payable to bearer, be registered in the name of the Custodian for the account of the Customer or its nominee, as Custodian may appoint, and at any time remove, in Custodian's sole discretion. Custodian may deposit all or a part of the Property in a Depository; provided, however, no such deposit or appointment shall relieve the Custodian of its obligations under this Agreement. Custodian, in accordance with it normal and customary practices, will segregate and identify on its books as belonging to the Customer all Property held by Custodian or any other entity authorized to hold Property in accordance with this Agreement.

4. **APPOINTMENT AS CUSTODIAN**. Customer hereby constitutes and appoints Custodian as custodian of the Property and Custodian agrees to act in the capacity as custodian with respect to the Property during the term of this Agreement. Custodian shall perform the Services and maintain the Account as set forth herein. Custodian shall be held to the exercise of reasonable care in carrying out its obligations under this Agreement. Custodian shall have no investment authority, nor any duty or obligation to supervise or advise Customer on any investments. Except as specifically set forth herein, Custodian shall have no liability and assumes no responsibly for any non-compliance by Customer of any laws, rules or regulations.

5. **SCOPE OF SERVICES**. Custodian may make changes to the Services and/or the Fee Schedule attached hereto as **Schedule 2** based upon, but not limited to: technological developments; legislative, regulatory, third party depository or sub-custodian operational changes; or the introduction of new services by Custodian. Custodian will notify Customer of any changes to the Services that will affect Customer at least 30 days prior to the effective date of such changes.

6. **INSTRUCTIONS; RELIANCE BY CUSTODIAN**. Custodian is authorized to rely and act on Proper Instructions in providing the Services, whether such Proper Instructions are received via telephone, facsimile, or by bank wire so long as Custodian believes in good faith that such Proper Instructions have been given by an authorized person or agent acting on behalf of Customer. Custodian will only rely upon Proper Instructions sent via electronic mail if Proper Instruction specifically approves this method of delivery in writing (by other than electronic means) prior to the delivery of such Proper Instructions by electronic mail. Custodian is also authorized to rely and act upon instructions transmitted electronically through the Institutional Delivery System (IDS), a customer data entry system, or any other similar electronic instruction system acceptable to Custodian. Custodian will not be liable for any failure to execute instructions or failure to receive Property due to incorrect, incomplete, conflicting or untimely instructions. Custodian, in its discretion, is authorized to accept and act upon orders from Customer, whether given orally by telephone or otherwise, which Custodian in good faith believes to be genuine. Customer shall cause all oral instructions to be confirmed in writing by a written Proper Instruction. Custodian's records will be conclusive as to the content of any such instruction, regardless of whether confirmation is received.

7. **REIMBURSEMENT FOR COSTS, EXPENSES**. Custodian is authorized to take all steps it deems necessary or advisable to complete a transaction and shall be reimbursed for all costs, losses and liabilities if settlement is not accomplished due to Customer's failure for any reason to follow Custodian's instructions with respect to the Property or the Account. Custodian is authorized to execute, in the name of Customer, any certificates of ownership, declarations or other certificates required under any tax or other laws or governmental regulation now or hereafter in effect. Custodian will have the right to setoff against the Property held by Custodian hereunder and upon any deposit account of Customer for the following: (i) compensation, expenses, commitments made by Custodian upon instructions of Customer or its authorized agent; (ii) reimbursement of taxes incurred by Custodian for the Account of Customer; and (iii) other liabilities of Customer to Custodian, however created.

8. **SETTLEMENT PRACTICES**. Custodian will settle trade orders as instructed by the Customer. Custodian will not be liable or accountable for any act or omission by, or for the solvency of, any broker or agent effecting such transaction.

9. **INDEMNIFICATION**. Custodian shall not be liable for, and Customer agrees to indemnify and hold harmless Custodian and any nominee appointed pursuant to the terms hereof, from and against any loss, damage, cost, expense (including attorneys' fees and disbursements), liability or claim of any third party arising directly or indirectly (a) from the fact that any of the Property is registered in the name of any such nominee, or (b) from any action or inaction by the Custodian or such nominee (i) at the request or direction of or in reliance on the advice of Customer, or (ii) upon Proper Instruction, or (c) generally, from the performance (or absence or lack thereof) of its obligations under this Agreement; provided, however, that neither Custodian nor any nominee shall be indemnified and held harmless from and against any such loss, damage, cost, expense, liability or claim arising from Custodian's or such nominee's

gross negligence or willful misconduct. If Customer requests Custodian to take any action with respect to Property that may, in the opinion of Custodian, result in Custodian or its nominee becoming liable for the payment of money or incurring liability of some other form, Custodian shall not be required to take such action until Customer shall have provided indemnity therefore to Custodian in an amount and form satisfactory to Custodian.

J. LIMITATION OF WARRANTIES. OTHER THAN THE EXPRESS WARRANTIES (IF ANY) MADE IN THIS AGREEMENT, CUSTODIAN DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER. Without limiting the foregoing, Custodian shall not be liable for lost profits, lost business or any incidental, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Custodian) suffered by Customer, its customers or any third party in connection with any of the products or services made available hereunder. Custodian's liability under this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Customer or (ii) an amount not to exceed one-half of the net fees paid to Custodian within the prior three calendar months immediately preceding the date on which Custodian received a written notice from Customer regarding such damages. In no event shall Custodian be liable for any matter beyond its reasonable control, or for damages or losses wholly or partially caused by the Customer, or its employees or agents, or for any damages or losses which could have been avoided or limited by Customer giving prompt written notice to Custodian. Customer shall bring no cause of action, regardless of form, more than one year after the cause of action arose.

11. LIQUID FUNDS. Custodian shall not be liable for, or considered to be the custodian of, any cash belonging to Customer or any money represented by a check, draft or other instrument for the payment of money, until Custodian or its agents actually receive such cash or collect on such instrument. So long as and to the extent that it is in the exercise of reasonable care, Custodian shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received or delivered by it pursuant to this Agreement. Custodian shall not be required to enforce collection, by legal means or otherwise, of any money or property due and payable with respect to any Property held in the Account if such Property is in default or payment is not made after due demand or presentation.

12. CONFIDENTIAL RECORDS. Custodian shall treat all records and information relating to Customer and the Account as confidential, except that it may disclose such information after prior approval of Customer, such approval not to be unreasonably withheld. Custodian will be authorized to disclose any information regarding Customer, the Property, and the Account that is required to be disclosed by any law, governmental regulation or court order in effect without having received Customer's prior approval.

13. CONFIDENTIALITY. Customer acknowledges that the Information is of a confidential nature, and is a valuable and unique asset of Custodian's business. During the term of this Agreement and following the expiration or termination thereof, Customer shall not make or permit disclosure of any Information to any person or entity (other than to those employees and agents of Customer who participate directly in the performance of this Agreement and need access to Information

14. STATEMENTS. Inquiries regarding any valuations or other reports must be submitted to Custodian within thirty days of the receipt of the Custodian's statement or report, and on expiration of this period, statements and reports shall be deemed correct and accepted by Customer. Express or tacit approval of such statement or report implies acceptance of the various entries listed therein and approval of any reservations made by Custodian. Thereafter, Customer assumes the responsibility to correct any and all errors.

15. FEES. Customer shall pay to Custodian when due all fees and expenses arising in connection with the Services and the Account in accordance with the Fee Schedule (as may be amended from time to time) and billed or charged according to Customer's customer profile schedule maintained at Custodian's place of business. Customer shall receive no less than thirty days prior notice of any changes in the Fee Schedule. If Customer fails to pay Custodian for any fees and expenses owed within thirty days after invoice, Custodian may charge such fees and expenses to any deposit account of Customer or in the name of Customer. Custodian may also assess usual and customary late payment fees for payments past due more than thirty days after invoice.

16. NO WAIVER. The failure of Custodian to insist on strict compliance, or to exercise any right or remedy under this Agreement, shall not constitute a waiver of any rights contained herein or estop Custodian from thereafter demanding full and complete compliance or prevent Custodian from exercising such remedy in the future.

17. FORCE MAJUERE. Custodian shall not be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes, acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that the Custodian in the event of a failure or delay shall endeavor to ameliorate the effects of any such failure or delay.

18. INDEPENDENT CONTRACTOR. This Agreement is not a contract of employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employment between the parties. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and their permitted transferees and assignees.

19. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, and representations regarding the subject matter of this Agreement. No amendment to this Agreement shall be valid, unless made in writing and signed by both parties; provided, however, Custodian may amend or otherwise modify this Agreement, and any addenda, amendments, exhibits or schedules thereto, provided such modification does not create any new obligation on the part of Customer and does not materially diminish any service being provided by Custodian hereunder. Custodian shall give Customer notice of such changes by ordinary mail. This Agreement is for the benefit of, and may be enforced only by, Custodian and Customer and their respective successors and permitted transferees and assignees, and is not for the benefit, of and may not be enforced by, any third party.

20. **VALIDITY AND BINDING EFFECT**. Customer hereby warrants and represents to Custodian: that Customer has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract, written or oral, to which Customer is bound; and that this Agreement is valid and enforceable against Customer in accordance with its terms and conditions.

21. **NO ASSIGNMENT**. Customer agrees not to sell, assign, sublet, pledge, hypothecate, suffer a lien upon or against, or otherwise encumber any interest in this Agreement, in whole or in part. Should Custodian assign this Agreement or should the fees due hereunder be assigned, no breach or default of this Agreement by Custodian to its assignee shall excuse performance by Customer of any provision hereof.

22. **SEVERABILITY**. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

23. **NO IMPLICIT DUTY**. Custodian shall have no duties or obligations whatsoever except such duties and obligations as are specifically set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against Custodian.

24. **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, and by the parties hereto on separate counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

25. **GOVERNING LAW**. This Agreement will be governed by and construed according to the laws of the State of Ohio. The parties hereby consent to service of process, personal jurisdiction, and venue in the state and federal courts located in Cincinnati, Hamilton County, Ohio, and select such courts as the exclusive forum with respect to any action or proceeding brought to enforce any liability or obligation under this Agreement.

26. **TERMINATION**. Customer or Custodian may terminate this Agreement upon thirty days prior written notice to the other party by registered, certified or express mail. Custodian will charge fees up to and including the last day of the billing period in which the effective date of termination occurs. Notice of termination shall be effective on the date of receipt thereof. If Customer fails to designate a successor custodian on or before the effective date of termination, then Custodian shall have the right to deliver all of the Property then held in the Account to Customer. Thereafter, Customer (or the designated replacement custodian) shall be custodian of the Property and Custodian shall be relieved of all obligations under this Agreement.

27. **SPECIFIC REQUIREMENTS OF THIS CUSTOMER.**

_____

_____

_____

_____

_____

_____

[signatures follow; the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CUSTOMER:

By:_____

Date:_____

Accepted:_____

CUSTOMER'S ADDRESS:

_____

_____

FIFTH THIRD BANK

By:_____

Title:

Date:_____

CUSTODIAN'S ADDRESS:

Fifth Third Bank
111 Lyon Street NW – MD# RMNR1A
Grand Rapids, MI 49503

Fifth Third Bank

Schedule 1

SCHEDULE OF CUSTODY SERVICES

Custodian shall perform the custody services set forth below (the "Custody Services") in connection with the maintenance of a custodial account in the name of and on behalf of Customer, in accordance with the terms and conditions of the Agreement. The Custody Services made available by Custodian are subject to change from time to time without notice; provided, however, Custodian shall endeavor to notify Customer of any changes to the below Custody Services that will affect Customer at least thirty days prior to the effective date of such changes. Capitalized terms used below have the meanings set forth in the Agreement.

A. **SAFEKEEPING.** Custodian will maintain in its vault or at a Depository, or sub-Custodian identified on its books as the property of the custodial account(s) of Custodian, all Property that it now or hereafter receives for the Account(s) of Customer.

B. **TRADING.** Custodian will, upon Proper Instructions, sell, assign, transfer, deliver, purchase or acquire securities or other property for the Account.

C. **DEPOSITS OR WITHDRAWALS.** Custodian will, upon Proper Instructions: (a) deliver or receive securities or other properties; and (b) transfer or make payments from the Account of such cash or securities to such person(s) specified by Customer. Unless Customer directs otherwise, excess cash will be invested in the Custodian's investment/sweep alternatives.

D. **INCOME.** Custodian will collect and receive all cash or property related to, associated with or earned by, the Property as interest, dividends, proceeds from transfer, and other payments for the Account of Customer. Custodian will convert cash distributions denominated in foreign currency into United States dollars at Custodian's then applicable rate for the account of Customer. In effecting such conversion, Custodian may use such methods or agencies as it deems necessary and appropriate at the current prevailing rates.

E. **CAPITAL CHANGES.** Custodian will notify Customer of capital changes, limited to those securities registered in a nominee's name and to those securities held at a Depository or sub-custodian acting as agent for Custodian. Custodian will be responsible only if the notice of such capital change is published by Xcitek, DTC, or received by registered mail from the agent. For market announcements not yet received and distributed by Custodian's services, Customer will provide Custodian with appropriate instructions. Custodian will, upon receipt of Customer's response within the required deadline, affect such action for receipt or payment for the Account of Customer. For those responses received after the deadline, Custodian will affect such action for receipt or payment, subject to the limitations of the agent(s) affecting such actions.

F. **PUTS.** Custodian will promptly notify Customer of put options only if the notice is received by registered mail from the agent. Customer will provide Custodian with all relevant information contained in the prospectus for any security that has unique put option provisions and provide Custodian with specific tender instructions at least ten business days prior to the beginning date of the tender period.

G. **SHAREHOLDER COMMUNICATIONS.** Custodian will, as set forth in the Customer Profile Schedule, either receive, execute or cause to be transmitted all shareholder communications. With regard to any temporary cash investment offered by Custodian, Custodian shall respond on behalf of the Customer.

H. **RECORD RETENTION.** Custodian will, at all times, maintain books and records relating to the Account in accordance with its normal and customary procedures and will reasonably make available for inspection such records to duly authorized officers, employees, or agents of Customer or by legally authorized regulatory officials who are then in the process of reviewing the Customer's financial affairs upon adequate proof to Custodian of such official status.

I. **REPORTS.** Custodian will provide such reports as set forth in the Customer Profile Schedule and notify the Customer of each transaction confirmation via a monthly statement of transactions and holdings.

J. **COMMUNICATIONS.** Custodian shall be authorized to rely upon the accuracy and genuineness of all data received through electronic means and initiated by any person authorized by Customer. In its employment of such devices, Customer will safeguard and maintain the confidentiality of all passwords or numbers and will disclose them only to those employees who are to have access to the Account. Custodian may electronically record any instructions or other telephone discussions. Custodian may electronically record any instructions given by telephone, and any other telephone discussions with respect to the Account or transactions pursuant to the Agreement.

K. **OVERDRAFTS.** At the discretion of Custodian in cases concerning overdrafts, the Account may be charged interest at a rate determined by Custodian in its discretion.

Schedule 2

Fee Schedule

DRAFT

OPERATING AGREEMENT

OF

DRAFT

OPERATING AGREEMENT
OF
[redacted]

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OPERATING AGREEMENT
OF
[redacted]

THIS OPERATING AGREEMENT is made and entered into as of the ___ day of _____, 2008 ("Effective Date") by and among [redacted], a Michigan limited liability company, and the persons executing this Operating Agreement as Members of the Company as follows:

ARTICLE I - DEFINITIONS

1.1 Act. Act shall be defined as the Michigan Limited Liability Company Act, being Act No. 23, Public Acts of 1993, as amended.

1.2 Affiliate. Affiliate shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, through an employer and employee relationship, or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

1.3 Agreement. The Agreement shall be defined as the valid written Operating Agreement signed by the Members of the Company executing an organization or subscription agreement, which Agreement specifies the affairs and conduct of the Company, including any provision in the Articles pertaining to the affairs and conduct of the business of the Company.

1.4 Articles. Articles shall be defined as the Articles of Organization as filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division as required by the Act.

1.5 Assignment. Assignment shall include any type of sale or transfer of a Member's Membership Units in the Company.

1.6 Capital Accounts. Capital Account shall be as defined in paragraph 4.5 of this Agreement.

1.7 Code. Code is defined as the Internal Revenue Code of 1986, as amended.

1.8 Company. Company shall be defined as [redacted].

1.9 Contributing Member. Contributing Member shall be defined as a Member choosing to make additional contributions when another Member becomes a Noncontributing Member.

1.10 Contribution. Contribution shall mean anything of value that a person contributes to the Company as a prerequisite for, or in connection with, membership, including cash,

property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

1.11 Control. Control shall be defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management, activities or policies of any person through the ownership of voting securities, by contract, employment or otherwise.

1.12 FSC&S. FSC&S shall be defined as Foster, Swift, Collins & Smith, P.C., a Michigan professional corporation.

1.13 Indemnified Person. An Indemnified Person shall be any individual indemnified pursuant to the provisions of this Agreement.

1.14 Class A Member. The Class A Member is [redacted]. The Class A Member shall have all of the voting rights of Members.

1.15 Class B Member. Each Member who (1) contributes $500,000 to purchase one Unit of Membership Interest of the Company; (ii) executes a Subscription Agreement; and (iii) has the Company accept the Subscription Agreement shall become a Class B Member and as such shall have no voting rights as a Member since all voting rights are held by the Class A Member.

1.16 Member Representative. A Member Representative shall be defined as an individual designated by a Member who is authorized to act on behalf of said Member.

1.17 Membership Interest or Interest. Membership Interest or Interest shall be defined as a Member's rights in the Company, including, but not limited to, the right of a Member to receive distributions of the Company's assets and any right of a Member to vote or participate in the Management of the Company.

1.18 Membership Unit or Units. Membership Unit or Units shall be defined as units of equity ownership in the Company, which equal the Members' Membership Interest in the Company. Membership Units shall be uncertificated, unless the Managers determine in their discretion, that certificates shall be issued.

1.19 Noncontributing Member. Noncontributing Member shall be defined as any Member who does not make additional capital contributions according to the Member's pro rata ownership of all Membership Units as provided in this Agreement.

1.20 Offer. Offer shall be defined as a written offer made by a prospective buyer, assignee, or transferee of a Transferring Member's Membership Units in the Company.

1.21 Offered Membership Interest. An Offered Membership Interest shall be defined as that portion of a Membership Interest being sold, assigned, or transferred by a Transferring Member.

1.22 Offerees. Offerees shall be defined as the Members of the Company excluding the Transferring Member.

1.23 Person. Person shall mean an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

1.24 Resident Agent. The Resident Agent of the Company shall be as designated in the Articles or any amendment to the Articles. The Resident Agent may be changed from time to time and such change shall be made in accordance with the Act. If the Resident Agent shall ever resign, the Company shall promptly appoint a successor.

1.25 Registered Office. The Registered Office of the Company shall be as designated in the Articles or any amendment to the Articles. The Registered Office may be changed from time to time and such change shall be made in accordance with the Act.

1.26 Transferring Member. A Transferring Member shall be defined as a Member who sells, assigns, transfers, or exchanges some or all of said Member's Membership Interest in the Company.

ARTICLE II - ORGANIZATION

2.1 Formation. The Company has been organized as a Michigan limited liability company under and pursuant to the Act, by the filing of Articles with the Michigan Department of Energy, Labor and Economic Growth (DELEG), Bureau of Commercial Services, Corporation Division.

2.2 Name. The name of the Company shall be [redacted]. The Company may also conduct its business under one or more assumed names.

2.3 Purposes. The purposes of the Company are to engage in any activity for which Limited Liability Companies may be formed under the Act, including but not limited to holding investments. The Company shall have all the powers necessary or convenient to effect any purpose for which it is formed, including all powers granted by the Act.

2.4 Duration. The duration of the Company shall be perpetual and shall continue until the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

2.5 Intention for Company. The Members have formed the Company as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership (including, a limited partnership) or any other venture, but a Limited Liability Company under and pursuant to the Act. No Member or Manager shall be construed to be a partner in the Company or a partner of any other Member, Manager or person and the Articles, this Agreement and the relationships created thereby and arising therefrom shall not be construed to suggest otherwise. Notwithstanding the foregoing, however, the Members intend that the Company be treated as a partnership for federal income tax purposes.

2.6 Effective Date. The Agreement shall become effective upon the date this Agreement is fully executed, or the date the Articles are filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division, whichever is later.

2.7 Conflict between Articles and Agreement. If there is a conflict between the Company's Articles and the Agreement, the Articles shall control.

ARTICLE III - BOOKS, RECORDS AND ACCOUNTING

3.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act. Such books and records shall be kept at the Company's Registered Office or principal place of business. The books and records shall be open to inspection by any Member or a Member's authorized representative at any reasonable time during business hours.

3.2 Fiscal Year; Accounting. The Company's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Company shall be selected by the Managers from time to time.

3.3 Reports. The Managers shall provide reports concerning the financial condition and results of operation of the Company and the Capital Accounts of the Members to the Members in the time, manner and form as the Managers determine. Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction and credit.

3.4 Members' Capital Accounts. The Company shall maintain a Capital Account for each Member. Each Member's Capital Account shall be adjusted in accordance with the terms of paragraph 4.5.

3.5 Member Tax Treatment. No Member shall treat a Company tax item on such Member's federal, state or local income or other tax returns or permit an affiliate to treat a Company tax item on such affiliate's tax returns in a manner inconsistent with the treatment of such item on the Company's federal, state or local tax returns.

ARTICLE IV - CAPITAL CONTRIBUTIONS

4.1 Initial Commitments and Contributions. By the execution of this Agreement, the initial Members hereby agree to make the capital contributions for the Membership Units as set forth in their Subscription Agreement and which is also designated in the attached Exhibit A. The capital contributions represent each Member's contribution of $500,000.00 in exchange for one Member's Membership Unit. The Membership Units of the respective Members in the Company are also set forth in Exhibit A. Any additional Member (other than an assignee of a Membership Interest who has been admitted as a Member) shall make the capital contribution set forth in a separate written Subscription Agreement at the time of admission. No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution except as provided in this Agreement.

4.2 Additional Capital Contributions. In addition to the initial capital contributions, the Member may determine from time to time that additional capital contributions are needed to enable the Company to conduct its business and affairs. Such additional capital contributions are separate and distinct from amounts that each Member has committed to loan to the Company pursuant to the Funding Agreement described in paragraph 4.3, below.

a. Notice. Upon making such a determination that additional capital contributions are needed, notice shall be given to all Members in writing at least thirty (30) business days prior to the date on which such additional contributions are due. Such notice shall describe, in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is required.

b. Member Contribution. If the Class B Members agree to make additional capital contributions, the additional contributions shall be made by each Class B Member in the proportion that such Member's Membership Units bear to all issued and outstanding Membership Units.

c. If Member Does Not Make Additional Contribution. In the event a Member is a Noncontributing Member, the Contributing Member(s) shall be given the opportunity to make such Noncontributing Member's contribution in the proportion that each such Contributing Member's Membership Units bears to all Contributing Members' Membership Units.

d. Adjustment to Capital Accounts of Members. After the additional capital contributions have been made, each Contributing Member's Capital Account shall be increased to reflect the additional capital contributed to the Company.

4.3 Failure to Contribute.

a. Capital Contributions. If any Member fails to make a capital contribution when required in accordance with the Member's commitment to contribute initial or additional capital, the Company may, in addition to the other rights and remedies the Company may have under the Act or applicable law, take such enforcement action (including, the commencement and prosecution of court proceedings) against such Member as Class A Members considers appropriate.

4.4 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member and assignee.

a. Increases to Capital Accounts. Each Member's Capital Account shall be increased by:

i. the amount of any money actually contributed by the Member to the capital of the Company;

ii. the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of Code § 752); and

iii. the Member's share of net profits and of any separately allocated items of income or gain including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

b. Decreases to Capital Accounts. Each Member's Capital Account shall be decreased by:

i. the amount of any money actually distributed by the Company to the Member;

ii. the fair market value of any property distributed to the Member, as determined by the Company and the receiving Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of Code § 752); and

iii. the Member's share of net losses and of any separately allocated items of deduction or loss including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

4.5 Distribution of Assets. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the net profits or net losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

4.6 Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Member's Membership Interest in the Company by a Transferring Member, the Capital Account of the Transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the Membership Interest so transferred.

4.7 Compliance with Section 704(b) of the Code. The provisions of this Article IV relate to the maintenance of Capital Accounts, and are intended, shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Exhibit B (Internal Revenue Code § 704(b) Provisions) to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Article V and Article X and the Capital Contributions made pursuant to this Article IV. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the Initial Contribution.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations. Except as may be required by the Code or this Agreement, net profits, net losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated to each Member in the proportion that such Member's Membership Units bears to all issued and outstanding Membership Units.

5.2 Distributions.

a. Determination. Except for the Federal Tax Liability which shall be paid under paragraph 5.2.b. as a mandatory payment, the Managers may make other distributions to the Members from time to time only after the Managers determine, in their reasonable judgment,

that the Company has sufficient cash and/or property on hand which exceeds the current and the anticipated needs of the Company to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, reserves and mandatory distributions, if any).

b. Distributions to Members. All distributions shall be made to the Members in accordance with their Membership Units.

c. Types of Distributions. Distributions shall be in cash and/or property as determined by the Managers.

d. Distribution Not Allowed. No distribution shall be declared or made if, after giving it effect:

i. the Company would not be able to pay its debts as they become due in the usual course of business;

ii. the Company's total assets would be less than the sum of its total liabilities; or

iii. the Company would not have the amount needed if it were to dissolve at the time of the distribution to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

e. Liability of Member in Accepting a Distribution. A Member who accepts or receives a distribution with knowledge of facts indicating the distribution is in violation of the Act or the Agreement is liable to the Company for the amount the Member accepts or receives that exceeds the Member's share of the amount that could have been distributed without violating the Act or the Agreement.

f. Distributions to Cover Tax Liability. If the Company incurs some income that would generate tax liability for its Members, and there is sufficient cash available for distribution to Members, it is the intent of the Company to distribute to Members, based upon their Membership Units, sufficient cash to allow the Members to substantially pay the estimated federal income tax liability associated with the allocation of income to each Member.

ARTICLE VI - DISPOSITION OF MEMBERSHIP INTERESTS

6.1 General. Every sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other disposition of any Membership Interest shall be made only upon compliance with this Article. No Membership Interest shall be disposed of if:

a. the disposition would cause a termination of the Company as defined under the Code;

b. the disposition would be in violation of any applicable state or federal securities law or regulation; or

c. the assignee of the Membership Interest does not provide the Company with the information and agreements that the Members may require in connection with such

disposition. Any attempted disposition of a Membership Interest in violation of this Article is null and void.

6.2 Permitted Dispositions. Subject to the provisions of this Article, a Member may assign such Member's Membership Interest in the Company in whole or in part. The assignment of a Membership Interest does not itself entitle the assignee to participate in the management and affairs of the Company or to become a Member or to vote on any matters submitted to Members to vote upon. Such assignee is only entitled to receive, to the extent assigned, the distributions to which the assigning Member would otherwise be entitled.

An assignee of a Membership Interest shall be admitted as a substitute Member and shall be entitled to all the rights and powers of the assignor only if the Class A Member consents. If admitted, the substitute Member, has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member and therefore is subject to the terms and conditions of this Agreement.

6.3 Right of First Refusal. A Member may not sell, assign, transfer, or exchange any Offered Membership Interest unless the Transferring Member first notifies the Company and the Class A Member of the identity of the prospective buyer, assignee, or transferee and sends to the Company and the Class A Member a copy of the Offer, and the Transferring Member shall do the following:

a. The Transferring Member must first offer to sell the Offered Membership Interest in the Company to the Company, for the same price and on the same terms as those being offered to the Transferring Member in the Offer. The Company shall have thirty (30) days after receiving said offer to accept said offer.

b. Any Offered Membership Interest not purchased by the Company pursuant to paragraph 6.3.a. above shall then be offered to the Class A Member. The Class A Member shall have thirty (30) days after having received the offer to accept said offer.

c. If the Company or the Class A Member receiving said Offer does not elect to purchase the entire original Offered Membership Interest pursuant to paragraphs 6.3.a. or 6.3.b. above, the Transferring Member shall, for a period of ninety (90) days after the expiration of the option periods set forth above, be free to sell the remaining Offered Membership Interest to the person or entity who submitted the Offer for the exact price and upon the exact terms disclosed in the Offer. Such purchaser shall not become a substitute Member of the Company unless the express written unanimous consent of Class A Member is obtained. Otherwise, the purchaser shall become an assignee of a Membership Interest subject to the provisions of this Agreement.

6.4 Registration and Transfer of Interest. Each Member hereby acknowledges and represents that notwithstanding any provisions contained in this Agreement, no Company interest or Membership Interest may be offered or sold and no transfer of such interest will be made either by the Company or the Members unless such interest is registered under the Securities Act of 1933 and any applicable securities laws of the State of Michigan or an opinion of counsel for the Company, is obtained to the effect that there is no violation of applicable federal or state laws and the cost of such is reimbursed to the Company by the Member transferring the Membership Interest.

6.5 Entity Related Transfers. Anything in this Agreement to the contrary notwithstanding, with respect to each Member that is an entity, transfers (i) from the entity to one or more members; (ii) between individual equity owners of the Member, are permitted without triggering any right of first refusal, subject to compliance with securities registration laws as specified under paragraph 6.4 of this Agreement. No transfer under this paragraph is effective unless the transferee executes and becomes a party to this Agreement as a substitute Member. The members of each Member entity as of the date of this Operating Agreement have been provided to the Company.

ARTICLE VII - MEETING AND REPRESENTATIONS OF MEMBERS

7.1 Member Representative. Each Member who is not an individual may designate a Member Representative for purposes of meetings of Members and all decisions, actions and communications on behalf of such Member. A Member may designate a new Member Representative by written notice to the Company and the other Members executed by either the existing Member Representative of such Member or by the chairperson or President of such Member. Each Member Representative, when appointed and designated, and until terminated, shall be deemed to have full and complete authority to act on behalf of the Member the Member Representative represents, and to bind such Member in all matters relating to, arising out of, or in connection with this Agreement, and the management and operation of the Company. No Member Representative shall be personally liable to the Members by reason of said Member Representative's acts as such, except in the case of said Member Representative's gross negligence or actual fraudulent or dishonest conduct, or liable to any third party for the debts and obligations of the Company. If applicable, the Member Representative for a Member shall be set forth in Exhibit A.

7.2 Voting. The Class A Member has all rights to vote as a Member of the Company and shall manage the day to day affairs of the Company. The Class B Members do not have any voting rights under this Operating Agreement. An amended report may be sent to the Class B Members in lieu of any annual meeting of the Members.

7.3 Annual Meetings. An annual meeting of Members for the transaction of such business as may properly come before the Meeting may be held at such place, on such date, and at such time as the Class A Member shall determine.

7.4 Special Meetings. Special meetings of Members for any proper purpose or purposes may be called at any time by the Managers or any Member.

7.5 Notice of Meetings. The Company shall deliver or said written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given by e-mail or by mail through the postal service, not less than ten (10), nor more than sixty (60) days before the date of the meeting. All meetings of the Members shall be presided over by a Chairperson who shall be a Member so designated by the Managers. Presence at a meeting waives the required notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or the transacted business at the meeting.

7.6 Consent. Any action required or permitted to be taken at an annual or special meeting of the Class A Member may be taken without a meeting, without prior notice, and

without a vote, if consents in writing, setting forth the action so taken are signed by the Class A Member. Every written consent shall bear the date and signature of the Class A Member who signs the consent.

7.7 Quorum. The presence of the Class A Member is a quorum for the transaction of business.

7.8 Manner of Acting. The Class A Member may vote or may give its written consent and this shall be action on behalf of the Company and the Members.

7.9 Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member that if the Member is an organization, it is duly organized, validly existing, and in good standing under the laws of its state of organization and that it has full organizational power to execute and agree to the Agreement to perform its obligations hereunder.

7.10 Investment Considerations. Each Member hereby further acknowledges and represents that:

a. the Member has reviewed and understands the investment considerations described in the attached Exhibit C (Investment Considerations);

b. the Member has had the opportunity: (i) to investigate the business of the Company, the qualifications of the other Members, and the tax and financial implications of an investment in the Company, and the merits and risks of investment in the Company, and (ii) to ask questions of, and receive answers from the Company concerning the terms and conditions of membership, to obtain such supplemental information as the Member deemed desirable, and the Member acknowledges and represents that all such information has been made readily available to the Member by the Company;

c. in reaching the conclusion that the Member desires to invest in the Company, such Member has carefully evaluated his financial resources and the risks associated with the investment, including the risks described in subparagraph 7.10.a, above;

d. the Member is familiar with the Company's business, properties, prospects and financial condition; and

e. the Member has agreed to acquire a membership interest in the Company after evaluating these risks, and after obtaining the advice of such professional advisors as the Member deems necessary in the Member's sole discretion;.

7.11 Investment Decision. Each Member hereby further acknowledges and represents that:

a. the Member is acquiring the Membership Interests for investment for the Member's own account and not with a view to, or for, resale, in connection with any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), and the Member does not now have any reason to anticipate any change in his

circumstances or other particular occasion or event which could cause the Member to sell or transfer such Membership Interest;

b. The issuance of the Membership Interest will not be registered under the Securities Act or qualified under applicable state securities laws, including without limitation the Michigan Uniform Securities Act, on the grounds that the issuance of the Interests to such Member is exempt from registration under such laws. The Membership Interest may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements;

c. the Membership Interest is irrevocable, and except as provided in paragraph 6.6, must be held indefinitely by such Member unless the Membership Units are subsequently registered under applicable federal and state securities laws or an exemption from such registration is available;

d. there is no market for the Membership Interest, and it is not anticipated that such a market will develop;

e. the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of the Membership Interest and can bear the economic risk of an investment in the Membership Interest for an indefinite period of time;

f. the Member is an "accredited investor" as defined in Rule 501(a) of the Securities Act;

7.12 Electronic Meetings. The Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

ARTICLE VIII - MANAGEMENT

8.1 Management of Business. The Company shall be managed by the Class A Member. The initial Manager shall be:

_____

8.2 Duties of Class A Member. The Class A Member shall manage the day to day operations of the Company.

8.3 Management Vested with a Manager. Except as may be delegated to the officers of the Company or otherwise be provided in this Agreement, the business and affairs of the Company shall be managed by the Class A Member. The Class A Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including the power to:

a. purchase, lease or otherwise acquire any real or personal property;

b. sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal property;

c. open one or more depository accounts and make deposits into and checks and withdrawals against such accounts;

d. borrow money, incur liabilities, and other obligations;

e. enter into any and all agreements and execute any and all contracts, documents and instruments;

f. engage employees and agents, define their respective duties, and establish their compensation or remuneration;

g. establish pension plans, trusts, profit sharing plans and other benefit and incentive plans for Members, employees and agents of the Company;

h. obtain insurance covering the business and affairs of the Company and its property and on the lives and well being of its employees and agents;

i. commence, prosecute, or defend any proceeding in the Company's name; and

j. participate with others in partnerships, joint ventures or other associations and strategic alliances.

k. the sale, exchange, lease, or other transfer, of all or substantially all of the assets of the Company; and

l. after the sale or transfer of all or substantially all of the assets of the Company, the (i) investment of the proceeds of such sale in one or more investments or businesses; and (ii) the distribution of all or part of such proceeds to the Members.

8.4 Standard of Care; Liability. Class A Member shall discharge said Class A Member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Class A Member reasonably believes to be in the best interests of the Company. The Class A Member shall not be liable for any monetary damages to the Company for any breach of such duties except for receipt of a financial benefit to which the Class A Member is not entitled; voting for or assenting to a distribution to Members in violation of this Agreement or the Act, or a knowing violation of the law.

8.5 Tax Matters Partner. The Class A Member shall be the tax matters partner of the Company pursuant to Code § 6231(a)(7). Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Code § 6223.

8.6 Compensation. The Class A Member, acting on behalf of the Company, shall be reimbursed for reasonable expenses incurred while conducting the business of the Company.

ARTICLE IX - OFFICERS

9.1 Officers. The Class A Member of the Company may, in its sole discretion, elect officers of the Company to conduct the day to day affairs of the Company under the direction and supervision of the Managers. The officers elected by the Class A Member may consist of a President, a Secretary, a Treasurer, and if desired, a Chairman of the Board and one or more Vice Presidents. An officer shall hold office for the term for which said officer is elected or appointed and until said officer's successor is elected or appointed and qualified, or until said officer's resignation or removal. Two or more offices may be held by the same person, but an officer shall not execute, acknowledge or verify an instrument in more than one capacity, if the instrument is required by law or this Agreement to be executed and acknowledged or verified by two or more officers.

9.2 Duties of Officers. The officers of the Company may be charged with the daily operations of the Company and shall perform such duties as specified by Class A Member of the Company.

ARTICLE X - EXCULPATION OF LIABILITY; INDEMNIFICATION

10.1 Exculpation of Liability. Unless otherwise provided by law or expressly assumed, a person who is a Member or Officer, shall not be liable for the acts, omissions, representations, covenants, debts or liabilities of the Company.

10.2 Mandatory Indemnification by the Company. Except as otherwise provided in this Article, the Company shall indemnify any Member, and any officer of the Company, and may (in its sole discretion) indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, employee, or agent of the Company.

a. Indemnification Applied Against Expenses. Any Indemnified Person shall be indemnified against expenses, including attorneys fees, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with the action, suit or proceeding, only if the Indemnified Person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such Indemnified Person reasonably believed to be in the best interests of the Company and, with respect to a criminal action or proceeding, if such Indemnified Person had no reasonable cause to believe such Indemnified Person's conduct was unlawful.

b. Success of Person. To the extent that an Indemnified Person has been successful on the merits or otherwise in defense of an action, suit or proceeding or in defense of any claim, issue or other matter in the action, suit or proceeding, such Indemnified Person shall be indemnified against actual and reasonable expenses, including attorneys fees, incurred by such Indemnified Person in connection with the action, suit or proceeding brought to enforce the mandatory indemnification provided in this Agreement.

c. Events of Indemnification. Any indemnification permitted under this Article, unless ordered by a court, shall be made by the Company only as authorized in the specific case and upon:

i. a determination that the indemnification is proper under the circumstances because the Indemnified Person has met the applicable standard of conduct; and

ii. an evaluation of the reasonableness of expenses and amounts paid in settlement.

This determination and evaluation shall be made by the Class A Member or other members who are not parties or threatened to be parties to the action, suit or proceeding.

d. Events When Indemnification Shall Not Be Provided. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to any Member, employee, or agent of the Company for or in connection with:

i. the receipt of a financial benefit to which such person is not entitled;

ii. voting for or assenting to a distribution to Members in violation of this Agreement or the Act; and

iii. a knowing violation of law.

ARTICLE XI - DISSOLUTION AND WINDING UP

11.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events:

a. at any time specified in the Articles or this Agreement;

b. upon the happening of any event specified in the Articles or this Agreement;

c. by a vote of the Class A Member;

d. unless the Class A Member determines otherwise, fifteen (15) years from the Effective Date of this Agreement.; or

e. upon the entry of a decree of judicial dissolution.

11.2 Winding Up. Upon dissolution, the Company shall cease carrying on its business and affairs and shall commence winding up the Company's business and affairs as soon as practicable. Upon the winding up of the Company, the assets of the Company shall be distributed first to creditors to the extent permitted by law, in satisfaction of Company debts, liabilities, and obligations, and then to Members and former Members in satisfaction of Company liabilities to them, and then the balance of the net proceeds shall be distributed to the Members in accordance with their Membership Units.

ARTICLE XII - VOLUNTARY WITHDRAWAL OR DEATH OF A MEMBER

12.1 Voluntary Withdrawal of a Member. A Member may not voluntarily withdraw from the Company or voluntarily dissolve (if applicable), without the unanimous written consent of Class A Member.

12.2 Death of a Member.

a. Purchase or Liquidation. If an individual Member dies, then the Company has an option for ninety (90) days from the date notified of the death of the Member to either (i) purchase the Membership Interest from the deceased person's heirs or estate, or (ii) allow the deceased Members' heirs to become assignees of the Membership Interest represented by the Units held by the deceased Member. Such purchase shall occur within ninety (90) days.

b. Purchase Price. The purchase price for any deceased Member's Membership Interest where the Company has elected to purchase the Membership Interest shall be $500,000/Unit multiplied by the number of Membership Units owned by the deceased Member.

c. Terms of Payment and Purchase Price. The Company may elect to have the Company pay the purchase price plus interest at 5% per annum to the Member's estate in sixty (60) equal, consecutive monthly installments commencing within ninety (90) days of the date of notice of the death sent to the Company.

ARTICLE XIII - ADDITION OF NEW MEMBERS

13.1 Addition of New Members. The Class A Member may determine that it is in the best interest of the Company to admit additional Members subject to the terms of this Agreement, as amended to reflect the new ownership interests.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Nouns and Pronouns. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

14.2 Headings. The headings contained in this Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.

14.3 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

14.4 Entire Agreement. This Agreement and the Articles for the Company constitute the entire agreement among the parties hereto and contain all of the agreements among said parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

14.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

14.6 Amendment. In conjunction with the provisions of paragraph 7.2 of this Agreement, this Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Agreement. No change or modification to this Agreement shall be valid unless in writing and signed by all of the parties to this Agreement.

14.7 Notices. Any notice permitted or required under this Agreement shall be conveyed to the party at the address reflected in this Agreement on Exhibit A and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission or may be given by e-mail to the e-mail address also listed in Exhibit A or in the Subscription Agreement executed by the Member.

14.8 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

14.9 Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan, without giving effect to conflict of law principles. All actions or proceedings arising from or related to this Agreement shall be brought in a state court of competent subject matter jurisdiction in Ingham County, Michigan, or in the federal courts of competent subject matter jurisdiction in the Western District of Michigan, Southern Division. Each party expressly and irrevocably consents to personal jurisdiction and venue in such courts, and agrees not to object to such jurisdiction or venue on the ground of *forum non conveniens* or otherwise.

14.10 Arbitration. At the Company's election and in its discretion, any dispute, controversy, or claim arising out of or related to this Agreement or the breach thereof to which the Company is a party shall be submitted to and settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration will be conducted by private party administration consisting of either one or three arbitrators selected by the Company at its election, but shall not be conducted by AAA. The arbitrators shall produce a reasoned, written decision as the basis for any award. The parties agree that no awards of punitive damages may be made. Any counterclaims must be brought in the first filing by a party or shall be barred. The costs of such arbitration shall be paid equally by the parties, and each party shall be responsible for its own attorneys fees, costs and expenses. The arbitration award may be entered as a final judgment in any court having jurisdiction thereon. The arbitration shall be held in the metropolitan Lansing, Michigan area. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. This provision shall survive termination of this Agreement without limitation.

14.11 Advice of Counsel. The Members agree, stipulate, and acknowledge that FSC&S has prepared this Agreement on behalf of and in the course of its representation of _____; the Class A Member and that FSC&S has not represented the interest of any Class B Member in connection with this Agreement, and that:

a. each Member has been advised that a conflict of interest may exist between said Member's interest and those of the Company and/or the other Members;

b. each Member has been advised to seek the advice of independent legal counsel; and

c. each Member has had the opportunity to seek the advice of independent legal counsel.

14.12 Securities Legend. With respect to securities registration, each certificate (if any) evidencing a Membership Unit will carry the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THEREOF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date set forth above.

THE COMPANY:

CLASS A MEMBER

[redacted]

By: _____

Its Manager

CLASS A MEMBER:

[redacted]

By:_____

Its Manager

CLASS B MEMBER:
(see executed Subscription Agreements)

By:_____

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EXHIBIT A

OPERATING AGREEMENT OF

____

Dated _______________, 2008

Class A Member Name and Address	Capital Contribution	Membership Units	Membership Interest
	$1,000	5	20%
Class B Members Name and Address			
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
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	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
TOTALS:	**$10,001,000**	**25 units**	**100%**

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EXHIBIT B
INTERNAL REVENUE CODE §704(B) PROVISIONS

ARTICLE B-I
DEFINITIONS

1.1 Company Minimum Gain. An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

1.2 Company Nonrecourse Liability. A Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in §1.752-2 of the Treasury Regulations) with respect to the liability.

1.3 Member Minimum Gain. An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease of Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code and Treasury Regulations issued thereunder, as the same may be issued and interpreted from time to time.

1.4 Member Nonrecourse Liability. Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor or a guarantor.

1.5 Net Losses. The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.6 Net Profits. The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.7 Nonrecourse Liabilities. Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.8 Offsettable Decrease. Any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation related attributable to depletion allowances under §1.704-1(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year, are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

ARTICLE B-II
CODE SECTION 704(b) PROVISIONS

2.1 Allocations of Net Profits and Net Losses from Operations. Except as may be required by §704(c) of the Code, and §§ 2.2, 2.3, and 2.4 of this Article B-II, net profits, net losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with Article V of the Operating Agreement.

2.2 Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument

causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.752-2 of the regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

2.3 Member Minimum Gain Chargeback. If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of §1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to §704(b) of the Code.

2.4 Qualified Income Offset. In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

2.5 Elections. The Company may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

2.6. Taxes of Taxing Jurisdictions. To the extent that the laws of any taxing jurisdiction requires, each Member requested to do so by the Company will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the, laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Agreement. The Company may, where permitted by the rules of any taxing jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the Members of the amount of such tax interest and penalties so paid.

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EXHIBIT C
INVESTMENT CONSIDERATIONS

An investment in the Company involves a high degree of risk. In addition to the risks described elsewhere in the Operating Agreement, the risks described below represent the material risks a Member should carefully consider before making an investment decision. If any of these risks occur, the Company's business, financial condition, liquidity and results of operations could be materially and adversely affected, in which case the value of the Membership Units could decline significantly and a Member could lose all or a part of his or her investment. The risk factors described below are not the only ones that may affect the Company. Additional risks and uncertainties not presently known to the Company may also adversely affect the Company's business, financial condition, liquidity and results of operations.

No Prior Business History. The Company has no prior business history.

No Tangible Assets. The Company has and will likely have no tangible assets other than miscellaneous office supplies and related materials.

Management Structure. Under the Operating Agreement of the Company, the authority to manage the operations and daily business of the Company is delegated to the Class A Member. Unless otherwise agreed, all decisions affecting the Company are to be made by the Class A Member in its discretion, including any decision to invest assets of the Company in another business. The Class B Members in their capacity as Members, will not be actively involved in the management of the Company.

Risks Associated with other Enterprises. The primary purpose of the Company is to invest in what is known as the [redacted]. Any decision to invest in such an enterprise will be made by Class A Members, based upon information available to it at the time. Although information regarding such Project will be compiled by the Company, it will be prepared by others who are beyond the Company's control. The Class A Member has evaluated the Project based upon certain information primarily supplied by the Seller of the Project. No assurance can be given that such information will be accurate or complete.

The performance of the Company depends on the performance of the Project. No assurance can be given that the Project specific performance projections or goals will be met.

Business Risk. The Company and the Project will be constructed within proposed timetables or under proposed costs, or tenants will take occupancy of the Project. This proposed time table is pursuant to proposed rents and it is unclear whether the Company will invest will also be subject to risks facing any other business, including economic downturns, competition, liability claims, and many other risks. If the Class B Member lives outside of the United States, their investments in the Company will be subject to currency fluctuations, and special circumstances attributable to the legal, political, economic and social structures unique to USA, and any restrictions which may be imposed by other _____ Country.

Restricted Securities. The Membership Units issued to Members will be restricted securities under the Securities Act and thus may not be resold except pursuant to registration or

an exemption from registration. The Operating Agreement (and if applicable, any certificate representing the Membership Units) will contain a legend (in addition to any specific legends required under applicable state securities laws) substantially as follows:

> THE SECURITIES REPRESENTED BY THIS [AGREEMENT/ CERTIFICATE] HAVE BEEN ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THERE OF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

To ensure that transfers of the Membership Units are made in strict accordance with all limitations upon transfers imposed by the federal and applicable state securities laws, the Company may require an opinion of counsel with respect to the applicability of such laws to a transfer. The books and records of the Company will include respective "stop transfer" notations to the effect that no transfer of any Membership Units shall be effective unless strict compliance with the applicable securities laws shall occur, the determination of which will be at the absolute discretion of the Company.

No Market. There is no present market for the Membership Units and no market for the Membership Units will develop. In addition, the transferability of Membership Units is subject to the terms of this Operating Agreement and each Member will have very limited rights to dispose of the Member's Membership Units prior to dissolution of the Company. Accordingly, an investment in the Membership Units will not be liquid and Members will likely have difficulty selling such Membership Units in the future. The purchase of the Membership Units should be considered only as a long term investment.

Not a Registered Offering. The Membership Units have not been registered under the Securities Act in reliance upon exemptions from registration. Prospective Members must recognize that they do not have the same protections afforded by fully registered securities offerings because they do not have the benefit of prior review by regulatory authorities. Accordingly, each Member must judge the adequacy of disclosure and the fairness of the terms of this venture on his or her own.

Forward Looking Statements. Because of their nature, predictions, forecasts, and projections about the future are inherently risky. In the case of a new company like the Company, such forward looking statements about Company operations are especially likely to be

imperfect, wrong, or unintentionally misleading. All predictions, forecasts, and projections are based on assumptions that may not prove to be accurate. In addition, the estimates and assumptions underlying the projections are based on numerous economic and competitive assumptions that are beyond the Company's control. Potential Members should realize that all such projections are good faith estimates only and that actual results will vary, and may vary significantly. Because of the limitations of these projections, Members are cautioned about placing undue reliance on them. This information was not prepared with a view to public disclosure or to compliance with published guidelines of the Securities and Exchange Commission or any state securities commission.

Foreshadowing statements, without limitation, statements relating to the profitability of a Membership Unit and adequacy of the Company's resources are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Members are advised that such foreshadowing statements involve risks and uncertainties, including without limitation, risks associated with the future economic conditions, and other risks and uncertainties indicated from time to time, many of which are beyond the control of the Company. In addition, when used herein, the words "will", "intends to", "anticipates", "expects", "likely" and other similar expressions are intended to identify foreshadowing statements.

Equity Investment. Investment in any equity unit of ownership such as the Membership Units is risky because there is no guaranteed return or growth, if any, on the investment and the amount and frequency of distributions, if any, and the amount of any growth, if any, is dependent upon the future financial success of the Company, which cannot be predicted with any certainty. Because of restrictions on the sale or other transfer of the Membership Units, no established market for the interests will develop. Members may not, therefore, be able to liquidate their investment in the event of an emergency or for any other reason and must continue to bear the economic risk of the investment for an indefinite period. Members are in no way guaranteed that they will experience gains or not suffer losses in the value of their investment.

Each prospective Member is urged to consult with his or her tax and financial advisors to determine if an investment in the Company is suitable for the Member.

Tax Classification of the Company. While the Company believes that it will be classified as a partnership for federal, state, and local tax purposes, the Company has not obtained (and does not intend to obtain) either an opinion of counsel or an advance ruling from the Internal Revenue Service ("Service"), the Michigan Department of Treasury, or any local tax authority that the Company will, indeed, be classified as a partnership for tax purposes, and not as an association taxable as a corporation. There is a risk the Service, the Michigan Department of Treasury, or a local tax authority will seek to classify the Company as an association taxable as a corporation for income tax purposes, which could have significant adverse tax and perhaps other consequences for Members. EACH PROSPECTIVE MEMBER IS URGED TO CONSULT HIS/HER TAX AND LEGAL ADVISOR(S) REGARDING THE TAX AND OTHER RISKS AND CONSEQUENCES OF AN INVESTMENT IN THE COMPANY.

Tax Risks. The federal income tax aspects of an investment in the Company are complex and their impact may vary depending on a Member's individual circumstances. Members should

consider the following tax risks, among others: (a) the Company has not obtained any opinion on material tax issues or the realization in the aggregate of all potential material tax consequences of an investment in the Company; (b) Members will be taxed currently on their allocable shares of the Company's taxable income, even if they receive no distributions of cash from the Company; (c) the Company was not formed with the intent to produce deductions in excess of income that could be used to offset income from other sources; (d) any losses allocated to a Member are likely to be subject to the limitations on deduction of passive activity losses and may be further limited under the at risk rules; (e) any income realized by a Member from the Company is likely to be taxed as ordinary income rather than as capital gain; (f) the Service may assert that the Company should be characterized as an association taxable as a corporation, which would deprive Members of tax benefits from operating in a partnership form; (g) Members might be deemed to have a status other than partners in a partnership for federal income tax purposes; (h) income allocated by the Company to retirement plans and accounts or other tax exempt investments may be taxable to them as unrelated business taxable income; (i) the Service may challenge the Company's allocation of income, gain, loss, deduction and credit; (j) Members may be precluded from claiming certain deductions by virtue of limitations on miscellaneous itemized deductions; (k) the Company may claim deductions or other tax benefits to which it believes it is entitled, but there can be no assurance that the deductions or other benefits will be allowed on audit; and (l) tax laws, rules, regulations and rulings may change, with or without retroactive effect. No advance ruling will be sought from the Service on any tax issue. EACH POTENTIAL MEMBER IS URGED TO CONSULT HIS TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF INVESTING IN THE COMPANY, WITH SPECIFIC REFERENCE TO HIS OWN TAX SITUATION.

Determination of the Price for Membership Units. The price for the Membership Units was arbitrarily determined by the Company and may have no relationship to book value, assets, earnings or any other generally accepted criteria of value.

Liability of Members. In general, Members in the Company will not be liable for obligations of the Company. However, their capital contributions, and respective shares of the Company's assets and retained profits are subject to the risk of the Company's business and claims of Company creditors.

Return of Distributions and Contributions. If the Company were unable otherwise to meet its obligations, a Member might be obligated to return cash distributions previously received by him or her where the distribution is in violation of the operating agreement or the Michigan Limited Liability Company Act. Under the Michigan Limited Liability Company Act, a member may not receive a distribution from the Company to the extent that, at the time of the distribution and after giving effect to the distribution, all liabilities of the Company, other than liabilities to members on account of their interest in the Company, would exceed the fair value of the Company's assets.

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

JENNIFER M. GRANHOLM
GOVERNOR

STANLEY "SKIP" PRUSS
DIRECTOR

December 30, 2008

Mr. Ken Szymusiak
Lansing Economic Development Corporation
401 S. Washington Sq., Suite. 100
Lansing, MI 48933

Mr. Szymusiak:

I am writing to inform you that per your request, the Michigan Department of Labor and Economic Growth (MDLEG) has determined that the city of Lansing fits the criteria of a "Target Employment Area" in regards to the EB-5 Immigration Regional Center Program.

Due to the nature of the statistical analysis of unemployment the only true comparison between municipalities and the nation is through the comparison of year end data. For our determination, we have utilized seasonally adjusted year end figures from 2007 for the nation and the city of Lansing. The results are as follows:

2007 Year End Seasonally Adjusted Unemployment:

National	4.6%
City of Lansing	8.3%

Data source is the Michigan Department of Labor and Economic Growth and the Bureau of Labor Statistics. The data reflects the official employment and unemployment values as calculated using the methodology outlined by the Bureau of Labor Statistics (BLS) for the Local Area Unemployment Statistic (LAUS) program and supports the INS requirement for calculating unemployment levels to meet qualifications.

Utilizing these figures, the city of Lansing qualifies as a "Target Employment Area" within the EB-5 Immigration Regional Center Program due to the fact that the city's unemployment rate exceeds 150% of the national average.

Sincerely,

Richard H Waclawek, Director
Bureau of Labor Market Information & Strategic Initiatives

3032 W. GRAND BOULEVARD • SUITE 9-100 • DETROIT, MICHIGAN 48202
www.michigan.gov • (313) 456-3100

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

ENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

December 23, 2008

Ms. Barbara Q. Veldarde
Chief, Service Operations
201 Massachusetts Avenue, NW, Room 2123
Washington, D.C. 20529

Dear Ms. Veldarde:

I have designated the Michigan Department of Energy, Labor, and Economic Growth (DELEG) as the state agency responsible for determining whether the city of Lansing meets the high unemployment rate necessary for designation as an EB-5 "Target Employment Area." In this capacity, DELEG will issue a letter on behalf of the Lansing Economic Development Corporation declaring the city is an area of high unemployment and indicating the methodology used in this determination.

Any correspondence regarding this determination should be directed to:

Rick Waclawek, Director
Labor Market Information and Strategic Initiatives
Cadillac Place
3032 W. Grand Boulevard
Suite 9-100
Detroit, MI 48202

Sincerely yours,

Jennifer M. Granholm
Governor

JMG/pd
c: Ken Szymusiak, Lansing Economic Development Corporation
Harry Whalen, Michigan Economic Development Corporation

P.O. BOX 30013 • LANSING, MICHIGAN 48909
www.michigan.gov

LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Virg Bernero, Mayor

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone[sm]

Ms. Barbara Q. Velarde
Chief
Services Operations
201 Massachusetts Avenue, NW, Room 2123
Washington, D.C. 20529

I wanted to take a moment to provide you with the latest details regarding the Market Place development, which will be overviewed in subsequent pages.

Market Place, along with Ball Park North, is part of a duo of projects proposed by Lansing developer, Pat Gillespie. Market Place will occupy the land southwest of Shiawassee St. & Cedar St., down to Museum Drive. This land is currently occupied by the Lansing City Market, which will be demolished and reconstructed next to its current location. As outlined within the development agreement, the project is to include multiple (4-5) mixed-use buildings ranging from 2-4 stories. The two floor buildings, on the east half of the site will include underground parking with ground floor retail and upstairs residential. The four floor buildings will include four floors of residential housing and underground parking.

- **Height** - 2-4 floors
- **Size (sq ft)** - 140,000 in 4-5 buildings
- **Developer** - Pat Gillespie, Gillespie Group
- **Parking Spaces** - Underground/Unknown
- **Cost** - $24-$30 million
- **Construction** - Spring 2009 Start
- **Incentives** – Brownfield Tax Increment Financing, Brownfield Michigan Business Tax Credits

After months of public meetings and deliberation, construction is slated to begin on the new Lansing City Market in Spring 2009. The construction of Market Place will begin shortly after completion of the new Lansing City Market.

It is the intent of the Lansing Regional Center to recruit investors to serve in an equity partnership in this terrific mixed-use development opportunity.

Sincerely,

Ken Szymusiak
Director, International Initiatives
Lansing Economic Development Corporation


MARKET PLACE
Changing the FACE of Downtown
GILLESPIE GROUP
A New City Market - Downtown Lansing

GILLESPIE
group

2501 Coolidge Rd., Ste. 501
East Lansing, MI 48823
(517) 333-4123

MARKETPLACE and *BALL PARK NORTH*

~ Written Narrative ~

In an effort to continue the positive momentum the City of Lansing has experienced over the past couple of years, Gillespie Group is pleased to present the following detail as it pertains to the proposed revitalization of one of our city's most underutilized and yet greatest potential sites. Located on the Grand River, the site will encompass several acres and be constructed in two phases.

Marketplace

The ***Marketplace*** site contains the existing Lansing City Market which is in poor condition and underutilized. We feel this is "***THE***" site if you're going to be on the river in downtown Lansing, Michigan. We believe this development will help change the river scape and set the tone for additional downtown development.

Our vision is to raze the existing market building and replace it with a new market closer to the river's edge and next to the existing River Walk (paved pathway for bicycles/pedestrians/roller bladers, etc.). Proposed venues in the new market include a coffee shop, wine bar, and ice creamery with organic fruits and vegetables being sold and outdoor seating provided as well. All of this will entice people to the water's edge to enjoy the new diverse market place.

In addition to this activity, we envision semi-motorized and non-motorized boats that will be docked at this site when "in season" and available for rent. A few boat slips will be available for people to utilize so they may enjoy the downtown area. The green, grassy knoll to the east of this building can serve as overflow for seasonal flats of flowers and festive tents for various events the market plans to hold.

We also propose to house a restaurant (with large patio facing the river) 14,000 square foot day spa and 25 (+/-) condominiums in a building just to the northeast of the new market that shares a high-end, eclectic main lobby area. Covered parking will be provided for resident vehicles with surface parking available for patrons and guests.

Ball Park North

On the half block directly to the north of Oldsmobile Park, we would like to construct a building looking down into the stadium, with the outdoor patio seating to provide a view into the ballpark. We propose two levels of parking under this structure and three to four levels above.

We believe this will be a massive structure and need to consist of two or three different structures that are either attached or look as though they are attached. Two different hotel (brand) products may play off

:ach other well in this format (one in left field and one in right field). There may be a few floors of hotel rooms and a floor or two of condominiums and/or apartments.

This building could also be a very unique use for a corporate headquarters or office, using just a portion of the building. The balance of this phase can be a multitude of things such as office, residential, retail, entertainment or a mix of all.

Elevation

We prefer an urban-edge elevation with a flat roof look but are not opposed to a pitched roof with the right parapet walls and pitch. We envision a roof top that allows 5,000 square feet of roof top dining, entertainment and the like.

Why Lansing will be a very Different City 36 Months from Today

- ***The Stadium District*** development will be up and operating in April 2008
  - 100,000 square foot mixed-use building w/36,000 square feet of retail, 30 apartments, 20 for-sale condominiums

- The new **State Police Headquarters,** located at northeast corner of Grand Avenue and Kalamazoo Street, will be open with an estimated 500+ new jobs

- Board of Water and Light (BWL) defunct power plant will have been transformed into the new corporate headquarters for **The Accident Fund**. Approximately $170 million will be spent on this redevelopment project. Between our development and the BWL development, this part of the river will be a star of the Midwest. Estimated 1,200 jobs upon completion.

- Kalamazoo Gateway - $12 million LEED-certified retail and residential complex, 32 apartments and 10 condominiums

- Capitol Complex – A mixed-use development offering 5,000 square feet of commercial space and for-sale condominiums ranging from 1,000 square feet at an estimated $136,000 each to 2,000 square feet at an estimated $272,000 each

- The Arbaugh – A mixed-use development with commercial space on the first floor and 48 loft apartments on the upper levels

- Capitol Club Tower – 12 to 24 story high-rise housing 80-160 living units, restaurants, a gym, perhaps even a grocery store and swimming pool.

- Prudden Place – An upper-scale full service rental community currently featuring 72 units with another 60 units scheduled for Phase II of this premier property.

We feel that as the developments within the City of Lansing continue to unfold, demand for hotel space will grow immensely. In early 2009 we would hope to have a hotel operation or two on board and ready to proceed with **Phase II – *Ball Park North*** and its mixed uses.

Additional Downtown Lansing Attributes

- **Michigan State Capitol** – Only .63 miles from our developments
- **City of Lansing** government offices – in very close proximity to our developments and employing over 11,400 associates
- Over 32,000 people are in downtown Lansing daily
- **Cooley Law School** – largest law school in the country with 2,300 students in the downtown area and located just .7 miles from our developments
- **Davenport University** – 900-1000 students and located .7 miles from our developments
- **Michigan State University** – Located just 2.9 miles from our developments with a student population of 44,000
- **Entertainment Express Trolley** – The newest addition to our transportation system, this trolley links downtown Lansing and downtown East Lansing, making seven stops every 30 minutes and runs on Thursday, Friday and Saturday evenings.
- **Sparrow Hospital** – Located just three quarters of a mile from our developments, Sparrow Hospital employs 7,800 health care workers and cares for over 567,000 patients each year. This hospital just opened a new 10-story addition that features the region's first and only ER for children, operating rooms that support breakthrough procedures, including robotic surgery, new adult ER with 62 all-private treatment rooms, 4 high-technology trauma rooms and a rooftop helicopter landing pad. It is also the region's only Certified Trauma Center. There is also an expanded oncology facility, 29-bed orthopedic unit and the Heart and Vascular Center of Excellence featuring Stereotaxis technology – the most advanced a safest cardiac catheterization technology available.
- **Lansing Community College** – located in downtown Lansing with 1,634 employees, 14,000+ students and located .69 miles from our developments
- **Lansing Center** – Adjacent to our developments, The Lansing Center is mid-Michigan's premier facility for meetings, hosting many of the greater Lansing area's most prominent events. Featuring over 100,000 square feet of state-of-the-art meeting, exhibit and ballroom space, the Lansing Center hosts nearly 300,000 persons at more than 850 event days on a yearly basis, providing in excess of $13 million dollars of economic impact to the Greater Lansing business community.

- **Oldsmobile Park** – Home of our Lansing Lugnuts, a Single A minor league affiliate of the Toronto Blue Jays and located adjacent to our developments with 350,000+ patrons each year. This stadium is also a venue for many concerts and community events.

- **Impression 5 Science Museum** – ¼ mile from our developments, Impression 5 is a hands-on learning environment that challenges its visitors to experience, discover and explore the world in which they live. Approximately 84,000+ people visit each year with attendance increasing annually.

- **Riverwalk Theater** – This local theater is the home of the Community Circle Players and located on the banks of the Grand River, just three blocks east of the Capitol in downtown Lansing. The theater produces outstanding dramas, comedies, musicals and children's shows and draws over 14,000 guests each year.

Festivals, Races and Special Events

Common Ground Festival – Is a seven day event attracting approximately 90,000 attendees throughout the week. It is mid-Michigan's largest music festival and has featured national recording artists: Steve Miller, Poison, John Legend, Bonnie Raitt, ZZ Top, Alice Cooper, Crosby, Stills & Nash, Beach Boys, Gavin DeGraw, Third Eye Blind, Gladys Knight, Charlie Daniels, Martina McBride, Smokey Robinson and many more! Special events such as the Common Crit and various other athletic events are held throughout Lansing during the festival.

St. Patrick's Day Event – Hosted by the local downtown businesses, the first annual event drew numerous people downtown to celebrate this holiday.

Blues on the Square - This event hosts Blues acts from around the country every Thursday evening beginning in mid-June. The seven-week series runs from 6:00 p.m. to 10:00 p.m. and is held close to the corner of Washtenaw Street and Washington Avenue, drawing people from all areas of the region. 1-2,000

Be a Tourist in Your Own Town Event – This annual event draws over 15,000 "tourists" to the downtown area. Local businesses and entertainment venues open their doors to these tourists, stamp their passport booklet and provide refreshments, tours, information packets, and lots of fun activities for their guests.

Silver Bells in the City – This annual event, which attracted 100,000 people in 2006, is held in mid-November and runs from 5:00 to 9:00 pm. An Electric Light Parade steps off at 6:10 pm at the corner of Lenawee and South Washington Square, followed by the lighting of State of Michigan Official Christmas Tree in front of the State Capitol and a five minute fireworks show over the State Capitol.

The Fitness Festival – This newly created event will be held on September 29th and 30th in 2007. The Capital City ½ Marathon and 5K has partnered with LEPFA and Healthy and Fit Magazine to host a weekend filled with exciting healthy activities and a trade show. We are anticipating over 3,000 runners and cyclist throughout the weekend. Michigan Ave, the Lansing Center, Oldsmobile Park and Adado Riverfront Park will be filled with athletes from around the region and country.

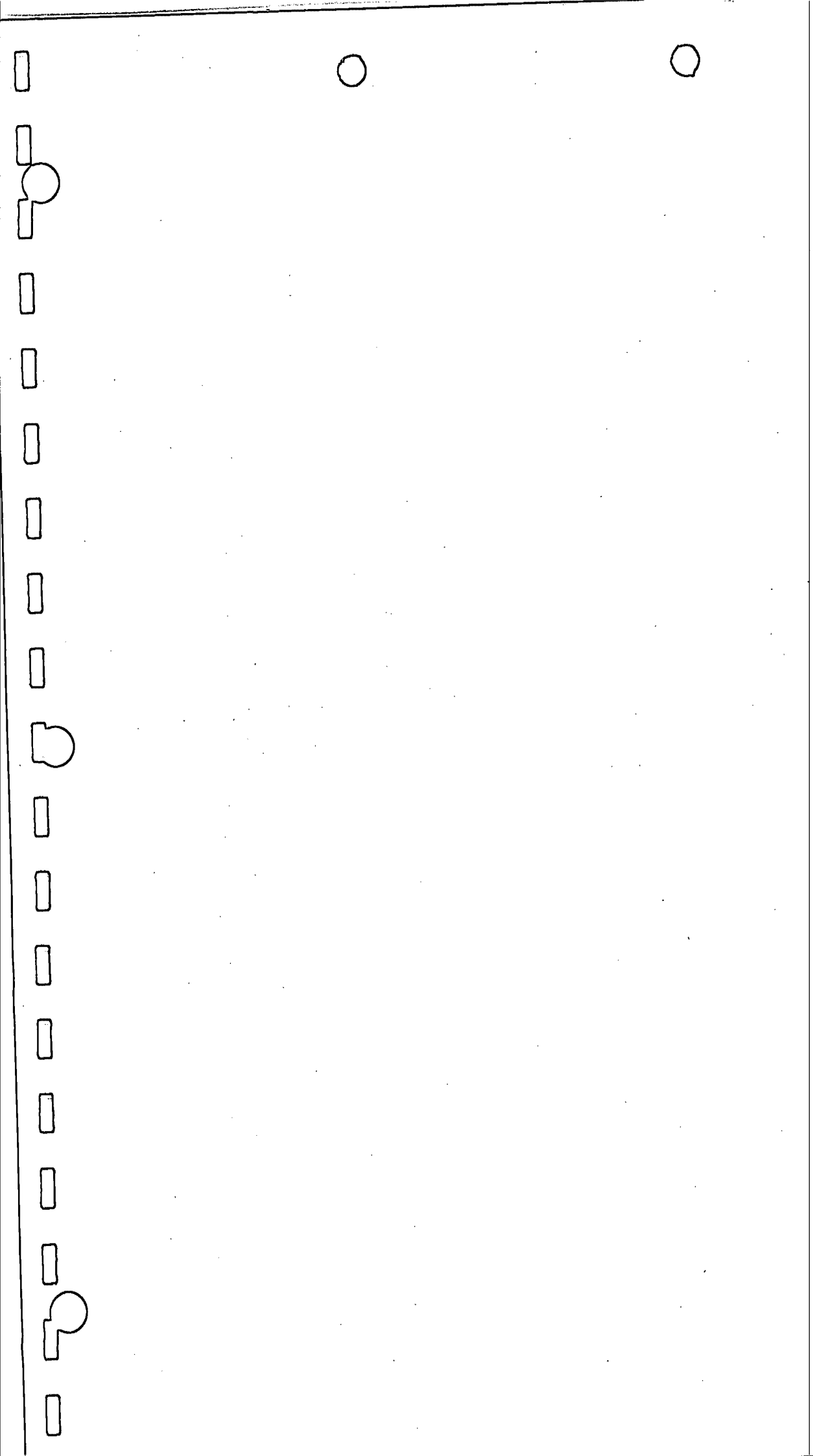
Races –Numerous races, parades and walk-a-thons are held downtown every year, each attracting thousands of attendees. A sampling of events includes: the Michigan Mile, the Memorial Day Parade, the American Cancer Society Relay for Life, the Michigan Pride Parade and Festival, the July 4th Parade, the

Annual African American Parade & Festival, the REO Transportation Museum Car Capitol Celebration, and the Capitol Area Mustangs Car Show "Cruisin' for a Cause."

Festival of the Sun/Festival of the Moon: Sponsored by the Old Town Commercial Association and held over the course of two days, this annual wine tasting event draws over 6,000 patrons annually.

Hopefully this narrative has allowed you to see what we are striving to achieve with this proposed development and we encourage you to contact us with any questions.

Primary Contact:
Jason Kildea
Director of Commercial Development, Sales & Leasing
Gillespie Group
2501 Coolidge Road, Suite 501
East Lansing, MI 48823
(517) 333-4123
Email: jkildea@gillespie-group.com



[Billing Code: 4810-02P; 6720-01P; 6210-01; 7537-01-U; 4810-33-P; 6714-01-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 03-08]

RIN 1557-AC06

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R-1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2003- 16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks.

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: **Effective Date:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874-3295.

Board: Enforcement and Special Investigations Sections at (202) 452-5235, (202) 728-5829, or (202) 452-2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898-3671.

OTS: Compliance Policy Division at (202) 906-6012.

NCUA: Office of General Counsel at (703) 518-6540; or Office of Examination and Insurance at (703) 518-6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905-3590; Office of the General Counsel (Treasury) at (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622-0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107-56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to

facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2) and (c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to

the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the Federal Register (67 FR 48290) applicable to (a) any financial institution defined as a "bank" in 31 CFR 103.11(c)[1] and subject to regulation by one of the Agencies; and (b) any foreign branch of an insured bank. On the same date, Treasury separately published an identical, proposed rule for credit unions, private banks, and trust companies that do not have a Federal functional regulator (67 FR 48299).[2] Treasury and the Agencies proposed general standards that would require each bank to design and implement a customer identification program (CIP) tailored to the bank's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all banks.[3]

Treasury and the Agencies collectively received approximately five hundred comments in response to these proposed rules (collectively referred to as the "proposal" or the "proposed rule" for "banks"), although some commenters sent copies of the same letter to Treasury and to each of the Agencies. The majority of comments received by

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[1] This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

[2] In the preamble for this proposed rule, Treasury explained that a single final regulation would be issued for all financial institutions defined as "banks" under 31 CFR 103.11(c), with modifications to accommodate certain differences between Federally regulated and non-Federally regulated banks. See 67 FR 48299, 48300.

[3] At the same time, Treasury also published (1) together with the SEC, proposed rules for broker-dealers (67 FR 48306) and mutual funds (67 FR 48318); and (2) together with the CFTC, proposed rules for futures commission merchants and introducing brokers (67 FR 48328).

Treasury and the Agencies were from banks, savings associations, credit unions, and their trade associations. Most of these commenters agreed with the largely risk-based approach set forth in the proposal that allowed each bank to develop a CIP based on its specific operations.

Some commenters, however, criticized the specific requirements in the proposed rule and suggested that Treasury and the Agencies issue a final rule containing an entirely risk-based approach without any minimum identification and verification requirements. According to some of these commenters, such a thoroughly risk-based approach would give banks appropriate discretion to focus their efforts and finite resources on specific, high-risk accounts most likely to be used by money-launderers and terrorists.

Other commenters, especially those representing credit card banks and credit card issuers, asserted that the proposed minimum identification and verification requirements should be eliminated because they did not take into account the unique nature of credit card operations. They warned that these requirements, if implemented, would have a chilling effect on credit practices important to U.S. consumers and would impose significant compliance costs on their industry with little benefit to law enforcement.

By contrast, some smaller banks criticized the flexibility of the proposal and stated that a risk-based approach would leave too much room for interpretation by the Agencies. These commenters urged Treasury and the Agencies to issue a final rule establishing more specific requirements. For example, some commenters suggested that the rule prescribe risk assessment levels for each customer type and type of account, along with a specific description of acceptable forms of identification and methods of verification appropriate for each bank's size and location.

While commenters representing various segments of the industry differed on the approach that should be taken in the final rule, the vast majority concluded that Treasury and the Agencies had underestimated the compliance burden that would be imposed by certain elements of the proposal. Commenters were especially concerned about the proposed requirements that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed.

Some commenters also suggested that banks be given greater flexibility when dealing with established customers and urged that banks be permitted to rely on identification and verification of customers performed by a third party, including an affiliate. Other commenters asked for additional guidance regarding the lists of known and suspected terrorists and terrorist organizations that must be checked, and regarding what will be deemed adequate notice to customers for purposes of complying with the final rule. Many commenters requested that the final rule contain a delayed implementation date that would provide banks with the time needed to design a customer identification program, obtain board approval, alter existing policies and procedures, forms and software, and train staff.

Several comments were received from companies engaged in the sale of technology or services that could be used to identify and verify customers, retain records, and check lists of known and suspected terrorists and terrorist organizations. Many of these companies recommended that the proposed rule be modified to make clear that use of specific products and services would be permissible. Some of these commenters urged

that the rule require banks to authenticate any documents obtained to verify the identity of the customer through the use of automated document authentication technology.

A small number of comments were received from individuals. Some of these individuals criticized the proposed requirement that banks obtain a social security number from persons opening an account as an infringement upon individual liberty and privacy. Some individuals were concerned that this requirement would expose them to an added risk of identity theft. Other individuals supported the proposal and concluded that its verification requirements might diminish instances of identity theft and fraud. A few commenters suggested that the government develop a separate national identification number or require that social security cards bear photographs and or other safeguards.

A variety of commenters applauded the efforts of Treasury and the Federal functional regulators to devise a uniform set of rules that apply to banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers.[4] They noted that, without uniformity, customers of financial institutions may seek to open accounts with institutions that customers perceive to have less robust customer identification requirements. These commenters also suggested revisions that would enhance the uniformity of the rules.

Treasury and the Agencies have modified the proposed rule in light of the comments received. A discussion of the comments, and the manner in which the proposed rule has been modified, follows in the section-by-section analysis.

In addition, as suggested by a number of commenters, Treasury and the Agencies expect to issue supplementary guidance following issuance of the final rule.

C. Joint Issuance by Treasury and the Agencies

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

D. Compliance Date

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided

[5] 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis of Final Rule Implementing Section 326

Section 103.121(a) Definitions.

Section 103.121(a)(1) Account. The proposed rule defined "account" as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an "account."[6] The proposal also explained that the term "account" was limited to formal banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of "account" was either too broad or needed clarification. Some commenters suggested that the definition of "account" be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of "account."

[6] The definition of "account" in the proposed rule was based on the statutory definition of "account" that is used in section 311 of the Act.

Most commenters requested that the final rule provide additional examples of the relationships that would constitute an "account." Many commenters requested that the rule clarify the meaning of "ongoing services." These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an "account." Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal -- which commenters characterized as the "transfer exception" – be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term "business relationship" has been deleted from the definition of "account." This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general "business" dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an "account."

The definition of "account" also has been changed to include a list of products and services that will not be deemed an "account." The preamble for the proposed rule had used the term "ongoing services" to define accounts covered by the final rule, and had referred to the exclusion of "occasional" transactions and "infrequent" purchases

(which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that "account" excludes products and services where a formal banking relationship is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.[7] Treasury and the Agencies note that part 103 already requires verification of identity in connection with many of these products and services. See, e.g., 31 CFR 103. 29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for $3000 or more); 31 CFR 103.33 (funds transfers of $3000 or more).

In addition, the final rule codifies and clarifies the "transfer exception." Under the final rule, the definition of "account" excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.[8] Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for "verifying the identity of any person seeking to open an account." Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.[9]

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[7] This exclusion is consistent with legislative history indicating that by referencing the term "customers," Congress intended "that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined 'customers' and 'customer relationship' for purposes of the financial privacy rules." H.R. Rep. No. 107-250, pt. 1, at 62 (2001). The definitions of "customer" and "customer relationship" in the financial privacy rules apply only to a consumer who has a "continuing relationship" with a bank, for example, in the form of a deposit or investment account, or a loan. See .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

[8] In many cases, these third parties are themselves "financial institutions" for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

[9] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of "account" for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements.

Section 103.121(a)(2) Bank. The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a "bank" in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included "any foreign branch of an insured bank" to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.[10] As

[10] All insured depository institutions currently must have a BSA compliance program. See 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, i.e., the requirement to

described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a "bank" in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, "bank" includes all financial institutions covered by both of the proposals described above, except that "bank" does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,[11] Treasury and the Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-

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implement a BSA compliance program. See 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. See 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

[11] See, e.g., 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled "Anti-Money Laundering Requirements –Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for Foreign Banks" implementing sections 313 and 319(b) of the Act).

specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

Section 103.121(a)(3) Customer. The proposal defined "customer" to mean any person[12] seeking to open a new account. In addition, the proposal defined a "customer" to include any signatory on an account. The preamble for the proposal explained that the term "customer" included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a "customer," regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that "customer" does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define "customer" to mean "a person who opens a new account," as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines

[12] The proposed rule defined "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal

a "customer" as "a person that opens a new account."[13] For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.[14] In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether "customer" includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that "customer" means "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."

A few banks stated that defining "customer" to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business

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personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

[13] Therefore, each person named on a joint account is a "customer" under this final rule unless otherwise provided.

[14] However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves – many of whom simply work as employees for firms with corporate accounts -- and would outweigh any benefit.[15] One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

[15] Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. See 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

After revisiting the issue of whether a signatory should be a "customer," Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining "customer" to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)-(iv).[16] Section 103.22(d)(2)(iv) exempts such companies only to the

[16] Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. See 31 CFR 103.22(d)(1).

extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

Treasury and the Agencies acknowledge that the proposed rule might have had unintended consequences for bank-customer relationships and that the risk-based approach suggested by commenters would avoid these consequences. Accordingly, the final rule excludes from the definition of "customer" a person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[17]

[17] As a foreign branch of an insured U.S. bank is no longer a "bank" for purposes of this rule, a customer of a bank's foreign branch will no longer be "a person who has an existing account with the bank." Therefore, the bank must verify the identity of a customer of its foreign branch in accordance with its CIP if such a customer opens a new account in the U.S.

Section 103.121(a)(4) Federal functional regulator. The proposed rule defined "Federal functional regulator" by reference to § 103.120(a)(2), meaning each of the Agencies, the SEC, and the CFTC. There were no comments on this definition, and Treasury and the Agencies have adopted it as proposed.

Section 103.121(a)(5) Financial institution. The final rule includes a new definition for the term "financial institution" that cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

Section 103.121(a)(6) Taxpayer identification number. The proposed rule repeated the language from § 103.34(a)(4), which states that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes "a taxpayer identification number." There were no comments on this approach, and Treasury and the Agencies have adopted it substantially as proposed, with minor technical modifications.

Section 103.121(a)(7) and (8) U.S. Person and non-U.S. person. The proposed rule provided that "U.S. person" is an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States. A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.

As described in greater detail below, a bank is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the bank may obtain

an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Several commenters suggested that it would be less confusing to bankers if "U.S. person" meant both a U.S. citizen and a resident alien, consistent with the definition of this term used in the Internal Revenue Code (IRS definition).[18] A few commenters criticized the proposed definition because it would require banks to establish whether a customer is or is not a U.S. citizen.

Treasury and the Agencies believe that the proposed definition of "U.S. person" is a better standard for purposes of this final rule than the IRS definition. Adoption of the IRS definition of "U.S. person" would require bank staff to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a bank will not necessarily need to establish whether a potential customer is a U.S. citizen. The bank will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification. For these reasons, the definition is adopted as proposed.

Section 103.121(b)Customer Identification Program: Minimum Requirements.

Section 103.121(b)(1) General Rule. The proposed rule required each bank to implement a CIP that is appropriate given the bank's size, location, and type of business. The proposed rule required a bank's CIP to contain the statutorily prescribed procedures, described these procedures, and detailed certain minimum elements that each of the

[18] 26 U.S.C. 7701(a)(30)(A).

procedures must contain. In addition, the proposed rule required that the CIP be written and that it be approved by the bank's board of directors or a committee of the board.

The proposed rule also stated that the CIP must be incorporated into the bank's BSA[19] compliance program and should not be a separate program. A bank's BSA compliance program must be written, approved by the board, and noted in the bank's minutes. It must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The preamble for the proposal explained that the CIP should be incorporated into each of these four elements of a bank's BSA program.

Most commenters agreed with the proposal's approach of allowing banks to develop risk-based programs tailored to their specific operation, though some of these commenters recommended that Treasury and the Agencies adopt an entirely risk-based approach without any minimum requirements while others recommended a more prescriptive approach. Many commenters suggested that Treasury and the Agencies clarify the extent to which a bank could rely on a third party, especially an affiliate, to perform some or all aspects of its CIP.

Other commenters focused on the requirement that a bank's board of directors approve the CIP. These commenters urged Treasury and the Agencies to adopt a regulation that states that the role of a bank's board of directors need only be to approve broad policy rather than the specific methods or actual procedures that will be a part of a bank's CIP. One commenter recommended that the governing body of a financial institution be permitted to delegate its responsibility to approve the CIP.

The final rule attempts to strike an appropriate balance between flexibility and detailed guidance by allowing a bank broad latitude to design and implement a CIP that is tailored to its particular business practices while providing a framework of minimum standards for identifying each customer, as the Act mandates. Following the description of the procedures and minimum requirements for each element of a bank's CIP (identity verification, recordkeeping, comparison with government lists, and customer notice), the final rule contains a new section describing the extent to which a bank may rely on a third party to perform these elements, described in detail below.

The final rule removes the requirement that the bank's board of directors or a committee of the board must approve the bank's CIP because this requirement is redundant. A bank's BSA compliance program must already be approved by the board. Treasury and the Agencies regard the addition of a CIP to the bank's BSA compliance program to be a material change in the BSA compliance program that will require board approval. The board of director's responsibility to oversee bank compliance with section 326 of the Act is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

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[19] See footnote 10, supra.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.[20] Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.[21]

Section 103.121(b)(2) Identity Verification Procedures. The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide "an affidavit of identity" on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures "that enable the bank to form a reasonable belief that it knows the true identity of the customer" as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

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[20] See footnote 10, supra.

[21] The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

The final rule provides that a bank's CIP must include risk-based procedures for verifying the identity of each customer[22] to the extent reasonable and practicable. The final rule also states that the procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer. As section 326 of the Act states, a bank's affirmative obligation to verify the identity of its customer applies to "any person" rather than only to a person whose identity is suspect, as suggested by one commenter. Furthermore, Treasury and the Agencies have determined that the statutory obligation to "verify the identity of any person" requires the bank to implement and follow procedures that allow the bank to have a reasonable belief that it knows the true identity of the customer.

Given the flexibility built into the final rule, Treasury and the Agencies believe that it is not appropriate to provide special treatment for new customers known to bank personnel. In addition, permitting reliance on bank personnel to attest to the identity of a customer may be subject to manipulation. Accordingly, the final rule does not establish different rules for customers who are known to bank personnel.

The final rule requires the identity verification procedures to be based upon relevant risks, including those presented by the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the types of identifying information available. In addition to these risk factors, which are specifically identified in section 326, the final rule states that the procedures should take into account

[22] Other elements of the bank's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.[23]

Section 103.121(b)(2)(i) Customer Information Required. The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3) date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

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[23] H.R. Rep. No. 107-250, pt. 1, at 62 and 63 (2001).

Other commenters stated that the rule should not require a bank to obtain the minimum identifying information prior to account opening in every instance. Some of these commenters suggested that a bank be permitted to obtain the required information within a reasonable time after the account is opened. Some commenters suggested that the rule permit banks to obtain identifying information from a party other than the customer. This would arise, for example, when a bank offers a credit card based on information obtained from a credit reporting agency. Other commenters suggested that a bank also be required to obtain information about a customer's occupation, profession or business, as this information is needed by a bank that intends to file a report of transactions in currency or a suspicious activities report on the customer.

Consistent with the proposal, the final rule provides that a bank's CIP must contain procedures that specify the identifying information that the bank must obtain from each customer prior to opening an account. In addition, the rule specifies the four basic categories of information that a bank must obtain from the customer prior to opening an account. Treasury and the Agencies believe that requiring banks to gather these standard forms of information prior to opening an account is not overly burdensome because such identifying information is routinely gathered by most banks in the account opening process and is required by other sections of 31 CFR part 103. Of course, based upon an assessment of the risks described above, a bank may require a customer to provide additional information to establish the customer's identity.

Treasury and the Agencies acknowledge that imposing this requirement on banks that offer credit card accounts is likely to alter the manner in which they do business by requiring them to gather additional information beyond that which they currently obtain

directly from a customer who opens an account at the point of sale or by telephone. Treasury and the Agencies are mindful of the legislative history of section 326, which indicates that Congress expected the regulations implementing this section to be appropriately tailored for accounts opened in situations where the account holder is not physically present at the financial institution and that the regulations should not impose requirements that are burdensome, prohibitively expensive, or impractical.[24]

Therefore, Treasury and the Agencies have included an exception in the final rule for credit card accounts only, which would allow a bank broader latitude to obtain some information from the customer opening a credit card account, and the remaining information from a third party source, such as a credit reporting agency, prior to extending credit to a customer. Treasury and the Agencies recognize that these practices have produced an efficient and effective means of extending credit with little risk that the lender does not know the identity of the borrower.

Treasury and the Agencies also received comments on the advisability of requiring banks to collect the specific identifying information (name, date of birth, address, and identification number), as would have been required under the proposed rule. With respect to obtaining the customer's name, one commenter recommended that based on Texas law and banks' experience, a bank should be required to obtain the name under which the customer is doing business and the customer's legal name. The final rule continues to require that the bank obtain the customer's name, meaning a legal name that can be verified. As noted above, this is a minimum requirement, and a bank may also need to obtain the name under which a person does business in order to establish a reasonable belief it knows the true identity of the customer.

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[24] H.R. Rep. No. 107-250, pt. 1, at 63 (2001).

One trade association suggested that banks be permitted to make a risk-based determination before requiring a customer to provide date of birth because many customers would prefer not to share this information. One commenter stated that date of birth is not an important identifying characteristic and should be deleted. Another commenter stated that credit card issuers do not request this information because it can raise fair lending issues. Finally, a few commenters noted that standardized mortgage applications require age rather than date of birth and would have to be altered.

The final rule provides that a bank must obtain the date of birth for a customer who is an individual. Treasury and the Agencies believe that date of birth is an important identifying characteristic and can be used to provide a bank or law enforcement with an additional means to distinguish between customers with identical names. However, the required collection and retention of information about a customer's date of birth does not relieve the bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of age or other prohibited classification. Banks collecting date of birth from individual customers should be able to take reasonable measures to convert this information into age for purposes of the forms used in the secondary mortgage market given the delayed compliance date for the final rule.

Many commenters criticized the requirement that a bank obtain both the customer's physical and mailing address, if different. Most commenters urged Treasury and the Agencies to eliminate the requirement that the customer provide a physical address. Some of these commenters stated that this requirement could interfere with the

ability of certain segments of the population to obtain a bank account, such as members of the military, persons who reside in mobile homes with no fixed address, and truck drivers who do not have a physical address. Banks that offer credit card accounts and card issuers stated that the address requirement would be extremely burdensome because they would have to change the manner in which they do business, and in some cases, credit card banks currently do not have the capacity to collect both addresses. Some of these commenters stated that new credit card customers are reluctant to give more than one address and, therefore, it would be difficult to obtain this information from customers. A trade association representing credit card banks asserted that customers may have a legitimate reason for handling correspondence through post office boxes and should not have to provide a physical address. This commenter asserted that requiring the customer to provide a physical address will discourage the provision of financial services to the unbanked and will prevent a victim of identity theft from using an alternative to an unsecured home mailbox. Another commenter noted that the physical address of a customer's principal place of business may not be relevant if the bank is working with a customer's local office. This commenter recommended that the rule simply permit the bank to obtain the customer's street address. Credit card banks and issuers urged Treasury and the Agencies to make the requirement that a bank obtain the customer's physical address optional.

Section 326 of the Act requires Treasury and the Agencies to prescribe regulations that require financial institutions to implement "reasonable procedures." Accordingly, under the final rule, a bank will not be required to obtain more than a single address for a customer. Nonetheless, Treasury and the Agencies believe that the

identification, verification, and recordkeeping provisions of the Act, taken together, should provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing. The final rule therefore provides that a bank generally must obtain a residential or business street address for a customer who is an individual because Treasury and the Agencies have determined that law enforcement agencies should be able to contact an individual customer at a physical location, rather than solely through a mailing address. Treasury and the Agencies recognize that this provision may be impracticable for members of the military who cannot readily provide a physical address, and other individuals who do not have a physical address but who reliably can be contacted. Accordingly, the final rule provides an exception under these circumstances that allows a bank to obtain an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual. For a customer other than an individual, such as a corporation, partnership, or trust, the bank may obtain the address of the principal place of business, local office, or other physical location of the customer. Of course, a bank is free to obtain additional addresses from the customer, such as the customer's mailing address, to meet its own or its customer's business needs.

The proposal required that banks obtain an identification number from customers. For U.S. persons, a bank would have been required to obtain a U.S. taxpayer identification number. For non-U.S. persons, a bank would have been required to obtain a number from various alternative forms of government-issued identification.

One commenter stated that this requirement would not be burdensome. Commenters representing certain consumer advocacy groups commended Treasury and

the Agencies for providing banks with the discretion to accept alternative forms of identifying information from non-U.S. citizens. These commenters stated that this position would assist low-income immigrants in gaining financial stability. By contrast, some commenters stated that the final rule should not permit a bank to open an account for a customer using only a foreign identification number when the customer provides a U.S. address. Other commenters asked for guidance on whether a bank is permitted to accept a number from the identification document issued by a foreign government. A few commenters urged the government to require a national identification document for all individuals.

Other commenters, primarily credit card banks, stated that the requirement that a bank obtain a U.S. taxpayer identification number from U.S. persons would create considerable hardship. They stated that new credit card customers are reluctant to give out their social security numbers, especially over the telephone. They urged that banks be given the discretion to collect identifying information, other than social security numbers, when appropriate in light of consumer privacy and security concerns. In the alternative, they recommended that banks be permitted to obtain a U.S. taxpayer identification number for U.S. persons from a trusted third party source, such as a credit reporting agency.

Some commenters questioned what number to use for accounts opened in the name of a bowling league or class reunion, or to accept donations for a special cause. Other commenters questioned what number could be obtained from foreign businesses and enterprises that have no taxpayer identification number or other government-issued documentation.

The final rule provides that a bank must obtain an "identification number" from every customer. As discussed above, under the definition of "customer," the final rule permits a bank to obtain the identification number of the individual who opens an account in the name of an individual who lacks legal capacity, such as a minor, or a civic group, such as a bowling league.

After reviewing the comments, Treasury and the Agencies have determined that requiring a bank to obtain a customer's identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks' current practices and could alienate many potential customers. Accordingly, Treasury and the Agencies have adopted an exception for credit card accounts that will permit a bank offering such accounts to acquire information about the customer, including an identification number, from a trusted third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

The final rule also provides that for a non-U.S. person, a bank must obtain one or more of the following: a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This standard provides a bank with some flexibility to choose among a variety of identification numbers that it may accept from a

non-U.S. person.[25] However, the identifying information the bank accepts must permit the bank to establish a reasonable belief that it knows the true identity of the customer.

Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself, based upon appropriate risk factors, including those discussed above (the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the other types of identifying information available, and the bank's size, location, and customer base), whether the information presented by a customer is reliable.

Treasury and the Agencies recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore, the final rule notes that when opening an account for such a customer, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposal also contained a limited exception to the requirement that a bank obtain a taxpayer identification number from a customer opening a new account. The exception permitted a bank to open an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number (EIN), provided that the bank obtains a copy of the application before it opens the account and obtains the EIN within a reasonable period of time after the account is established. The preamble for the proposed rule explained that

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[25] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a bank. See Treasury Department, "A Report to Congress in Accordance with

this exception was included for a new business that might need access to banking services, particularly a bank account or an extension of credit, before it has received an EIN from the Internal Revenue Service.

Some commenters questioned this limited exception for certain businesses. A few commenters suggested expanding the exception to include individuals who have applied for, but have not yet received a taxpayer identification number. Another commenter stated that the exception provided no added benefit and would add to a bank's recordkeeping and monitoring burden.

Treasury and the Agencies have determined that a bank should be afforded more flexibility in situations where a person, including an individual, has applied for, but has not yet received, a taxpayer identification number. Therefore, the final rule states that instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a taxpayer identification number.[26] To lessen the recordkeeping burden for a bank that elects to use this exception, the final rule also provides that the bank's CIP need only include procedures requiring the bank to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened. Thus, a bank will be able to exercise its discretion[27] to determine how to confirm that a customer has filed an

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Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[26] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting–TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (i.e., interest and dividends) on certain accounts. See 26 CFR 31.3406(g)-3.

[27] For example, the bank may wish to examine a copy of the application filed.

application for a taxpayer identification number rather than having to keep a copy of the application on file.

Section 103.121(b)(2)(ii) Customer Verification. The proposed rule provided that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened.[28] The proposed rule also described when a bank is required to verify the identity of existing customers.

Several commenters asked Treasury and the Agencies to underscore that these verification procedures may be risk-based by noting that a bank may verify less than all of the identifying information provided by the customer. Many commenters noted that there is currently no reliable, efficient, or effective means of verifying a customer's social security number. Some of these commenters asked the government to establish a method that would permit banks to establish the authenticity and accuracy of a customer's name and taxpayer identification number.

Treasury and the Agencies recognize that there currently is no method that would permit a bank to verify, for example, a taxpayer identification, passport or alien identification number through an official source. Accordingly, the final rule provides that a bank's CIP must contain procedures for verifying the identity of the customer, "using the information obtained in accordance with paragraph (b)(2)(i)," namely, the identifying information obtained by the bank. Thus, a bank need not establish the accuracy of every

[28] The preamble for the proposed rule noted that, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provided the bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.

element of identifying information obtained but must do so for enough information to form a reasonable belief it knows the true identity of the customer.

Some commenters stated that they appreciated the flexibility of the proposal permitting an institution to determine how soon identity must be verified. Other commenters asked Treasury and the Agencies to clarify what is a "reasonable period of time." As stated in the preamble for the proposal, Treasury and the Agencies believe that the amount of time it will take an institution to verify a customer's identity may depend upon various factors, such as the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. For the same reasons, the final rule provides banks with the flexibility necessary to accommodate a wide range of situations by stating that the bank must verify the identifying information within a reasonable time after the account is opened.[29]

As discussed above in the definition section, many commenters criticized the proposed approach regarding verification of existing customers that open new accounts. The final rule addresses these concerns by modifying the definition of "customer" to exclude a person who has an existing account with the bank if the bank has a reasonable belief that it knows the true identity of the person.

Many commenters urged that the final rule continue to allow, but not mandate, documentary verification. A few commenters requested that the final rule provide additional guidance on verification. Some commenters asked that the final rule clarify that a bank may choose to use only documentary methods and may refuse to open an

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[29] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. See, e.g., 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control (OFAC) prohibiting transactions involving designated foreign countries or their nationals).

account using other methods.

The final rule addresses these comments by stating that a bank's CIP's verification procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.

Section 103.121(b)(2)(ii)(A) Verification Through Documents. The proposed rule provided that the CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. It then gave examples of documents that could be used to verify the identity of individuals and other persons such as corporations, partnerships, and trusts.

Most commenters noted that banks do not have the means to authenticate or validate documents provided by their customers and urged Treasury and the Agencies to clarify that document authentication is not a CIP requirement. Treasury and the Agencies wish to confirm that once a bank has obtained and verified the identity of the customer through a document such as a driver's license or passport, the bank will not be required to take steps to determine whether the document has been validly issued. A bank generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the bank must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Some commenters also asked that Treasury and the Agencies provide more examples and discuss appropriate types of documentary identification in the final rule or in separate guidance that banks may easily access. Commenters asked whether a utility bill, or library card addressed to the same physical address and name of the person

seeking the account, or a foreign identification card, such as a foreign voter registration card or driver's license, would be acceptable. Some commenters questioned whether copies of documents would suffice.

Given the recent increases in identity theft and the availability of fraudulent documents, Treasury and the Agencies agree with a commenter who suggested that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, a bank is encouraged to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, banks are encouraged to use a variety of methods to verify the identity of a customer, especially when the bank does not have the ability to examine original documents.

The final rule attempts to strike the appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement by providing that a bank's CIP must state the documents that a bank will use. This will require each bank to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.

The final rule continues to provide an illustrative list of identification documents. For an individual, these may include an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. For a person other than an individual, these may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Some commenters questioned whether the examples of identification documents

given for persons other than individuals would be reliable. One commenter questioned whether trust documents alone would be sufficient verification of identity. Another commenter suggested allowing banks to rely on a certification by the trustee, or an appropriate legal opinion, rather than the trust instrument to verify the existence of a trust. Someone else suggested that banks should be allowed to rely on documentation consisting of evidence that a business is either publicly traded or is authorized to do business in a state or the United States.

The examples provided in the final rule were intended only to illustrate the documents a bank might use to verify the identity of a customer that is a corporation, partnership, or trust. A bank may use other documents, provided that they allow the bank to establish that it has a reasonable belief that it knows the true identity of its customer. Accordingly, the final rule makes no significant changes to the examples.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. Recognizing that some accounts are opened by telephone, by mail, and over the Internet, the proposed rule provided that a bank's CIP also must contain procedures describing what non-documentary methods the bank will use to verify identity and when the bank will use these methods (whether in addition to, or instead of, relying on documents). The preamble for the proposed rule also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.

The proposed rule gave examples of non-documentary verification methods that a bank may use, including contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is

associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The preamble for the proposed rule stated that a bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).

The proposal required that the procedures address situations where an individual, such as an elderly person, legitimately is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction, for example over the phone, by mail, or through the Internet; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Several commenters asked for additional guidance regarding when non-documentary verification methods should be used in addition to documentary verification methods and the circumstances in which only one or all of the non-documentary verification methods listed are necessary. Commenters also asked for guidance on audit methodology, and an explanation of the due diligence required for verification of accounts opened by telephone, mail, and through the Internet. A few commenters suggested that reference to verification, where a bank compares information provided by

the customer with information from trusted third party sources, be expressly mentioned in the final rule.

As the large number of comments on this section illustrates, a rule that attempted to address every scenario and combination of risk-factors that a bank might confront would be extremely complex and invariably would fail to address many situations. Rather than adopt a lengthy and potentially unwieldy rule that still would not address every situation, Treasury and the Agencies have concluded that it would be more effective to adopt general principles that are fleshed out through examples. Therefore, the final rule states that for a bank relying on non-documentary verification methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

The final rule generally retains the illustrative list of non-documentary methods contained in the proposal. Treasury and the Agencies have clarified that one method is "independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source," rather than verifying "documentary information" through such sources.

The final rule also retains the variety of situations that the procedures must address that were identified in the proposal, with the following two changes. First, because "transaction" is a defined term in 31 CFR part 103, instead of using the term "face-to-face transaction," the final rule states that the procedures must address the situation where a customer opens an account without appearing in person at the bank. Second, the final clause of this provision provides that the CIP must include procedures

to address situations where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents. This clause acknowledges that there may be circumstances beyond those specifically described in this provision when a bank should use non-documentary verification procedures.

As stated in the preamble for the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the Agencies encourage banks to use non-documentary methods even when the customer has provided identification documents.

Section 103.121(b)(2)(ii)(C) Additional Verification for Certain Customers. As described above, the proposed rule required the identification and verification of each signatory for an account. Most commenters objected to this requirement as overly burdensome, and, upon consideration of the points raised by the commenters, Treasury and the Agencies agree that it is appropriate to delete it. For the reasons discussed below, however, the rule does require that a bank's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the Agencies believe that while the majority of customers may be verified adequately through the documentary or non-documentary verification methods described in paragraphs (b)(2)(ii)(A) and (B), there may be instances where this is not possible. The risk that the bank will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that

has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. Treasury and the Agencies believe that a bank must identify customers that pose a heightened risk of not being properly identified, and a bank's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the entity in whose name such an account is opened when standard documentary and non-documentary methods prove to be insufficient.

For these reasons, the requirement to verify the identity of signatories has been replaced by a new provision in the final rule that requires that a bank's CIP address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank also will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This additional verification method will only apply when the bank cannot adequately verify the customer's identity using the documentary and non-documentary verification methods described in (b)(2)(ii)(A) and (B). Moreover, a bank need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity using standard documentary and non-documentary verification methods.

Section 103.121(b)(2)(iii) Lack of Verification. The proposed rule stated that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. The

preamble for the proposed rule listed what these procedures should include. In addition, the proposal stated that a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[30]

The final rule retains the general requirement that a bank's CIP include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the customer. However, the rule text itself now states that the procedures should describe the following: when a bank should not open an account for a potential customer; the terms under which a customer may use an account while the bank attempts to verify the customer's identity; when the bank should close an account after attempts to verify a customer's identity have failed; and when the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

One commenter stated that requiring a bank to close an account if it cannot verify a customer's identity would conflict with state laws and would subject the bank to legal liability. The commenter urged that if this provision is retained, the final rule also should shield banks from state regulatory and borrower liability in these circumstances. Other commenters asked that Treasury and the Agencies clarify that further investigation that results in failure to open an account will not trigger adverse action requirements under the FCRA, 15 U.S.C. 1681 et seq. or the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq.

[30] The preamble also explained that there are some exceptions to this basic rule. For example, a bank may maintain an account at the direction of a law enforcement or intelligence agency, even though the bank does not know the true identity of the customer.

The final rule does not specifically require a bank to close the account of a customer whose identity the bank cannot verify, but instead leaves this determination to the discretion of the bank. Treasury and the Agencies have determined that there is no statutory basis to create a safe harbor that would shield banks from state regulatory or borrower liability if a bank should choose to close a customer's account. Any such closure should be consistent with the bank's existing procedures for closing accounts in accordance with its risk management practices. Treasury and the Agencies also note that a bank must comply with other applicable laws and regulations, such as the adverse action provisions under ECOA and the FCRA, when determining not to open an account because it cannot establish a reasonable belief that it knows the true identity of the customer.[31]

Section 103.121(b)(3) Recordkeeping.

Section 103.121(b)(3)(i) Required Records. The proposed rule set forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank would have been required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the proposal would have required the bank to maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain. The bank also would have been required to record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the

[31] See 12 CFR 202.9(b) (Federal Reserve Regulation B that prescribes the form of ECOA notice and statement of specific reasons); 15 U.S.C. 1681m (FCRA provision that provides for duties of users taking adverse actions on the basis of information contained in consumer reports from other third parties or affiliates).

bank would have been required to record the resolution of any discrepancy in the identifying information obtained.

This section of the proposed rule prompted the most comment. Though one commenter felt that the recordkeeping requirements in the proposed rule were weak, almost all other commenters identified the proposed documentation and record retention requirements as overly burdensome. Commenters urged Treasury and the Agencies to permit a bank to record the information from the documents obtained rather than requiring banks to maintain copies of these documents for the life of the account. Commenters generally argued that it would be difficult and very burdensome to store and retrieve copies of documents used to verify the identity of the customer. In addition, some commenters noted that many kinds of identification documents, particularly some new driver's licenses, have security features that prevent them from being copied legibly. Other commenters stated that copies of documents would be difficult to safeguard and could facilitate identity theft.

Commenters stated that requiring banks to keep copies of documents would substantially deviate from current banking practice and would violate certain states' laws. Banks offering credit card accounts through retailers, who require the customer to provide identifying documents at the point of sale, strenuously opposed this requirement if it were interpreted to cover documents presented to the merchant. These commenters stated that copy machines are not usually available at the point of sale, and that the rule as proposed would require merchants to purchase large numbers of additional copy machines. The commenters also anticipated that consumers would be greatly inconvenienced by this requirement and might have to endure lengthy waits during any

busy shopping season. These commenters questioned whether the risks of money-laundering and the financing of terrorism through retail store credit cards, which generally have relatively low credit limits, restrictions on pre-payment, and other features to detect fraud, warrant the imposition of these additional costs.

Other commenters stated that requiring banks to keep copies of documents that have pictures, such as driver's licenses, could expose the bank to allegations of unlawful discrimination, even if the retention of this information were not prohibited under ECOA. Some banks objected to this requirement on the grounds that it directly conflicted with the position that the Agencies have traditionally taken on this issue, including the criticism of banks that have retained such information in their files when extending credit.

Other commenters asked that a bank be permitted to record the processes and procedures generally used for verification rather than being required to keep records of the methods used and the resolution for each and every account, especially where the bank uses standardized procedures for all customers and could demonstrate that these procedures were applied. Some commenters suggested that the final rule permit banks to use a risk-based approach for recordkeeping.

In light of the comments received, Treasury and the Agencies have reconsidered and modified the recordkeeping requirements of the proposed rule. The final rule provides that a bank's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a bank develop and implement a CIP. However, the final rule affords banks significantly more flexibility than did the recordkeeping provisions contained in the proposal. Under

the final rule, a bank's records are to include "a description," rather than a copy, of any document upon which the bank relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. The final rule also clarifies that the record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.

As Treasury and the Agencies indicated in the preamble for the proposal, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this final rule, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(3)(ii) Retention of Records.

The proposal required a bank to retain all of the records specified in the recordkeeping provision for five years after the date the account is closed.

This requirement prompted strenuous objections. Assuming that copies of the documents used to verify the identity of the customer would have to be retained, commenters asserted that retaining records until five years after the account is closed would be very burdensome. Some commenters noted that imaging is not a routine practice for community banks and could be costly. Banks offering credit card accounts stated that the record retention requirement would require a change in forms, processes,

and systems, while also increasing storage costs. As credit cards do not have a specific term, commenters noted that banks would be required to keep these records forever, unless they are culled manually. Some commenters suggested that the retention period be shortened, with suggestions ranging from one to three years after the account is closed, while other commenters suggested that the period be shortened to five years from when the account is opened. Many commenters stated that two years from when the information is obtained would be consistent with other regulatory requirements, such as the record retention requirements for an application for an extension of credit subject to ECOA (12 CFR 202.12(b)).

By eliminating the requirement that a bank retain copies of the documents used to verify the identity of the customer, Treasury and the Agencies believe that the final rule largely addresses the main concern of these commenters. However, Treasury and the Agencies also have determined that, while the identifying information provided by the customer should be retained, there is little value in requiring banks to retain the remaining records for five years after an account is closed because this information is likely to have become stale. Therefore, the final rule now prescribes a bifurcated record retention schedule that is consistent with the general five-year retention requirement in 31 CFR 103.38. First, the bank must retain the information referenced in paragraph (b)(3)(i)(A) (that is, information obtained about a customer), for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. Second, the bank need only retain the records that it must make and maintain under the remaining parts of the recordkeeping provision, paragraphs

(b)(3)(i)(B), (C), and (D) (that is, information that verifies a customer's identity) for five years after the record is made.

Section 103.121(b)(4) Comparison with Government Lists. The proposed rule required a bank to have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any Federal government agency. In addition, the proposal stated that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists.

Most commenters were concerned about how a bank would be able to determine what lists should be checked for purposes of this provision and how these lists would be made available. Some commenters asked that the final rule confirm that a bank will not have an affirmative duty to seek out all lists compiled by the Federal government and would only be required to check lists provided to it by the Federal government. Some commenters noted that lists published by OFAC are published but are not provided to financial institutions.[32] Many commenters urged that all lists within the meaning of section 326 of the Act, be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single website that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

[32] Nevertheless, the legislative history for this provision indicates that the lists Congress intended financial institutions to consult "are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon." H.R. Rep. No. 107-250, pt. 1, at 63 (2001).

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to when a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

Section 103.121(b)(5) Customer Notice. The proposed rule would have required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued "shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures" that satisfy the statute. Based upon this statutory

requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's customers when provided in accordance with the requirements of this final rule.

Section 103.121(b)(6) Reliance on Another Financial Institution. Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution

having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a

customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks[33] will be subject to regulation and examination by the Agencies under other applicable laws and regulations. See, e.g., 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

Section 103.121(c) Exemptions. The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The

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[33] Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.

proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of "account" and "customer" for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

Section 103.121(d) Other Information Requirements Unaffected. The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the

customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons[34] opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

[34] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number)." Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the

exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule -- rather than withdrawing § 103.34(a) – amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.[35]

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." The definition of "customer" in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

[35] Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

Section 103.11(j), which defines the term "deposit account," contains an obsolete reference to the definition of "transaction account," which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[36] See 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[37]

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[36] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. See 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87-2, developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

[37] See footnote 10.

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.[38] Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. See 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists[39] and already use identity verification software, both as part of their customer due diligence obligations under existing BSA compliance program requirements and to detect fraud.

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[38] See, e.g., identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

[39] We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be de minimis.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of "customer," no longer requires a bank to keep copies of documents used to verify a

customer's identity, and reduces the universe of records that must be kept for five years after an account is closed. Treasury and the Agencies have taken other steps that significantly reduce the scope of the rule and burdens of the rule. Many of these burden-reducing actions are described in the Paperwork Reduction Act discussion below.[40] As a result of these changes, the final rule is far more flexible and less burdensome than the proposed rule while still fulfilling the statutory mandates enumerated in section 326 of the Act.

Finally, Treasury and the Agencies did consider whether it would be appropriate to exempt small banks from the requirements of the rule. We do not believe that an exemption for small banks is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of banks, as well as the

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[40] In addition to the burden-reducing measures discussed in the Paperwork Reduction Act discussion, other changes include:

- A clarification that a bank must verify the customer's identity using the identifying information obtained. The proposed rule would have required the bank to verify all identifying information.
- The elimination of the requirement that a bank must obtain a physical and a mailing address from a customer opening an account. Under the final rule, the bank is only required to obtain a physical address.
- A new provision that permits a bank to rely on another financial institution to perform its CIP under certain conditions. This provision allows financial institutions that share a customer to share customer identification and verification obligations and to reduce the cost of maintaining duplicative records required by the recordkeeping provisions of the final rule.
- A revised provision that extends to customers who are individuals the exception that permits a bank to open an account for a customer that has applied for, but has not received, a taxpayer identification number.
- A new exemption for credit card accounts from the requirement that a bank obtain identifying information from the customer prior to opening an account. In connection with credit card accounts, a bank is permitted to obtain identifying information from a third party source prior to extending credit.
- A clarification stating that the government will provide lists of known or suspected terrorists and terrorist organizations to banks. Banks will not be required to seek out this information. In addition, the rule now states that the bank may determine whether a customer appears on the list within a reasonable time after the account is opened, unless it is required to do so earlier by another Federal law, regulation, or directive.
- A transition period that permits banks a period of several months to comply with the final rule.

importance of the statutory goals and mandate of section 326. Money laundering can occur in small banks as well as large banks.

B. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury submitted the final rule to the OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506-0026.

Collection of Information Under the Proposed Rule

The proposed rule applied only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c),[41] and any foreign branch of an insured bank. The proposed rule required each bank to establish a written CIP that must include recordkeeping procedures (proposed § 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed § 103.121(b)(5)).

The proposed rule required a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. It also required these records to be maintained at the bank for five years after the date the account is closed (proposed § 103.121(b)(3)).

The proposed rule also required a bank to give its customers "adequate notice" of the identity verification procedures (proposed § 103.121(b)(5)). The proposed rule stated that a bank could satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice.

Collection of Information Under the Final Rule

The final rule, like the proposed rule, requires banks to implement reasonable procedures to (1) maintain records of the information used to verify a customer's identity, and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act. However, the final rule greatly reduces the paperwork burden attributable to these requirements, as described below.

The final rule also contains a new recordkeeping provision permitting a bank to rely on another financial institution to perform some or all its CIP, under certain circumstances. Among other things, the other financial institution must provide the bank with a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

Response to Comments Received

We received approximately 500 comments on the proposed rule. Most of the commenters specifically mentioned the recordkeeping burden associated with the proposed rule. Some commenters also asked Treasury and the Agencies to clarify the meaning of "adequate notice" and requested that a sample notice be provided in the final rule.

[41] This definition includes banks, thrifts, and credit unions.

Only a few commenters provided burden estimates of additional burden hours that would result from the proposed rule. However, these burden estimates did not necessarily focus on the recordkeeping and disclosure requirements in the proposal and ranged from 200 extra hours per year to 9,000 additional hours. Treasury and the Agencies believe that the final rule substantially addresses the concerns of the commenters. Specific concerns about paperwork burden have been addressed as follows:

First, the recordkeeping and disclosure burden are minimized in the final rule because Treasury and the Agencies reduced the entire scope of the final rule, by:

- narrowing and clarifying the scope of "account." The final rule specifically excludes accounts that (1) a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from a third party, and (2) accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. It also specifically excludes wire transfers, check cashing, and the sale of travelers checks, and any other product or service that does not lead to a "formal banking relationship" from the scope of the rule;
- narrowing the definition of "bank" covered by the rule to exclude a bank's foreign branches; and
- limiting and clarifying who is a "customer" for purposes of the final rule. The final rule now defines "customer" as "a person that opens a new account" making clear that a person who does not receive banking services, such as a person whose deposit or loan application is denied, is not a customer. The definition of customer also excludes signatories from the definition of "customer." Moreover,

the final rule excludes from the definition of "customer" the following readily-identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)-(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[42]

Second, recordkeeping burden was further reduced by:

- eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include "a description" of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include "a description" of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and
- reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

[42] The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term "adequate notice."

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (see, e.g., 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and provided in accordance with the final rule, will be deemed adequate notice. In addition, it continues to permit banks to choose among a variety of low-cost methods of providing adequate notice and to select the least burdensome method, given the circumstances under which customers seek to open new accounts.

Treasury and the Agencies also believe that nominal burden is associated with the new recordkeeping requirement in § 103.121(b)(6). This section permits a bank to rely on another financial institution to perform some or all its CIP under certain conditions, including the condition that the financial institution enter into a contract with the bank providing that it will certify annually to the bank that it (1) has implemented its anti-money laundering program and (2) will perform (or its agent will perform) the specified requirements of the bank's CIP. Not all banks will choose to rely on a third party. For

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proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

those that do, the minimal burden of retaining the certification described above should allow them to reduce net burden under the rule by such reliance.

Burden Estimates

Treasury and the Agencies have reconsidered the burden estimates published in the proposed rule, given the comments stating that the burdens associated with the paperwork collections were underestimated. Having done so, and considering the reduction in burden taken in this final rule, Treasury and the Agencies have adjusted their estimates of the paperwork burden of this rule. The burden estimates that follow are estimates of the incremental burden imposed upon banks by this final rule, recognizing that some of the requirements in this rule are a usual and customary practice in the banking industry, or duplicate other regulatory requirements.

The potential respondents are national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); Federally insured credit unions (NCUA financial institutions); and certain non-Federally regulated credit unions, private banks, and trust companies (FinCEN institutions).

Estimated number of respondents:

OCC: 2207.

Board: 1240.

FDIC: 5,500.

OTS: 962.

NCUA: 9,688.

FinCEN: 2,460.

Estimated average annual recordkeeping burden per respondent: 10 hours.

Estimated average annual disclosure burden per respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 242,627 hours.

Treasury and the Agencies invite comment on the accuracy of the burden estimates and invite suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506-0026), Washington, DC 20503 (or by the Internet to jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

Executive Order 12866

Treasury, the OCC, and OTS have determined that the final rule is not a "significant regulatory action" under Executive Order 12866 for the following reasons.

The rule follows closely the requirements of section 326 of the Act. Moreover, Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the final rule because the procedures are a matter of good business practice. In addition, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this final rule.

At the proposed rule stage, Treasury, the OCC, and OTS invited national banks, the thrift industry, and the public to provide any cost estimates and related data that they

think would be useful in evaluating the overall costs of the rule. Most of the cost estimates provided by commenters related to the requirements in the proposed rule that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed. As described in the preamble, the final rule eliminates signatories from the definition of "customer," and no longer requires a bank to keep copies of documents used to verify a customer's identity. The final rule also reduces the universe of records that must be kept for five years after an account is closed. Treasury, the OCC and the OTS have taken other steps that significantly reduce the scope of the rule and the burden of the rule. These burden-reducing measures are described in the Paperwork Reduction Act discussion and Regulatory Flexibility Act discussion, above. [43]

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

[43] For these same reasons, and consistent with section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Treasury, the OTS and the OCC have also determined that this final rule will not result in expenditures by
State, local, and tribal governments in the aggregate, or by the private sector of $100 million or more in any one year, and therefore the rule is not subject to the requirements of section 202 of that Act.

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and Recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 748

Credit unions, Crime, and Security measures.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements,
Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103-FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107-56, 115 Stat. 307.

§ 103.11 [Amended]

2. Section 103.11(j) is amended by removing "paragraph (q)" and adding "paragraph (hh)" in its place.

§ 103.34 [Amended}

3. Section 103.34 is amended as follows:

a. By amending the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "May 31, 1978" and after the words "June 30, 1972";

b. By amending paragraph (b)(11) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number;" and

c. By amending paragraph (b)(12) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number."

2. Subpart I of part 103 is amended by adding new §103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) Definitions. For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3) (i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii)-(iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) Customer Identification Program: minimum requirements.

(1) In general. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's

assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) Customer information required. (A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or

number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) Credit card accounts. In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a bank may use the following sample language to provide notice to its customers:

> IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
>
> To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.
>
> What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) Exemptions. The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) Other requirements unaffected. Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Governors of the Federal Reserve System, _____, 2003.

_____

Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Directors of the Federal Deposit Insurance Corporation this _____ day of _____.

_____

Valerie J. Best,
Assistant Executive Secretary.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

Dated: _____

In concurrence:

_____

James E. Gilleran,
Director, Office of Thrift Supervision.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

Dated: _____

In concurrence:

_____

Becky Baker,
Secretary of the Board, National Credit Union Administration.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 21– MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

SUBPART C-PROCEDURES FOR MONITORING BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881-1884 and 3401-3422; 31 U.S.C. 5318.

2. In § 21.21:

A. Revise the section heading; and

B. Revise § 21.21(b) to read as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations

issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated:

John D. Hawke, Jr.,
Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Revise § 208.63(b) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(b) Establishment of BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., and 3901 et seq.; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

2. In § 211.5, add new paragraph (m) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Each Edge or agreement corporation is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

3. In § 211.24, add new paragraph (j) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

By order of the Board of Governors of the Federal Reserve System, April ___, 2003.

Jennifer J. Johnson,
Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set out in the preamble, the FDIC amends title 12, chapter III of the Code of Federal Regulations, as set forth below:

PART 326 – Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

1. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881-1883; 31 U.S.C. 5311-5314 and 5316-5332.2.

2. Revise § 326.8(b) to read as follows:

§ 326.8 Bank Secrecy Act compliance.

* * * * *

(b) Compliance procedures. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the Bank Secrecy Act compliance program required under this section.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation this __ day of April 2003.

Valerie J. Best,
Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set out in the preamble, OTS amends title 12, chapter V of the Code of Federal Regulations, as set forth below:

PART 563 - SAVINGS ASSOCIATIONS - OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

2. In § 563.177:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 563.177 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) Customer identification program. Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OTS and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: _____

James E. Gilleran,
Director, Office of Thrift Supervision.

National Credit Union Administration

12 CFR Chapter VII

For the reasons set out in the preamble, NCUA amends title 12, chapter VII of the Code of Federal Regulations, as set forth below:

PART 748 – SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

2. In § 748.2:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each federally-insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR Part 103. The compliance program must be written, approved by the credit union's board of directors, and reflected in the minutes of the credit union.

(2) Customer identification program. Each federally-insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * *

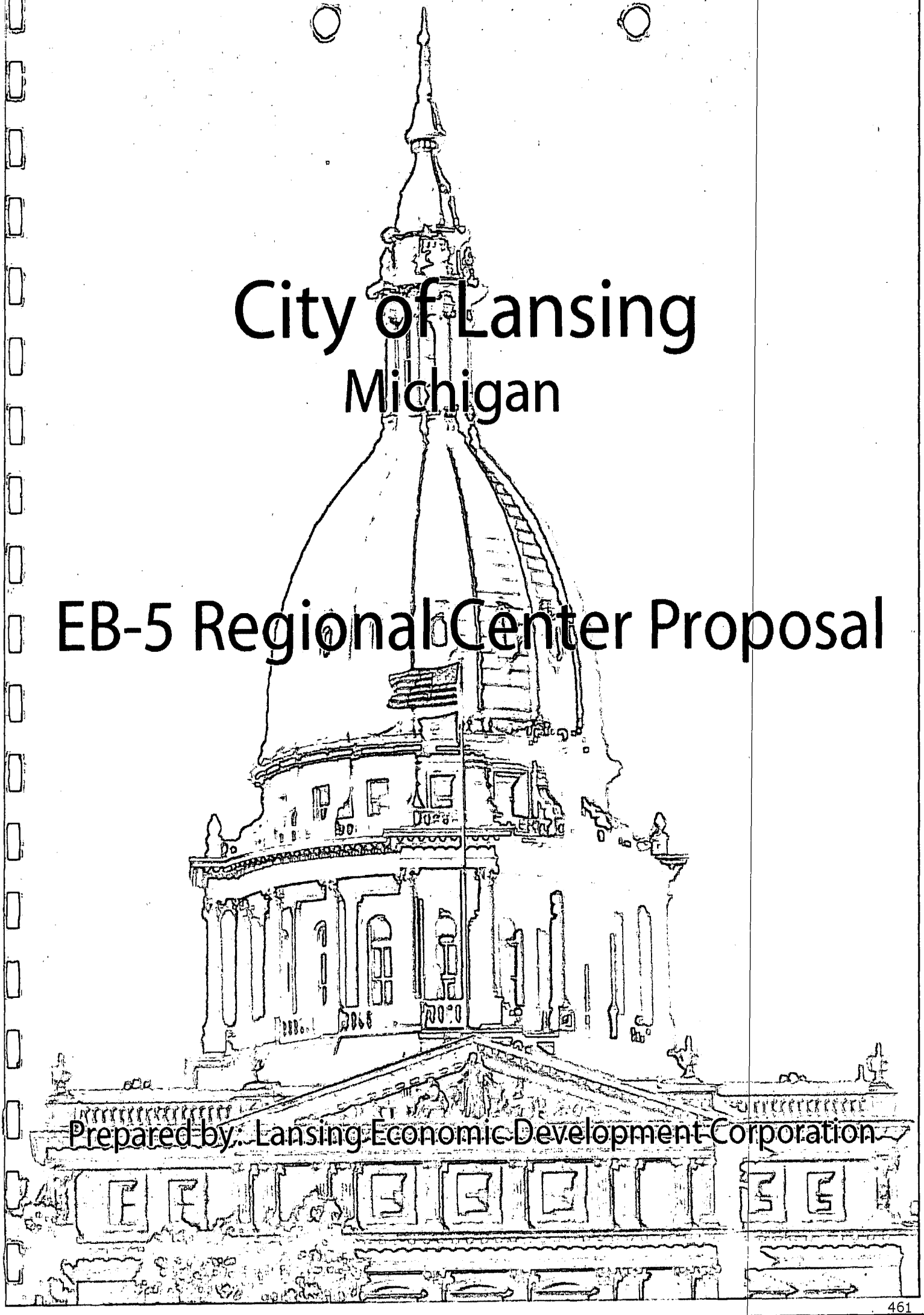
Dated: April ___, 2003.

Becky Baker,
Secretary of the Board, National Credit Union Administration.

DUPLICATE COPY

City of Lansing
Michigan

EB-5 Regional Center Proposal



Prepared by: Lansing Economic Development Corporation

LANSING ECONOMIC DEVELOPMENT CORPORATION

401 S. WASHINGTON SQ., SUITE 100, LANSING MI 48933, PHONE: (517) 483-4140 FAX: (517) 483-6057
www.edc.cityoflansingmi.com

Virg Bernero, Mayor

Lansing Economic Development Corporation
Lansing Tax Increment Finance Authority
Lansing Brownfield Redevelopment Authority
Lansing Regional SmartZone℠

Ms. Barbara Q. Velarde
Chief, Office of Service Center Operations
20 Massachusetts Ave., NW
Room 2123
Washington, D.C. 20529

Dear Ms. Velarde:

It is the objective of the Lansing Economic Development Corporation (LEDC) to obtain an EB-5 Regional Center designation for the city of Lansing, with the intent of utilizing foreign investment to spur economic development within the city and the entire Greater Lansing region. Michigan's recent economic struggles and those related to the automotive industry have had a profound impact on Lansing's economic makeup. The LEDC feels that by utilizing the EB-5 investment program the city can better leverage our assets and position Lansing as a leader in Michigan's economic rebound.

Like most mid-western industrial cities, the core community of Lansing has been decimated by urban sprawl of surrounding townships, high unemployment, aging infrastructure, contaminated properties, declining public school systems, and high property taxes. Additionally the city has seen unemployment rates grow to over 150% of the national average.

However, even with the many challenges the city faces there is plenty of optimism. In the past two years there has been a renewed interest in downtown development and the city has made huge strides:

- New private investment exceeding $600 million dollars over the past two years.
- 897% increase in private investment since 2005.
- 443% increase in private job creation since 2005.
- 277% increase in job retention since 2005.

The LEDC Regional Center intends to capitalize on recent momentum by focusing foreign investment toward target markets and industries that have proven successful track records and a demonstrated need in our community. These markets include:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism

- Manufacturing / Warehousing
- Info-, Bio-, & High- Technology Companies
- Higher Education

Lansing continues to emerge as a true urban destination as well as a hub for technological innovation. Increased demand for investment capital has presented unprecedented opportunities and the implementation of the EB-5 Regional Center program will allow the city to open its doors to international capital and position itself as a city that is receptive to the global economy. I appreciate your consideration of our request and look forward to your concurrence with our proposal.

Sincerely,

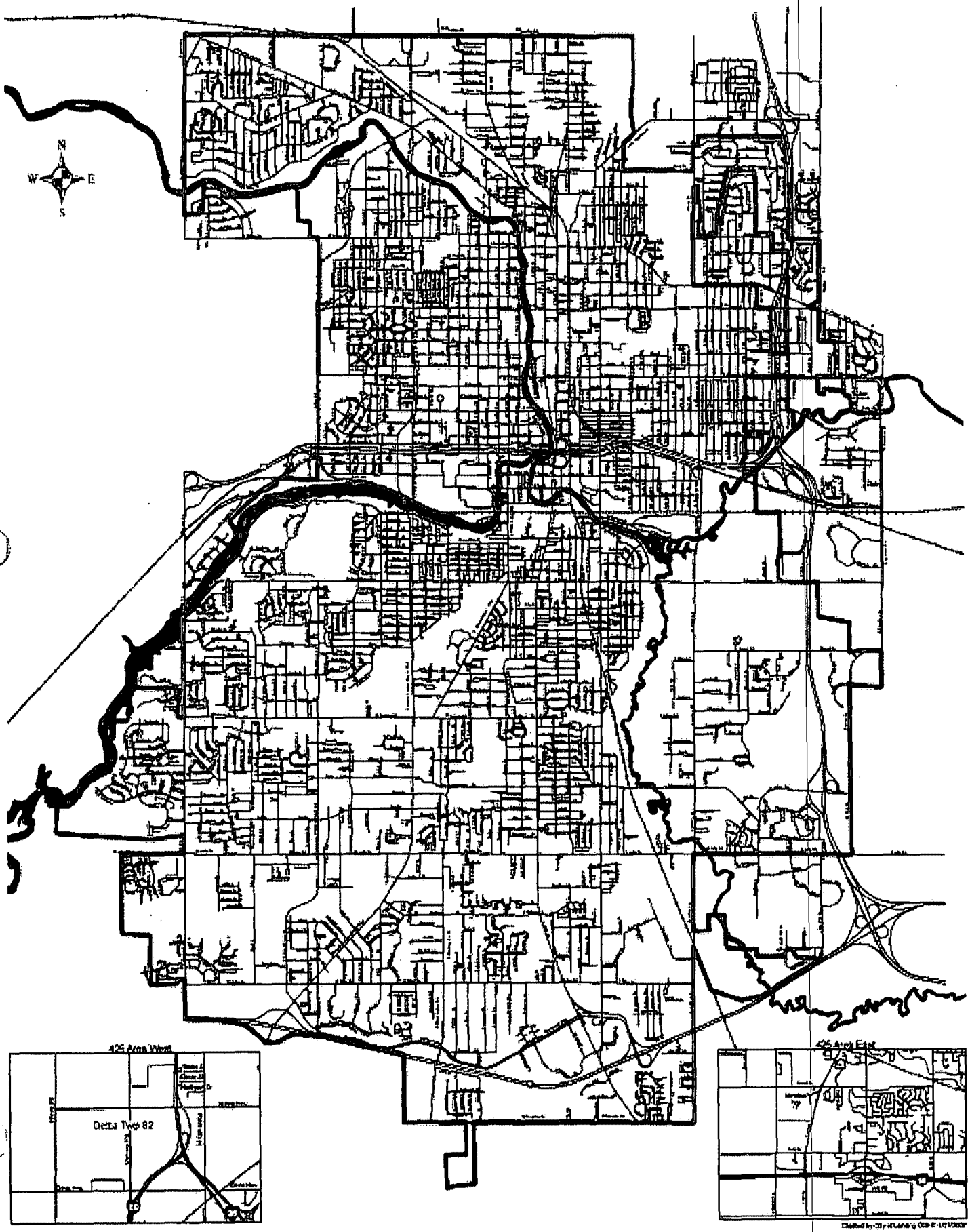
Robert L. Trezise, Jr.
President & CEO
Lansing Economic Development Corporation

Table of Contents

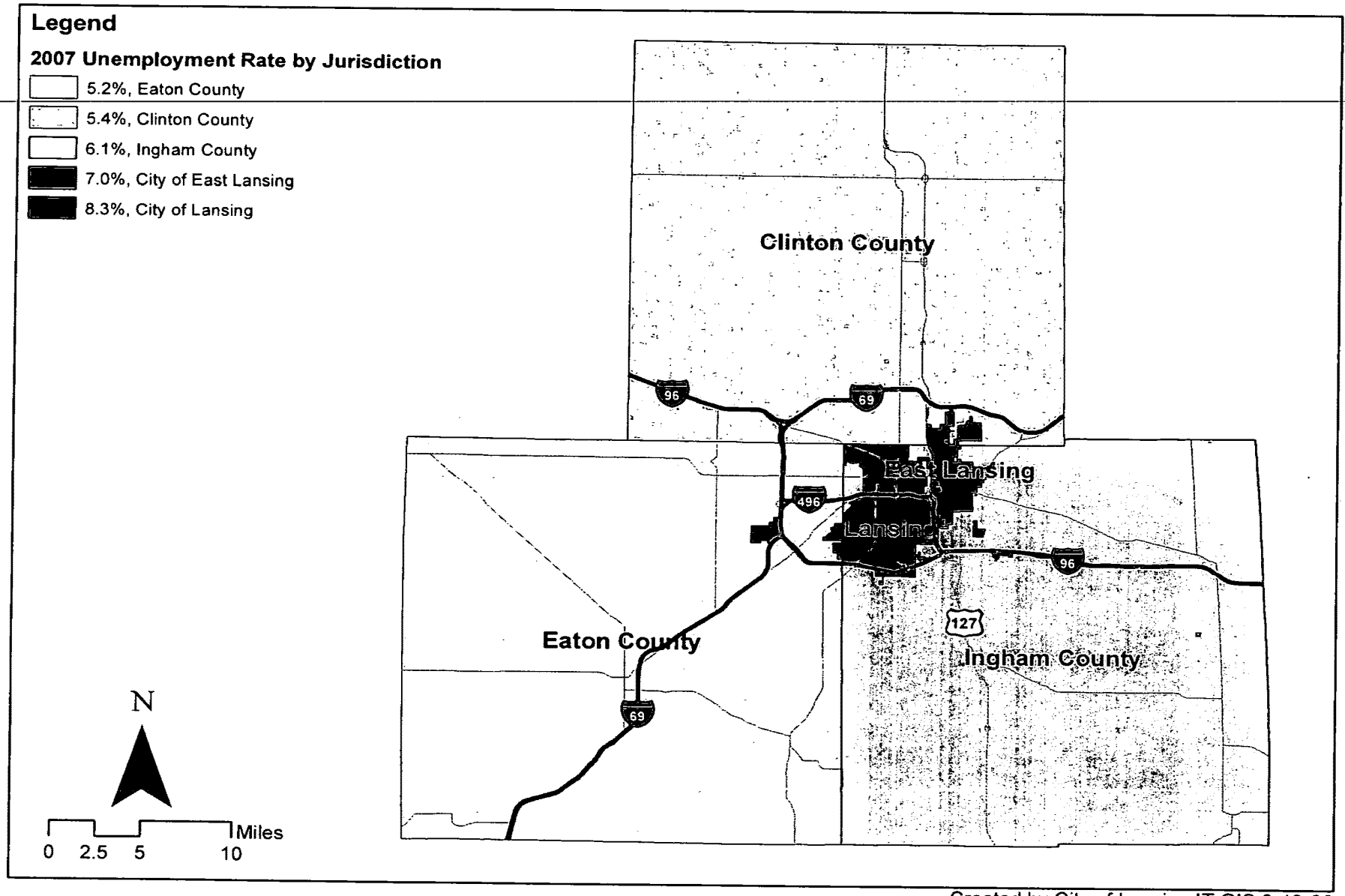
Description of Geographical Boundary

The Lansing Regional Center will invest all EB-5 funds within the geographic boundaries of the city of Lansing including all applicable properties subject to State of Michigan Public Act 425 agreements. The boundary of the proposed Regional Center is graphically represented in the attached map.

City of Lansing



2007 Year End Unemployment



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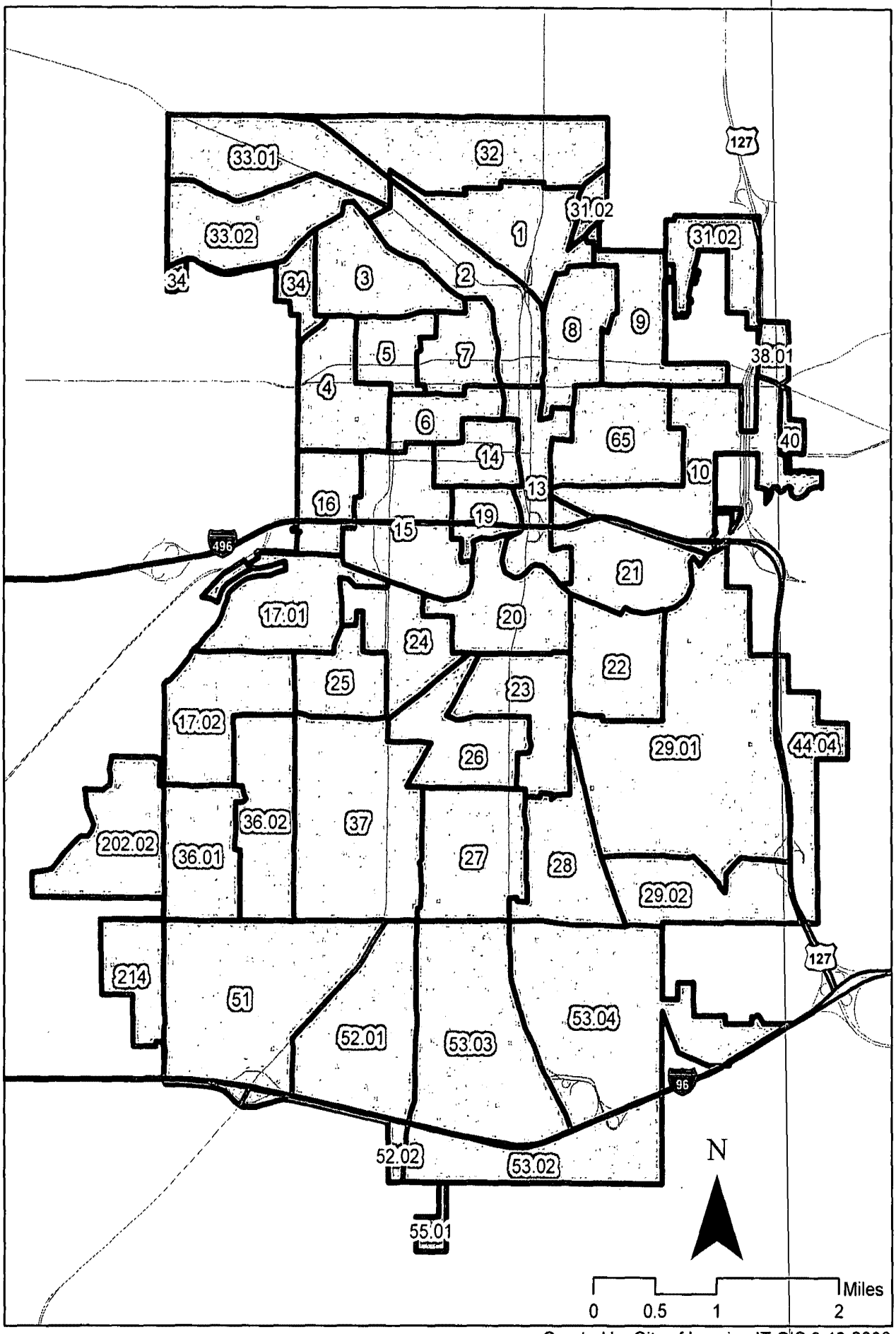
City of Lansing 2000 Census Tracts



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Investment Objectives & Target Industries

Investment Objectives:
It is the intent of the Lansing Regional Center to serve as an equity partner in qualified companies or projects which will provide investors with minimized risk, and favorable return on investment while contributing to the economic growth of the City of Lansing and subsequently the Greater Lansing Region.

Target Investments:

Business investment and development in the City of Lansing through the Lansing Regional Center will focus on key industries which show strong indications of growing market demand, expansion capabilities, growing employment demand and high returns on investment. The Lansing Regional Center will focus on investing in projects within the following target markets:

- Mixed-use Urban Real Estate Development
- Hospitality / Tourism
- Manufacturing / Warehousing
- Info-, Bio-, & High-Technology
- Higher Education

Mixed-use Urban Real Estate Development: In the past 3 years downtown Lansing has emerged as the premier urban live / work destination in mid-Michigan and has yet to meet capacity in this regard. The central business district continues to regain market share in regards to commercial office space as companies seek to abandon ubiquitous sprawling township office parks for true urban offices that are essential to attracting today's young urban oriented talent. In fact the majority of the city's new residential and retail units, 450 units in 3 years, have been brought online with almost 100% absorption and the trend is not slowing. The Lansing Regional Center looks to accelerate this progress by partnering with real estate developers to transform downtown with new projects that will meet and appeal to the demand currently created by the city's large student population and growing young professional crowd. The presence of three world class higher education providers in Michigan State University, Cooley Law School, and Lansing Community College have provided the region with an unbelievable talent pool and a population searching for new urban living and entertainment options. Examples of such projects include loft condominiums and apartments, street level bars and restaurants, new class A office space, cutting edge entertainment venues, and entrepreneurial incubator space. As the global economy continues to expand, new opportunities are being created that encourage our young talent pool to stay and grow the city and state, and the Lansing Regional Center will be a key component in creating a true vibrant urban community essential to the retention of these talented

individuals and entrepreneurial businesses.

Hospitality / Tourism: Recently the city of Lansing has also become a true entertainment and conference mecca, which is no wonder given the region's abundant resources:

- The 120,000 s.f. municipally owned Lansing Center is the region's premier conference and banquet facility and host to plethora of meetings, trade shows, and special events.
- The enormously successful Lansing Lugnuts baseball franchise, the Class A Midwest League affiliate of the Toronto Blue Jays; and their magnificent Oldsmobile Park Stadium constructed in 1996.
- The nationally recognized week long Common Ground Music Festival with over 30 bands on 3 stages, which has doubled in attendance to nearly 100,000 spectators over the past 5 years.
- The Wharton Center for the Performing Arts located at Michigan State University, which in 2006 ranked #5 in attendance among global theater venues ahead of some of the world's most storied venues including the Radio City Music Hall and Royal Albert Hall.

The city, working in tandem with the Greater Lansing Convention and Visitors Bureau, and the Lansing Entertainment & Public Facilities Authority plans to continually invest in marketing a strong tourism and convention industry supported by new real estate development, expanding entertainment opportunities, and a centralized location. The Lansing Regional Center will target specific tourism related projects including downtown hotels, convention center expansion plans, a new performing arts center, and the creation of a state of the art movie studio soundstage to accommodate Michigan's rapidly growing film industry.

Manufacturing / Warehousing: From the founding of Oldsmobile to the two most advanced and new manufacturing plants in the General Motor's portfolio, Lansing has a deep history in manufacturing. In addition to GM, Lansing is home to some the world's largest manufacturing companies including Barnes Aerospace, Pratt & Whitney, and Johnson Controls. Yet, like many mid-Western cities, Lansing has also faced the problems of a manufacturing dependent economy and the growing pains associated with increased global competition. However, through entrepreneurship, university research, and utilization of the city's highly trained workforce; new niche market high-tech manufacturing opportunities are arising. Innovative companies such as Demmer Corporation and Niowave Inc, are each respectively leading the way in defense contracting and particle accelerator technologies. In fact, through diversification, as well as aggressive action by the Lansing EDC, Demmer Corporation has added over 1,000 new employees in the last 3 years! And the future of manufacturing in Lansing continues to brighten as new innovative manufacturing companies utilizing Michigan State University patents and research are continuously emerging

with technologies the world has never seen before. These companies present tremendous growth opportunities as well as the potential for enormous international product export potential. The Lansing Regional Center will invest in projects related to the growth of this rapidly diversifying sector including investment in product warehousing, manufacturing incubators, company expansion, and capital for university patented technology start-ups.

Info-, Bio-, High- Technology: In recent years Lansing has quickly become a hub of growth in the fields of information and bio-technology. Between 1998 and 2004, the greater Lansing Information Technology industry grew by 20 percent, which is about seven times faster than the rate for all jobs. This continued growth can be attributed to the number of institutions of higher learning and the availability of talent in the Lansing region. This growth potential has led to recent announcements that will not only transform Greater Lansing's regional economy, but possibly the world. It was recently announced that Michigan State University will serve as the home of the Facility for Rare Isotope Beams (FRIB) furthering MSU's prowess as the nation's premier institution for particle acceleration research. Additionally, IBM recently announced the creation of a new Global Data Center at MSU, the first of its kind in the United States. Even with all of the success, when compared to other regions Lansing has yet to reach full potential for growth in this sector. Lansing Regional Center funds will focus investment to encourage entrepreneurship and assist rapidly growing companies. Investments may include high-tech incubator development, university/student entrepreneur incubator development, start-up capital investment, as well as storage and laboratory services.

Higher Education: The greater Lansing region is home to a very large number of higher education institutions which continue to gain global influence. The Lansing Regional Center will be uniquely positioned to assist these institutions with the expansion of educational and research related facilities. Potential projects would involve the following institutions:

- Michigan State University – One of the world's largest universities (42,000+ students) and home of some of the world's leading research including the newly awarded site for the Facility for Rare Isotope Beams (FRIB) which further enhances MSU's prowess as the leader in atomic research.
- Lansing Community College – Home of 20,000+ students, a provider of outstanding vocational degrees and certifications, as well as a feeder for Bachelors degree programs to the State of Michigan's finest universities.
- Thomas M. Cooley Law School - The nation's largest and most diverse law school with a student base of approximately 3,000.

Economic Impact Modeling

The Lansing Regional Center will utilize the United States Bureau of Economic Analysis RIMS II modeling system as the primary mechanism for determining indirect job creation associated with immigrant invested funds. However, it is important to note that, depending on the target industry, it is the intent of the Lansing Regional Center to invest in projects that will be able to reflect direct employment creation figures that will satisfy EB-5 Regional Center requirements.

Due to the diversity of target industries to which investment will flow through the Lansing Regional Center it is our conclusion that the RIMS II modeling system will provide the most accurate depiction of the investments within our regional economy. Each investment will be analyzed thoroughly prior to fund disbursement to ensure that employment growth expectations will be attained. For example, sectors such as mixed-use real estate development projects may require the use of industry specific ratios associated with employment and square footage. When these ratios are utilized, all sources of information will be obtained from leading industry resources and all citation and contacts will be provided with EB-5 verification reports.

Information regarding the use of RIMS II multipliers as well as applicable multipliers for the Greater Lansing Region can be found on immediately following pages.

Greater Lansing RIMS II Economic Multipliers

INDUSTRY	Multiplier					
	Final Demand				Direct Effect	
	Output (dollars)	Earnings (dollars)	Employment (jobs)	Value-added (dollars)	Earnings (dollars)	Employment (jobs)
Agriculture, forestry, fishing, and hunting						
1 Crop and Animla Production	1.7922	0.2667	15.7506	0.7795	2.6219	1.6602
2 Forestry and Fishing and related activities	1.9029	0.7725	36.0869	0.9631	1.1411	1.2619
Mining						
3 Oil and gas extraction	1.3974	0.3443	6.4346	0.86	1.4303	1.983
4 Mining, except oil and gas	1.4103	0.2784	5.3944	0.8379	1.1591	2.2288
5 Support activities for mining	1.5358	0.2681	5.9544	0.8328	2.3206	2.6867
Utilities						
6 Utilities	1.2917	0.2088	3.563	0.7735	1.1576	2.7917
Construction						
7 Construction	1.7612	0.5283	14.6427	0.9368	1.6191	1.7722
Manufacturing						
8 Wood product manufacturing	1.6151	0.2984	8.3259	0.6644	2.0124	2.0842
9 Nonmetallic mineral product manufacturing	1.6939	0.4245	9.4985	0.8248	1.7179	2.1508
10 Primary metals manufacturing	1.4964	0.3217	6.7138	0.551	1.6718	2.2166
11 Fabricated metal product manufacturing	1.5853	0.3467	8.3438	0.7416	1.7581	1.922
12 Machinery manufacturing	1.6245	0.4269	9.1841	0.7429	1.6323	2.036
13 Computer and electronic product manufacturing	1.6376	0.403	8.7283	0.7307	1.7491	2.1982
14 Electrical equipment and appliance manufacturing	1.525	0.3639	7.532	0.6783	1.6079	2.0699
15 Motor vehicle, body, trailer, and parts manufacturing	2.0233	0.299	6.6231	0.609	3.028	4.8381
16 Other transportation equipment manufacturing	1.4425	0.3082	6.0647	0.7052	1.6101	2.223
17 Furniture and related product manufacturing	1.7042	0.3159	7.847	0.7521	2.2403	2.5685
18 Miscellaneous manufacturing	1.6943	0.5506	10.7663	0.8572	1.4978	2.0207
19 Food, beverage, and tobacco product manufacturing	1.8604	0.3157	9.1893	0.6888	2.676	3.57
20 Textile and textile product mills	1.5375	0.3249	8.6956	0.5825	1.7616	1.8489
21 Apparel, leather, and allied product manufacturing	1.6099	0.4527	13.7619	0.8624	1.5809	1.5929
22 Paper manufacturing	1.4545	0.2519	5.6124	0.5764	1.9417	2.4672
23 Printing and related support activities	1.6368	0.4599	11.7742	0.8341	1.5809	1.732
24 Petroleum and coal products manufacturing	1	0	0	0	0	0
25 Chemical manufacturing	1.552	0.2637	5.0432	0.6315	2.1253	3.6404
26 Plastics and rubber products manufacturing	1.6051	0.257	6.1267	0.6552	2.1934	2.4269
Wholesale Trade						
27 Wholesale Trade	1.6381	0.4584	10.0223	1.0328	1.5921	2.0622
Retail Trade						
28 Retail Trade	1.721	0.4858	19.5613	1.0496	1.6155	1.393
Transportation & Warehousing						
29 Air transportation	1.5292	0.3618	8.2959	0.6543	1.6921	2.4061
30 Rail transportation	1.3601	0.1882	3.9612	0.7856	2.065	3.1778
31 Water transportation	1	0	0	0	0	0
32 Truck transportation	1.7979	0.464	12.4267	0.9155	1.8328	1.9883
33 Transit and ground passenger transportation	1.752	0.5475	24.6993	0.9177	1.5708	1.3314
34 Pipeline transportation	1.4715	0.2409	5.0892	0.6125	2.2323	3.5516
35 Other transportation and support actitivites	1.6927	0.6538	15.6905	1.175	1.3804	1.6005
36 Warehousing and storage	1.7588	0.6671	18.9673	1.2117	1.3893	1.4734
Information						
37 Publishing including software	1.7662	0.4406	9.9805	0.9795	1.8789	2.5901
38 Motion picture and sound recording	1.7177	0.4339	18.1524	0.8699	1.744	1.4724
39 Broadcasting and telecommunications	1.606	0.2917	6.7644	0.7972	2.1413	2.8483
40 Information and data processing services	1.7975	0.3486	9.7329	0.8976	2.5657	2.9658
Finance and Insurance						
41 Federal Reserve banks, credit intermediation and related services	1.4555	0.3326	7.557	1.0366	1.5731	1.9725
42 Securities, commodity contracts, investments	1.8851	0.6584	18.1622	1.0453	1.5516	1.6312
43 Insurance carriers and related actiivities	2.2097	0.5395	12.3695	1.0737	2.2495	2.6908
44 Funds, trusts, and other financial vehicles	1.6004	0.3734	8.2568	0.5798	1.8892	2.5757
Real estate and rental and leasing						
45 Real estate	1.3804	0.1496	5.0332	0.9229	2.7249	2.2475
46 Rental and leasing services and lessors of tangible assets	1.758	0.255	8.0042	0.8334	4.0137	3.5711
Professional, scientific, and technical services						
47 Professional, scientific, and technical services	1.8215	0.6314	13.9678	1.1083	1.5304	1.98

Management of companies and enterprises						
48 Management of companies and enterprises	1.9009	0.6401	11.3205	1.1328	1.5604	2.4951
Administrative and waste management services						
49 Administrative and support services	1.7623	0.5828	21.7553	1.0665	1.5277	1.4242
) Waste management and remediation services	1.7841	0.4313	11.0674	0.9108	1.8586	2.1906
Educational services						
51 Educational services	1.8925	0.658	28.0063	1.1162	1.4825	1.338
Health care and social assistance						
52 Ambulatory health care services	1.8192	0.6525	15.84	1.1498	1.4943	1.7531
53 Hospitals and nursing and residential care facilities	1.8478	0.6009	17.0924	1.0446	1.5613	1.6854
54 Social assistance	1.8683	0.6878	42.8046	1.109	1.4743	1.1961
Arts, entertainment, and recreation						
55 Performing arts, museums, and related activities	1.7942	0.5945	25.7107	1.149	1.5351	1.3694
56 Amusements, gambling, and recreation	1.6959	0.4616	20.3168	1.0421	1.5916	1.3502
Accomodation and food services						
57 Accomodation	1.6652	0.4583	20.2805	1.0045	1.597	1.352
58 Food services and drinking places	1.6995	0.4379	26.9427	0.8853	1.5965	1.2382
Other services						
59 Other services	1.8712	0.5386	20.7486	0.9914	1.6864	1.4896
Households						
60 Households	1.1215	0.2912	9.8777	0.6526	0	0

RIMS II Multipliers for Output, Earnings, and Employment

RIMS II provides users with five types of multipliers: Final-demand multipliers for output, for earnings, and for employment and direct-effect multipliers for earnings and for employment. These multipliers measure the economic impact of a change in final demand, in earnings, or in employment on a region's economy.[6] This section defines the RIMS II multipliers and gives brief examples of their use. (For a detailed discussion of the source data and methods used in the derivation of the RIMS II multipliers, see appendix A.)

Final-Demand Multipliers for Output

The final-demand multipliers for output are the basic multipliers from which all the other RIMS II multipliers are derived. They are presented in the final-demand output multiplier table. (For a sample of this table, designated as table 1.1, see appendix D.) In this table, each column entry indicates the change in output in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional output is calculated by multiplying the final-demand change in the column industry by the sum of all the multipliers for each row except the household row.[7]

For example, suppose that final demand in the food products machinery industry in the Kansas City BEA economic area (hereafter called the Kansas City economic area) increases by $1 million.[8] The effect of this increase in output on output in each industry in the economic area is calculated from the column of final-demand output multipliers for the food products machinery industry (summarized in column 1 in table A).[9] According to these calculations, the output of the farm products and agricultural, forestry, and fishing services industry increases by $15,000 (0.0150 times $1 million); the output of the industrial machinery and equipment industry, which includes the food products machinery industry, increases by $1.0393 million (1.0393 times $1 million); and total output in the economic area increases by $2.0655 million (2.0655 times $1 million).

Table A.—Final-Demand Multipliers for the Food Products Machinery Industry, Kansas City, MO-KS Economic Area

Industry	Output (dollars)	Earnings (dollars)	Employment[1] (jobs)
	(1)	(2)	(3)
Farm products and agricultural, forestry, and fishing services	0.0150	0.0036	0.2846
Industrial machinery and equipment	1.0393	.3072	9.8743
All other industries	1.0112	.2983	14.1743
Total	2.0655	.6091	24.3332

1. The employment multiplier is measured on the basis of a $1 million change in output delivered to final demand.

Multipliers for Earnings

RIMS II provides two types of multipliers for estimating the impacts of changes on earnings: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for earnings can be used if data on final-demand changes are available. In the final-demand earnings multiplier table, each column entry indicates the change in earnings in each row industry that results from a $1 change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact

6. The term "change in final demand," rather than the "change in output delivered to final users," is used in this handbook because of its widespread use in regional impact analysis.

The impact of an increase in final demand, earnings, or employment differs from that of a decline only by the sign of the impact.

7. The household row is excluded to avoid double counting, because each of the other row entries already includes earnings paid to households.

8. For a listing of the 1721 A BEA economic areas and associated metropolitan areas, see appendix E . For a discussion of the procedure used to define the BEA economic areas, see Kenneth P. Johnson, "Redefinition of the BEA Economic Areas." SURVEY OF CURRENT BUSINESS 75 (February 1995): 75–81.

9. For the complete final-demand output multiplier table for this economic area, see RIMS table 1.1 in appendix D.

on regional earnings is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on earnings in each industry in the Kansas City economic area is calculated from the multipliers for earnings in column 2 in table A . According to these calculations, earnings in the farm products and agricultural, forestry, and fishing services industry increases by $3,600 (0.0036 times $1 million); earnings in the industrial machinery and equipment industry increases by $307,200 (0.3072 times $1 million); and total earnings in the economic area increases by $609,100 (0.6091 times $1 million).

The direct-effect multipliers for earnings can be used if data on the initial changes in earnings by industry are available. In the direct-effect earnings multiplier table, each entry indicates the total change in earnings in the region that results from a $1 change in earnings in the row industry. The total impact on regional earnings is calculated by multiplying the initial change in earnings in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that workers in the industry will have additional annual earnings of $1 million. The effect of this increase on total earnings in the economic area is calculated by multiplying the initial change in earnings of $1 million by the multiplier in the row for the food products machinery industry in the direct-effect earnings multiplier table. The multiplier is 2.0829, so the total impact on the economic area is an earnings increase of $2.0829 million (2.0829 times $1 million).[10]

Multipliers for Employment

RIMS II provides two types of multipliers for estimating the impacts of changes on employment: Final-demand multipliers and direct-effect multipliers. These multipliers are derived from the table of final-demand output multipliers.

The final-demand multipliers for employment can be used if data on final-demand changes are available. In the final-demand employment multiplier table, each column entry indicates the change in employment in each row industry that results from a $1 million change in final demand in the column industry. The impact on each row industry is calculated by multiplying the final-demand change in the column industry by the multiplier for each row. The total impact on regional employment is calculated by multiplying the final-demand change in the column industry by the sum of the multipliers for each row.

For example, the effect of a $1 million increase in final demand in the food products machinery industry on employment in each industry in the Kansas City economic area is calculated from the multipliers for employment in column 3 in table A . According to these calculations, employment in the farm products and agricultural, forestry, and fishing services industry increases by 0.2846 jobs (0.2846 times 1 for each $1 million change in final demand); employment in the industrial machinery and equipment industry increases by 9.8743 jobs (9.8743 times 1); and total employment in the economic area increases by 24.3332 jobs (24.3332 times 1).

The direct-effect multipliers for employment can be used if data on the initial changes in employment by industry are available. In the direct-effect employment multiplier table, each entry indicates the total change in employment in the region that results from a change of one job in the row industry. The total impact on regional employment is calculated by multiplying the initial change in employment in the row industry by the multiplier for the row.

For example, suppose that output in the food products machinery industry in the Kansas City economic area increases so that 1,000 new jobs in the industry are created. The effect of this increase on total employment in the economic area is calculated by multiplying the initial change in employment of 1,000 jobs by the multiplier in the row for the food products machinery industry in the direct-effect employment multiplier table. The multiplier is 2.601, so the total impact on the economic area is 2,601 new jobs (2.601 times 1,000).[11]

Choosing a Multiplier

The choice of multiplier for estimating the impact of a project on output, earnings, and employment depends on the availability of estimates of the initial changes in final demand, earnings, and employment. If the estimates of the initial changes in all three measures are available, the RIMS II user can select any of the RIMS II multipliers. To assess the reasonableness of the impact estimates based on the multiplier selected, the user can compare these estimates with the estimates based on the other multipliers. In theory, all the impact estimates should be consistent.[12]

10. The multiplier is from RIMS table 1.4, which is not included in this handbook.

11. The multiplier is from RIMS table 1.4, which is not included in this handbook.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect

In theory, all the impact estimates should be consistent.[12] If the available estimates are limited to initial changes in final demand, the user can select a final-demand multiplier for impact estimation. If the available estimates are limited to initial changes in earnings or employment, the user can select a direct-effect multiplier.[13]

In some instances, such as estimating the impact of shutting down an industry in a region, the user must select the output-driven multiplier for impact estimation.[14] The output-driven multiplier measures the change in output in each row industry that results from a $1 change in total industry output in the column industry under study. Using the output-driven multiplier instead of the final-demand output multiplier ensures that the impact of the industry's shutdown on its own output will not exceed that output.

12. The impact estimates based on the product of the initial change in final demand and the final-demand multiplier for earnings (or employment) reflect national average relationships between output and earnings (or employment). In contrast, the impact estimates based on the product of the initial change in earnings (or employment) and the direct-effect multiplier for earnings (or employment) reflect regional relationships between output and earnings (or employment). If the regional relationships differ from the national relationships, the two sets of estimates will differ and the estimates based on the direct-effect multipliers are preferable.

13. In this instance, the user typically estimates earnings or employment impacts. However, by converting the initial changes in earnings or employment into final-demand changes, the user can also estimate output impacts. For the conversion method, see the section "Initial Changes."

14. This multiplier, though not a part of RIMS II, can be derived from the final-demand output multiplier table. See appendix A.

Lansing Regional Center Operational Finances

It is the intent of the Lansing Economic Development Corporation to incorporate the expenses of Lansing Regional Center activities within the fiscal year 2008-2009 into the LEDC's current budget (see attached) ending June 30th, 2009. This funding will be continued with subsequent budgets.

Operating Budget (Application – June 30, 2009)

Director's Salary (20 hrs / week):	$10,750
Marketing / Promotions:	$ 8,000
Legal / Audit:	$ 3,000

The LEDC will be requesting a $38,590 budget increase for fiscal year 2009-2010, and the program has the support of the administration in this request.

Operating Budget (July 1, 2009 – June 30, 2010)

Director's Salary (fulltime):	$ 58,000
Marketing / Promotions:	$ 25,000
Legal / Audit:	$ 15,000

Funds related to the EB-5 Regional Center will be allocated from the LEDC's yearly services contract with the city of Lansing.

Additionally, the LRC plans to assess a $30,000 non-refundable application fee in addition to an investors required capital investment which will be used for administrative and legal costs. Understanding that marketing and staff costs will accrue prior to the receipt of immigrant investment funds, the LRC plans to utilize the LEDC budget as previously stated.

The allocated funds will sustain the EB-5 Program with sufficient emphasis on marketing and legal, as well as adequate staffing expenses.

The LEDC has the sole discretion over the use of all allocated budget funds. Because the LEDC will serve as director of the EB-5 Regional Center all funds will be secure.

LANSING ECONOMIC DEVELOPMENT CORPORATION FY 2009 BUDGET

OPERATIONAL REVENUES Account Code	Description	FY 2008 Budget	As of 5/27/08 FY 2008 Actual Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.600002	Parking System Revenue	12,000	2,550	14,576	2,576	12,000	-
280.616101	Application Fees (Non-Brownfield)	19,500	18,000	18,500	(1,000)	13,000	(6,500)
280.616102	Brownfield Application Fees	7,500	34,500	34,500	27,000	14,000	6,500
280.635003	Contract Service LBRA (Admin Fee)	62,319	72,051	72,051.00	9,732	66,638	4,319
280.635004	Contract Service EPA Admin (BCRLF, Petro, HazSub)	2,750	151	151	(2,599)	100	(2,650)
280.635006	Contract Service City	241,300	241,300	241,300	-	339,160	97,860
280.635008	EDA/SmartZone	20,000	-	-	(20,000)	5,000	(15,000)
280.670000	Interest Income	27,000	65,683	58,434	31,434	36,893	9,893
280.670301	Loan Interest Income	33,504	26,106	42,788	9,284	34,282	778
280.679100	From Fund Balance (Includes $10,000 Federal Public Affairs Council for 2008 and $4,196 LCMF Loan Default Contingency for 2009)	20,000	-	10,000	(10,000)	4,196	(15,804)
280.680000	Miscellaneous Revenue	-	2,380	2,380	2,380	100	100
280.680002	Annual Issuer's Fees	4,600	-	4,600	-	4,600	-
280.696282	Operating Transfer - TIFA	273,399	-	282,467	9,068	290,614	17,215
	Subtotal	723,872	462,721	781,747	57,875	820,583	96,711
PROGRAM REVENUE (PASS THRU)							
280.547003	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
280.547004	Cool Cities Grant	65,000	61,725	61,725	(3,275)	35,000	(30,000)
280.635012	Façade Grant (Michigan Interfaith Trust Fund)	23,500	37,189	37,189	13,689	-	(23,500)
280.679100	Fund Balance ($12,110 IT Initiative/$81,564 Façade Grant Funds)	93,674	-		(93,674)	58,753	(34,921)
	Subtotal	192,174	106,340	106,340	(85,834)	93,753	(98,421)
	Total Revenue	**916,046**	**569,061**	**888,087**	**(27,959)**	**914,336**	**(1,710)**

OPERATIONAL EXPENSES Account Code	Description	FY 2008 Budget	FY 2008 Year-to-Date	FY 2008 Year-End Projection	Difference of 2008 Budget & Year-End Proj	FY 2009 Proposed Budget	Difference of 2008-2009 Budgets
280.172650.702000.	Salaries	383,600	333,129	376,991	(6,609)	389,700	6,100
280.172650.715000.	Fringe Benefits	9,000	8,278	7,941	(1,059)	9,000	-
280.172650.715002.	Fringe Benefit Cafeteria Plan	161,100	123,922	146,820	(14,280)	163,700	2,600
280.172650.741000.	Miscellanious Operating (Includes $10,000 Public Affairs Council in 2008	35,000	18,108	23,019	(11,981)	15,000	(20,000)
280.172650.741200.	Promotions/Marketing	68,219	45,133	55,209	(13,010)	150,452	82,233
280.172650.741810.	Dues and Subscriptions	1,325	1,100	1,145	(180)	2,205	880
280.172650.743000.	Contractual Services (Audit & Legal Fees)	22,500	17,752	17,752	(4,748)	23,300	800
280.172650.744000.	Utilities	10,300	8,449	8,955	(1,345)	15,180	4,880
280.172650.745100.	Building Rental	20,028	20,028	20,028	-	20,028	-
280.172650.747000.	Training/Conference	10,000	5,893	7,886	(2,114)	25,000	15,000
280.172650.748000.	Insurance & Bonds	2,800	2,506	2,506	(294)	2,822	22
000.000000.000000	LCMF Loan Default	-	-	-	-	4,196	4,196
	Subtotal	723,872	584,298	668,252	(55,620)	820,583	96,711
PROGRAM EXPENSE (PASS THRU)							
280.172650.743020	Fund Balance (Michigan Interfaith Trust Fund Grant Funds)	23,500	15,000	37,189	13,689	-	(23,500)
280.172650.743020	Fund Balance (12,110 IT Initiative/$81,564 /Façade Grant Funds)	93,674	34,921	58,753	(34,921)	58,753	(34,921)
280.172650.743021	Cool Cities Grant	65,000	98,925	61,725	(3,275)	35,000	(30,000)
280.172650.974020	EDC-MDEQ Grant 2007	10,000	7,426	7,426	(2,574)	-	(10,000)
	Subtotal	192,174	156,272	165,093	(27,081)	93,753	(98,421)
	Total Expenses	**916,046**	**740,570**	**833,345**	**(82,701)**	**914,336**	**(1,710)**
	Difference between Revenue and Expense	**0**	**(171,509)**	**54,742**	**54,742**	**0**	**0**

Revised April 24, 2008 Revised April 24, 2008

Escrow & Custodial Financial Services

The Lansing Regional Center has entered into agreement with Fifth Third Bank to serve as escrow and custodial agent with all funds related to the Lansing Regional Center EB-5 Immigration through investment program.

Fifth Third will perform custodial services for all escrowed funds and will serve as the primary contact for all funds related to the Regional Center. Invested funds will undergo a comprehensive due diligence process performed by Fifth Third Bank to certify all invested funds were obtained legally and in adherence with the U.S. Patriot Act Section 326 as provided in *Appendix 1* of this application.

In addition to the performance of escrow and custodial services Fifth Third Bank will handle all foreign currency exchange and provide all interested applicants with a full suite of ***expatriate banking services*** to assist with all aspects of financial planning when locating to the United States. A description of these services is provided in subsequent pages.

Contact Info:

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Senior Private Client Administrator
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Curtis D. Ballast, Vice President
Fifth Third Bank - Institutional Services
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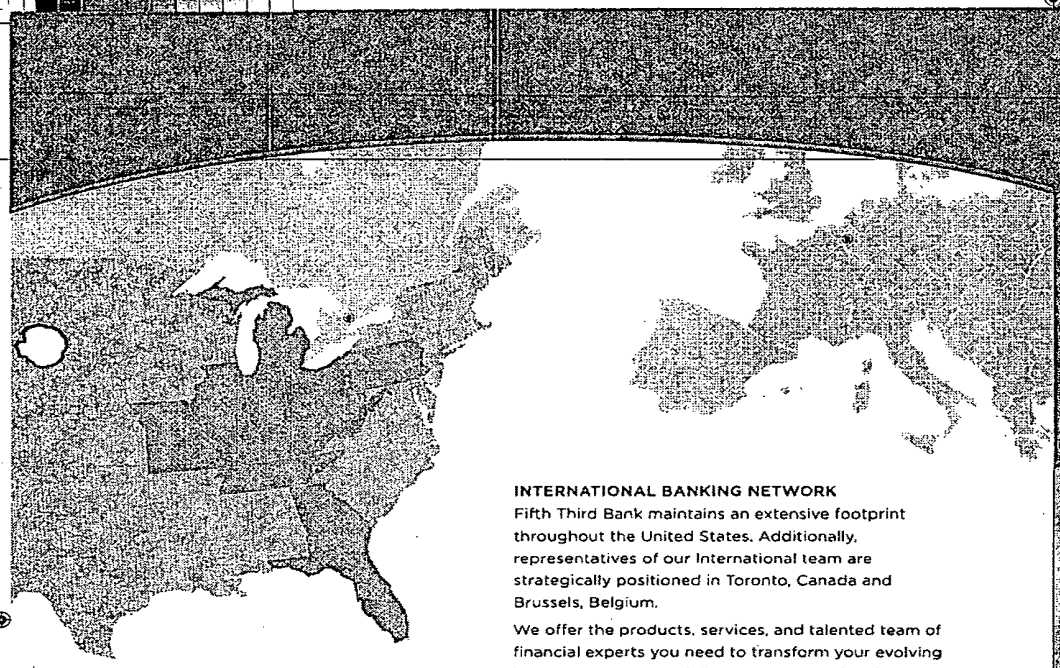
Grand Rapids, MI 49503
PH: 616-653-5235
curt.ballast@53.com



FIFTH THIRD BANK

International Banking

INTERNATIONAL BANKING NETWORK

Fifth Third Bank maintains an extensive footprint throughout the United States. Additionally, representatives of our International team are strategically positioned in Toronto, Canada and Brussels, Belgium.

We offer the products, services, and talented team of financial experts you need to transform your evolving business and successfully operate on a global scale.

Fifth Third Bank Contacts

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For more information on Fifth Third Bank's International Banking Solutions, please visit www.53.com

FIFTH THIRD BANK

150 Years of Banking Experience

As one of the oldest and most successful Financial Institutions in the United States, Fifth Third Bank has been serving the needs of the International Banking community for several decades. The Bank's success can be traced to our commitment to understanding and meeting the unique needs of our clients. Our proud heritage is deeply rooted in personalized service and a dedication to building lasting partnerships with our international clients.

Our team understands the importance and necessity of operating in a global marketplace. Success in this environment is often predicated on selecting the 'right' financial partner. Fifth Third Bank is well positioned to fulfill that role and we look forward to introducing you to our International team and the products and services they manage.

FIFTH THIRD BANK

Fifth Third Bank's International Team

Our commitment to the International community is supported by a large team of specialized International Bankers whose primary focus is understanding and meeting your specific needs in the financial marketplace.

At a glance, our team is...

- Strategically dispersed to better understand local economies and have direct access with the clients they serve.
- Easily accessible to European parent companies through our office in Brussels, Belgium.
- Supported by a full service Canadian branch in Toronto.
- Currently servicing the needs of more than 1,200 foreign-owned corporate clients and 5,000 expatriate banking customers.
- Backed by one of the largest foreign exchange trading desks in the United States.
- Comprised of International Relationship Managers that serve as a primary contact within Fifth Third Bank.
- Fluent in several European languages.

BANKING SOLUTIONS

Fifth Third's International Banking Team has the experience, insight and resources to deliver a complete package of financial solutions to meet our clients' specific needs. We provide customized financial solutions to minimize risk and maximize opportunities in the international marketplace.

Fifth Third Bank's broad array of banking services include:

- **Cash Management** and depository services for U.S. and foreign parent companies.
- **Internet Banking** provides a secure channel facilitating balance reporting, funds transfers, and receivable and payable solutions.
- **Lockbox/Imaging** service for U.S. check collection potentially reducing float and increasing cash flow.
- **Financing/Leasing** for U.S. subsidiaries of foreign owned companies including lines of credit, term loans and equipment financing.
- **Credit Card** payment solutions through issuance and merchant services.
- **Expatriate Banking** including depository and savings accounts, credit cards, vehicle and home loans. A staff of bilingual expatriate bankers is on hand to assist with all your banking needs.
- **Global Treasury Management** services including foreign currency exchange, multi-currency accounts, wires and drafts.
- **Trade Services** including export financing, letters of credit, and documentary collections.

Key Data Points

Fifth Third Bank ranks in the Top 15 (top 1%) of all bank holding companies in the United States.

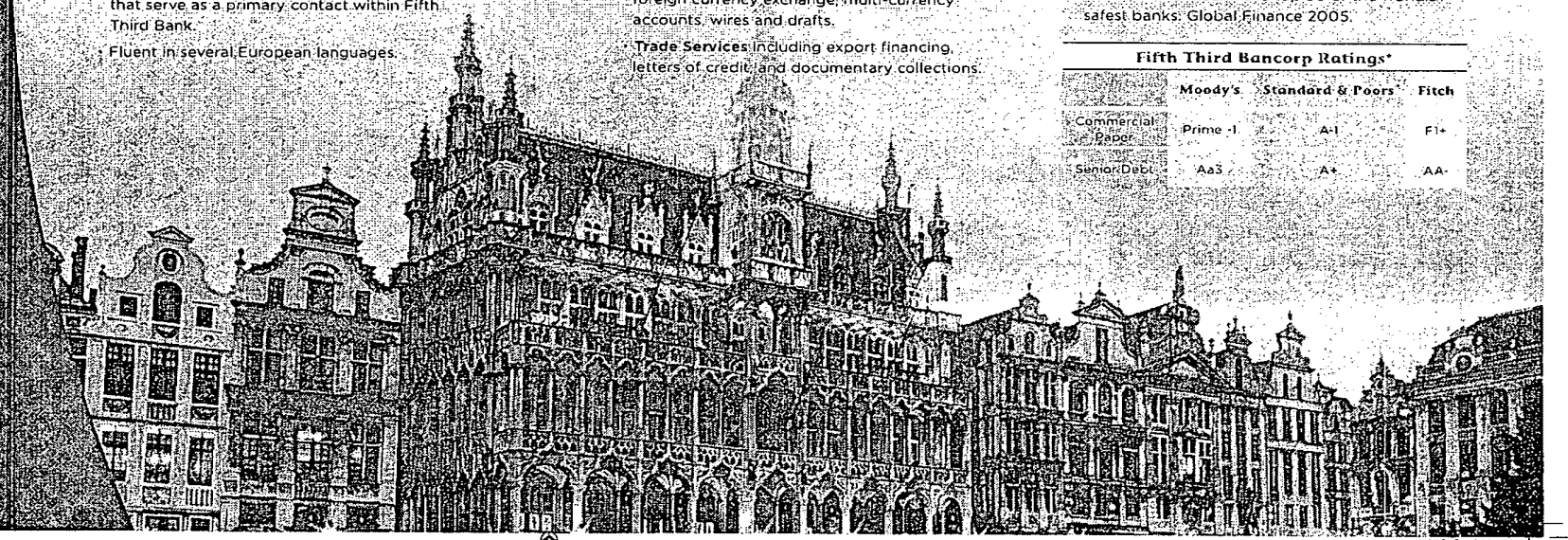
- More than $100 Billion in assets
- Extensive network of foreign exchange trading desks
- 22,000 Employees
- Strategically located throughout the manufacturing corridor of the United States
- European representative office established in 1996

Additional Worthy Accolades

- **Fortune 500 Company**
  Ranked in the top 300 of the largest U.S. Corporations.
- **Forbes Global 2000**
  Ranked in the top 350 of the world's largest public companies.
- **Most Trusted Retail Banks**
  Fifth Third Bank ranked second in the list of most trusted U.S. Banks for safeguarding customer data. 2006 Privacy Trust Study.
- **World's Safest Banks**
  Fifth Third ranked in the top 50 of the world's safest banks. Global Finance 2005.

Fifth Third Bancorp Ratings*

	Moody's	Standard & Poors	Fitch
Commercial Paper	Prime -1	A-1	F1+
Senior Debt	Aa3	A+	AA-



Legal Services

Legal services for the Lansing Regional Center will be provided by Foster, Swift, Collins and Smith, P.C. a Michigan based multi practice law firm which was established in 1902. Foster Swift will be handling all administrative work regarding immigration documents as well as overseeing the execution of all escrow and partnership agreements related to Lansing Regional Center projects.

Contact Info:

Gary J. McRay
Shareholder
Foster, Swift, Collins and Smith, P.C.
313 S. Washington Sq.
Lansing, MI 48933
517-371-8285
gmcray@fosterswift.com

All Lansing Regional Center applicants will be encouraged to obtain personal immigration consul prior to the transfer of funds to ensure compliance with United States Immigration law and that all obligations are met with the Office of Home Land Security.

Marketing / Promotional Efforts

Lansing is an international community. The city has large immigrant and refugee populations as well as a significant international student body. Additionally the city is continuing to build upon its assets through its continually evolving Sister & Friendship City program, which is helping to elevate Lansing's international reputation to cultural and economic exchange in the global economy.

The Lansing Regional Center plans to implement a multi-level marketing strategy to generate interest in open investment opportunities. Marketing strategies tend to evolve as a campaign unfolds. However, the Lansing Regional Center plans to implement the following techniques upon receiving the regional center designation.

1.) Reliance on Existing Business Relationships

The Lansing EDC has forged a number of relationships with many international and immigrant businessmen whom now call Lansing home yet are still very connected to the business communities in their respective home cities, and have volunteered to assist with the distribution of print materials as well as organize small symposiums for interested investors to gather information about the program.

2.) Michigan Economic Development Corporation - Shanghai Office

The Lansing EDC has permission to distribute marketing materials through the Michigan EDC's Shanghai office in regards to the Lansing Regional Center. The MEDC is deeply entrenched within the Chinese business community recruiting companies to invest in Michigan and also assisting Michigan based companies with their expansions into China. Due to the nature of their daily operations, utilization of the MEDC will be critical in getting promotional materials in front of our target market.

Contact Info:

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Manager International Business Development
State of Michigan
Michigan Economic Development Corporation
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Tel: (1) 517.241.4554
Fax: (1) 517.241.3689
e-mail: whalenh@michigan.org

3.) Consulate General of the People's Republic of China

The Consulate General has agreed to assist the city of Lansing in marketing the Lansing Regional Center. This connection will allow a direct link to the Lansing Regional Center from the Consulate General's website, and provide a unique opportunity to foreign investors interested in Mid-west prospects.

Contact info:

Ping Huang
Consul General
Consulate-General of the People's Republic of China
Chicago, IL

4.) Fifth Third Bank International Offices

Fifth Third Bank has committed the company's International Desk, located in Brussels, Belgium, for distribution of marketing materials. In addition, Fifth Third has agreed to market the program to clients who will be potential users. This will be a key partnership as Fifth Third is seeking to expand their global presence and the Lansing Regional Center will be at the forefront of this expansion.

5.) Website

The Lansing Regional Center will also be marketed heavily on the internet through the Lansing EDC's website. The website design and deployment is being coordinated by Spartan Internet Consulting, which is a leading company in the field of internet marketing and strategic implementation. By utilizing cutting edge analytical tracking tools the website will be enabled to seek out potential investors and provide the Lansing Regional Center with unprecedented global exposure.

6.) EB-5 Brokers

When necessary, the Lansing EB-5 Regional Center will work with brokers in countries where this type of process is customary. Through the broker network the Lansing Regional Center will gain true global exposure.

7.) Greater Lansing Office of New Americans

Under the guidance of Lansing Mayor Virg Bernero, Michigan State University, and the Lansing Economic Area Partnership (LEAP) an initiative has been created that will position the greater Lansing region as a true international community. The Office of New Americans (ONA) is a new program under development that will coordinate all of the community's international assets to ensure that greater Lansing has a unified voice to the global community. The following are just a few of the office's ambitious objectives: leverage regional business assets into global economic growth, assist in the welcoming of refugee populations including employment initiatives to ensure that we do not under-employ the population's vast intellect, implementation of new international business associations, and many other innovative programs to cater to the international community.

In an effort to securing funding for the launch of this initiative the Lansing EDC along with our partner organizations presented the initiative to Mr. Rick Foster, VP for Programs, W.K. Kellogg Foundation. The presentation was led by Dr. Soji Adelaja, Director of Michigan State University's Land Policy Institute, and was very well received by the W.K. Kellogg Foundation. So much so, that the Foundation has asked for a formal proposal and suggested that several hundred thousand dollars would be made available to launch a pilot program. The formal proposal is being drafted for submittal at this time.

Lansing Regional Center Operational Structure

Overview of the Lansing EDC:
The Lansing Economic Development Corporation (LEDC) is a nonprofit organization established in 1976 for the purpose of attracting, expanding and retaining business and industry in the City of Lansing.

Our goals are:

1.) Diversify our city's economy by assisting the private sector in the creation of jobs and investment.

2.) Create a sense of place that attracts the knowledge-based economy, entrepreneurial businesses, and young professionals to live and work in our global city.

Detail of Services

- Local Advocate for Business
  The LEDC acts as an ombudsman and business advocate on behalf of a private business with City agencies, as needed. We conduct a full-time pro-active business retention program, play a leadership role and serve as a liaison with local, regional and state organizations.

- Business Assistance
  The LEDC assists manufacturers and high technology firms in applying for tax relief on construction or new equipment investments. We also have the ability to issue tax exempt revenue bonds to finance or refinance private industrial or not-for-profit development projects. The LEDC supports the development of business related projects including assisting in the submission of grant and loan applications for infrastructure development.

- Sites & Brownfield Redevelopment
  The LEDC provides confidential site search assistance for businesses looking for a new location, as well as supporting documentation for businesses to make informed real estate decisions. Additionally the LEDC operates the City's Brownfield Redevelopment Authority which has the ability to offer financial and tax incentives to businesses for cleaning up and redeveloping contaminated and obsolete sites within the City. The LEDC also maintains an inventory of Brownfield sites and can apply for State and Federal grants and loans to fund redevelopment efforts on Brownfield properties.

- Residential Development
  The LEDC administers the Lansing Renaissance Zone program which offers exemption from most local and state taxes for business and residential development located in the zone. The LEDC also administers Neighborhood Enterprise Zones within the City that provide

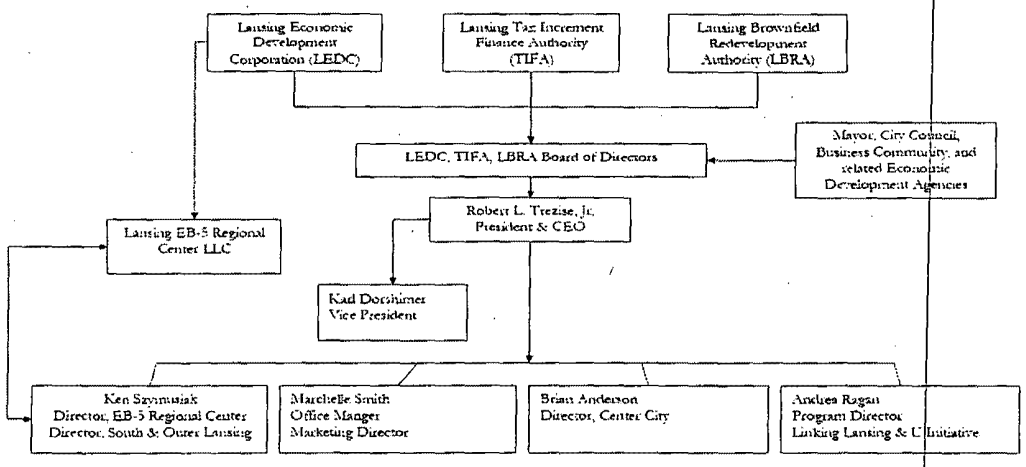
tax incentives for the rehabilitation or new construction of residential housing.

- Downtown Development
  The LEDC offers a matching grant and a loan program to encourage redevelopment in the core downtown area. Our "Building Facade Improvement" program offers up to $5,000 in matching grant funds to encourage property owners and tenants to make needed exterior building facade improvements. Additionally the LEDC's Business Finance Assistance Program can provide loans to help business development and expansion.

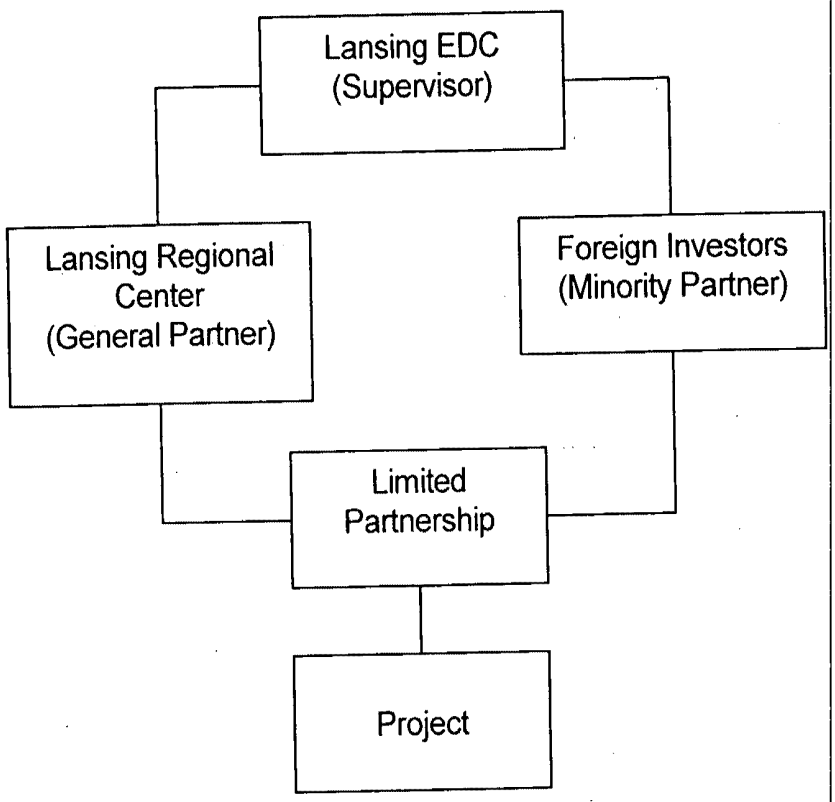
- Linking Lansing & U Initiative
  In 2006 Mayor Virg Bernero launched a new pro-active initiative, titled "Linking Lansing & U," with the sole purpose of developing programming and out-reach efforts to engage Lansing's student population. Programming revolves around three distinct focuses: employment / internships, housing, and entertainment. Since its launch "Linking Lansing & U" has engaged over 1,000 students in a multitude of events including wildly successful job shadow days, networking events, and student volunteer opportunities.

The LEDC is also actively involved in workforce development and economic development initiatives on both the state and regional levels. These close ties bring access to additional resources and expertise including: vocational and employment training, utilities, transportation, research and higher education and intergovernmental cooperation.

Lansing Economic Development Corporation
Organizational Chart



Lansing Regional Center Project Flow Chart:



Role of Lansing Economic Development Corp. (LEDC):
The LEDC will be retained as council pursuant to any advisory agreements entered into by the General Partner on behalf of each limited partnership to provide administrative services as follows:

- Identifying qualifying investments
- Completing due diligence in regards to proposed investments
- Monitoring qualifying investments for job creation and other EB-5 compliance requirements
- Providing accounting and reporting services for qualifying investments
- Assisting qualifying businesses in obtaining future financing

Role of Lansing Regional Center (LRC):
The LRC will operate as a limited liability company under the supervision of the Lansing EDC Board of Directors. LRC will have a separate independent board of

directors which will provide oversight of the fund and direction to the LRC Manager. The LRC Director will be an employee of the Lansing EDC and will be in charge of day-to-day management of each limited partnership. Management responsibilities shall include:

- Marketing qualifying investments to limited partners
- Determining that qualified investments meet minimum criteria
- Assuring that investments generate job creation criteria set forth by the EB-5 Program
- Supervise investment to insure financial performance and continued EB-5 Program qualification
- Providing detailed financial reports to Limited Partners
- Maintenance of accounting books and records for each Limited Partnership
- Retaining all professional services that may be deemed necessary for each Limited Partnership
- Providing detailed financial and status reports to LRC & LEDC Boards of Directors

CUSTODY SERVICES AGREEMENT

This CUSTODY SERVICES AGREEMENT (collectively with all schedules, exhibits, amendments, and addenda hereto, this "Agreement") is made effective as_____, by and between **FIFTH THIRD BANK**, 111 Lyon Street NW, MD # RMNR1C, Grand Rapids, Michigan 49503 ("Custodian"), and_____, _____, _____("Customer"). Custodian and Customer hereby agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below.

"Account" means the custodial account maintained by Custodian pursuant to this Agreement established in the name of and on behalf of Customer.

"Agreement" means this Custody Services Agreement and all schedules, exhibits, amendments and addenda hereto.

"Class Actions" means lawsuits initiated by or on behalf of a corporation that entitle the shareholders of such corporation to participate in such lawsuit by electing to so participate.

"Corporate Action Information" means all information communicated to Customer related to Corporate Actions when securities related to such Corporate Actions are held in the Account.

"Corporate Actions" means any actions undertaken by an issuer corporation that have an effect upon shareholders or entitlement holders of the corporation's securities (so long as such securities are held in the Account) including, without limitation, the inception of Class Actions.

"Custodian" means Fifth Third Bank, an Ohio banking corporation, acting pursuant to this Agreement.

"Customer ID" means a Customer-specific user identification code.

"Customer" means the party executing this Agreement for which the Custodian is performing the Services.

"Depository" means the Depository Trust Company, the Federal Reserve or such other sub-custodian as Custodian may from time to time nominate.

"Information" means the methods, techniques, programs, devices and operations of Custodian arising in connection with the services and products provided in connection therewith.

"Instructions" means the data messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by the Workstations, which requests that a task be performed on behalf of Customer or its customers regarding trust and/or demand deposit account funds maintained in the Account.

"Mandatory Corporate Actions" shall mean those Corporate Actions for which the effect on the shareholders or entitlement holders may not be modified by the Customer, including but not limited to, cash dividends, stock dividends, mergers, name changes, mandatory calls, and other mandatory corporate reorganizations.

"Other Instructions" means the messages, in a form and format acceptable to Custodian, submitted by Customer and successfully received by Custodian, which request that a task be performed on behalf of Customer or its customers regarding stock or other securities held in Customer's Account that does not relate to Voluntary Corporate Actions or the Customer's Voluntary Election Instructions.

"Proper Instruction" means the written and manually signed instructions of the person(s) identified in writing by Customer as being duly authorized by Customer to have authority over the Property.

"Property" means the property listed on a certain receipt(s) or as indicated on the confirmation separately supplied by Custodian to Customer in connection with this Agreement, which may include, without limitation, common and preferred stocks, bonds, debentures, notes, money market instruments or other obligations, and any certificates, receipts, warrants or other instruments or documents representing rights to receive, purchase or subscribe for any of the foregoing, or evidencing any other rights or interests therein.

"Services" means the custody services specified in the Custody Services Schedule attached hereto as **Schedule 1**.

"Transactions" means the Custodian's performance of certain tasks pursuant to Proper Instructions.

"Voluntary Corporate Actions" means those Corporate Actions for which shareholders or entitlement holders are entitled or required to make an election or decision among alternative courses of action such as, among other things, certain tender offers, conversions, distributions or exchanges that are voluntary by their terms.

"Voluntary Election Instructions" means those messages timely delivered from Customer to Custodian identifying Customer's election or decision among alternative courses of action triggered by the occurrence of a Voluntary Corporate Action.

2. **DEPOSIT OF PROPERTY**. Customer has deposited the Property, or may deposit additional Property, with Custodian. The purpose of such deposit is to obtain from Custodian the Services. The Services shall include those normally and customarily provided by Custodian with respect to Property including safekeeping, trading, deposits, withdrawals, income, corporate actions, puts, calls, overdrafts; record retention, reports and such other related services as Custodian may offer from time to time.

3. **DESCRIPTION OF PROPERTY**. Customer represents and acknowledges that the description of the Property listed on the receipt(s) or confirmation is an accurate description of the Property. Custodian shall not be responsible for any Property until actually received by Custodian. Securities held by Custodian shall, unless payable to bearer, be registered in the name of the Custodian for the account of the Customer or its nominee, as Custodian may appoint, and at any time remove, in Custodian's sole discretion. Custodian may deposit all or a part of the Property in a Depository; provided, however, no such deposit or appointment shall relieve the Custodian of its obligations under this Agreement. Custodian, in accordance with it normal and customary practices, will segregate and identify on its books as belonging to the Customer all Property held by Custodian or any other entity authorized to hold Property in accordance with this Agreement.

4. **APPOINTMENT AS CUSTODIAN**. Customer hereby constitutes and appoints Custodian as custodian of the Property and Custodian agrees to act in the capacity as custodian with respect to the Property during the term of this Agreement. Custodian shall perform the Services and maintain the Account as set forth herein. Custodian shall be held to the exercise of reasonable care in carrying out its obligations under this Agreement. Custodian shall have no investment authority, nor any duty or obligation to supervise or advise Customer on any investments. Except as specifically set forth herein, Custodian shall have no liability and assumes no responsibly for any non-compliance by Customer of any laws, rules or regulations.

5. **SCOPE OF SERVICES**. Custodian may make changes to the Services and/or the Fee Schedule attached hereto as **Schedule 2** based upon, but not limited to: technological developments; legislative, regulatory, third party depository or sub-custodian operational changes; or the introduction of new services by Custodian. Custodian will notify Customer of any changes to the Services that will affect Customer at least 30 days prior to the effective date of such changes.

6. **INSTRUCTIONS; RELIANCE BY CUSTODIAN**. Custodian is authorized to rely and act on Proper Instructions in providing the Services, whether such Proper Instructions are received via telephone, facsimile, or by bank wire so long as Custodian believes in good faith that such Proper Instructions have been given by an authorized person or agent acting on behalf of Customer. Custodian will only rely upon Proper Instructions sent via electronic mail if Proper Instruction specifically approves this method of delivery in writing (by other than electronic means) prior to the delivery of such Proper Instructions by electronic mail. Custodian is also authorized to rely and act upon instructions transmitted electronically through the Institutional Delivery System (IDS), a customer data entry system, or any other similar electronic instruction system acceptable to Custodian. Custodian will not be liable for any failure to execute instructions or failure to receive Property due to incorrect, incomplete, conflicting or untimely instructions. Custodian, in its discretion, is authorized to accept and act upon orders from Customer, whether given orally by telephone or otherwise, which Custodian in good faith believes to be genuine. Customer shall cause all oral instructions to be confirmed in writing by a written Proper Instruction. Custodian's records will be conclusive as to the content of any such instruction, regardless of whether confirmation is received.

7. **REIMBURSEMENT FOR COSTS, EXPENSES**. Custodian is authorized to take all steps it deems necessary or advisable to complete a transaction and shall be reimbursed for all costs, losses and liabilities if settlement is not accomplished due to Customer's failure for any reason to follow Custodian's instructions with respect to the Property or the Account. Custodian is authorized to execute, in the name of Customer, any certificates of ownership, declarations or other certificates required under any tax or other laws or governmental regulation now or hereafter in effect. Custodian will have the right to setoff against the Property held by Custodian hereunder and upon any deposit account of Customer for the following: (i) compensation, expenses, commitments made by Custodian upon instructions of Customer or its authorized agent; (ii) reimbursement of taxes incurred by Custodian for the Account of Customer; and (iii) other liabilities of Customer to Custodian, however created.

8. **SETTLEMENT PRACTICES**. Custodian will settle trade orders as instructed by the Customer. Custodian will not be liable or accountable for any act or omission by, or for the solvency of, any broker or agent effecting such transaction.

9. **INDEMNIFICATION**. Custodian shall not be liable for, and Customer agrees to indemnify and hold harmless Custodian and any nominee appointed pursuant to the terms hereof, from and against any loss, damage, cost, expense (including attorneys' fees and disbursements), liability or claim of any third party arising directly or indirectly (a) from the fact that any of the Property is registered in the name of any such nominee, or (b) from any action or inaction by the Custodian or such nominee (i) at the request or direction of or in reliance on the advice of Customer, or (ii) upon Proper Instruction, or (c) generally, from the performance (or absence or lack thereof) of its obligations under this Agreement; provided, however, that neither Custodian nor any nominee shall be indemnified and held harmless from and against any such loss, damage, cost, expense, liability or claim arising from Custodian's or such nominee's

gross negligence or willful misconduct. If Customer requests Custodian to take any action with respect to Property that may, in the opinion of Custodian, result in Custodian or its nominee becoming liable for the payment of money or incurring liability of some other form, Custodian shall not be required to take such action until Customer shall have provided indemnity therefore to Custodian in an amount and form satisfactory to Custodian.

10. **LIMITATION OF WARRANTIES**. OTHER THAN THE EXPRESS WARRANTIES (IF ANY) MADE IN THIS AGREEMENT, CUSTODIAN DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER. Without limiting the foregoing, Custodian shall not be liable for lost profits, lost business or any incidental, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Custodian) suffered by Customer, its customers or any third party in connection with any of the products or services made available hereunder. Custodian's liability under this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Customer or (ii) an amount not to exceed one-half of the net fees paid to Custodian within the prior three calendar months immediately preceding the date on which Custodian received a written notice from Customer regarding such damages. In no event shall Custodian be liable for any matter beyond its reasonable control, or for damages or losses wholly or partially caused by the Customer, or its employees or agents, or for any damages or losses which could have been avoided or limited by Customer giving prompt written notice to Custodian. Customer shall bring no cause of action, regardless of form, more than one year after the cause of action arose.

11. **LIQUID FUNDS**. Custodian shall not be liable for, or considered to be the custodian of, any cash belonging to Customer or any money represented by a check, draft or other instrument for the payment of money, until Custodian or its agents actually receive such cash or collect on such instrument. So long as and to the extent that it is in the exercise of reasonable care, Custodian shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received or delivered by it pursuant to this Agreement. Custodian shall not be required to enforce collection, by legal means or otherwise, of any money or property due and payable with respect to any Property held in the Account if such Property is in default or payment is not made after due demand or presentation.

12. **CONFIDENTIAL RECORDS**. Custodian shall treat all records and information relating to Customer and the Account as confidential, except that it may disclose such information after prior approval of Customer, such approval not to be unreasonably withheld. Custodian will be authorized to disclose any information regarding Customer, the Property, and the Account that is required to be disclosed by any law, governmental regulation or court order in effect without having received Customer's prior approval.

13. **CONFIDENTIALITY**. Customer acknowledges that the Information is of a confidential nature, and is a valuable and unique asset of Custodian's business. During the term of this Agreement and following the expiration or termination thereof, Customer shall not make or permit disclosure of any Information to any person or entity (other than to those employees and agents of Customer who participate directly in the performance of this Agreement and need access to Information

14. **STATEMENTS**. Inquiries regarding any valuations or other reports must be submitted to Custodian within thirty days of the receipt of the Custodian's statement or report, and on expiration of this period, statements and reports shall be deemed correct and accepted by Customer. Express or tacit approval of such statement or report implies acceptance of the various entries listed therein and approval of any reservations made by Custodian. Thereafter, Customer assumes the responsibility to correct any and all errors.

15. **FEES**. Customer shall pay to Custodian when due all fees and expenses arising in connection with the Services and the Account in accordance with the Fee Schedule (as may be amended from time to time) and billed or charged according to Customer's customer profile schedule maintained at Custodian's place of business. Customer shall receive no less than thirty days prior notice of any changes in the Fee Schedule. If Customer fails to pay Custodian for any fees and expenses owed within thirty days after invoice, Custodian may charge such fees and expenses to any deposit account of Customer or in the name of Customer. Custodian may also assess usual and customary late payment fees for payments past due more than thirty days after invoice.

16. **NO WAIVER**. The failure of Custodian to insist on strict compliance, or to exercise any right or remedy under this Agreement, shall not constitute a waiver of any rights contained herein or estop Custodian from thereafter demanding full and complete compliance or prevent Custodian from exercising such remedy in the future.

17. **FORCE MAJUERE**. Custodian shall not be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes, acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that the Custodian in the event of a failure or delay shall endeavor to ameliorate the effects of any such failure or delay.

18. **INDEPENDENT CONTRACTOR**. This Agreement is not a contract of employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employment between the parties. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and their permitted transferees and assignees.

19. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, and representations regarding the subject matter of this Agreement. No amendment to this Agreement shall be valid, unless made in writing and signed by both parties; provided, however, Custodian may amend or otherwise modify this Agreement, and any addenda, amendments, exhibits or schedules thereto, provided such modification does not create any new obligation on the part of Customer and does not materially diminish any service being provided by Custodian hereunder. Custodian shall give Customer notice of such changes by ordinary mail. This Agreement is for the benefit of, and may be enforced only by, Custodian and Customer and their respective successors and permitted transferees and assignees, and is not for the benefit, of and may not be enforced by, any third party.

20. **VALIDITY AND BINDING EFFECT**. Customer hereby warrants and represents to Custodian: that Customer has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract, written or oral, to which Customer is bound; and that this Agreement is valid and enforceable against Customer in accordance with its terms and conditions.

21. **NO ASSIGNMENT**. Customer agrees not to sell, assign, sublet, pledge, hypothecate, suffer a lien upon or against, or otherwise encumber any interest in this Agreement, in whole or in part. Should Custodian assign this Agreement or should the fees due hereunder be assigned, no breach or default of this Agreement by Custodian to its assignee shall excuse performance by Customer of any provision hereof.

22. **SEVERABILITY**. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

23. **NO IMPLICIT DUTY**. Custodian shall have no duties or obligations whatsoever except such duties and obligations as are specifically set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against Custodian.

24. **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, and by the parties hereto on separate counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

25. **GOVERNING LAW**. This Agreement will be governed by and construed according to the laws of the State of Ohio. The parties hereby consent to service of process, personal jurisdiction, and venue in the state and federal courts located in Cincinnati, Hamilton County, Ohio, and select such courts as the exclusive forum with respect to any action or proceeding brought to enforce any liability or obligation under this Agreement.

26. **TERMINATION**. Customer or Custodian may terminate this Agreement upon thirty days prior written notice to the other party by registered, certified or express mail. Custodian will charge fees up to and including the last day of the billing period in which the effective date of termination occurs. Notice of termination shall be effective on the date of receipt thereof. If Customer fails to designate a successor custodian on or before the effective date of termination, then Custodian shall have the right to deliver all of the Property then held in the Account to Customer. Thereafter, Customer (or the designated replacement custodian) shall be custodian of the Property and Custodian shall be relieved of all obligations under this Agreement.

27. **SPECIFIC REQUIREMENTS OF THIS CUSTOMER.**

_____

_____

_____

_____

_____

_____

[signatures follow; the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CUSTOMER:

By:_____

Date:_____

Accepted:_____

CUSTOMER'S ADDRESS:

_____

_____

FIFTH THIRD BANK

By:_____

Title:

Date:_____

CUSTODIAN'S ADDRESS:

Fifth Third Bank
111 Lyon Street NW – MD# RMNR1A
Grand Rapids, MI 49503

Fifth Third Bank

Schedule 1

SCHEDULE OF CUSTODY SERVICES

Custodian shall perform the custody services set forth below (the "Custody Services") in connection with the maintenance of a custodial account in the name of and on behalf of Customer, in accordance with the terms and conditions of the Agreement. The Custody Services made available by Custodian are subject to change from time to time without notice; provided, however, Custodian shall endeavor to notify Customer of any changes to the below Custody Services that will affect Customer at least thirty days prior to the effective date of such changes. Capitalized terms used below have the meanings set forth in the Agreement.

A. **SAFEKEEPING.** Custodian will maintain in its vault or at a Depository, or sub-Custodian identified on its books as the property of the custodial account(s) of Custodian, all Property that it now or hereafter receives for the Account(s) of Customer.

B. **TRADING.** Custodian will, upon Proper Instructions, sell, assign, transfer, deliver, purchase or acquire securities or other property for the Account.

C. **DEPOSITS OR WITHDRAWALS.** Custodian will, upon Proper Instructions: (a) deliver or receive securities or other properties; and (b) transfer or make payments from the Account of such cash or securities to such person(s) specified by Customer. Unless Customer directs otherwise, excess cash will be invested in the Custodian's investment/sweep alternatives.

D. **INCOME.** Custodian will collect and receive all cash or property related to, associated with or earned by, the Property as interest, dividends, proceeds from transfer, and other payments for the Account of Customer. Custodian will convert cash distributions denominated in foreign currency into United States dollars at Custodian's then applicable rate for the account of Customer. In effecting such conversion, Custodian may use such methods or agencies as it deems necessary and appropriate at the current prevailing rates.

E. **CAPITAL CHANGES.** Custodian will notify Customer of capital changes, limited to those securities registered in a nominee's name and to those securities held at a Depository or sub-custodian acting as agent for Custodian. Custodian will be responsible only if the notice of such capital change is published by Xcitek, DTC, or received by registered mail from the agent. For market announcements not yet received and distributed by Custodian's services, Customer will provide Custodian with appropriate instructions. Custodian will, upon receipt of Customer's response within the required deadline, affect such action for receipt or payment for the Account of Customer. For those responses received after the deadline, Custodian will affect such action for receipt or payment, subject to the limitations of the agent(s) affecting such actions.

F. **PUTS.** Custodian will promptly notify Customer of put options only if the notice is received by registered mail from the agent. Customer will provide Custodian with all relevant information contained in the prospectus for any security that has unique put option provisions and provide Custodian with specific tender instructions at least ten business days prior to the beginning date of the tender period.

G. **SHAREHOLDER COMMUNICATIONS.** Custodian will, as set forth in the Customer Profile Schedule, either receive, execute or cause to be transmitted all shareholder communications. With regard to any temporary cash investment offered by Custodian, Custodian shall respond on behalf of the Customer.

H. **RECORD RETENTION.** Custodian will, at all times, maintain books and records relating to the Account in accordance with its normal and customary procedures and will reasonably make available for inspection such records to duly authorized officers, employees, or agents of Customer or by legally authorized regulatory officials who are then in the process of reviewing the Customer's financial affairs upon adequate proof to Custodian of such official status.

I. **REPORTS.** Custodian will provide such reports as set forth in the Customer Profile Schedule and notify the Customer of each transaction confirmation via a monthly statement of transactions and holdings.

J. **COMMUNICATIONS.** Custodian shall be authorized to rely upon the accuracy and genuineness of all data received through electronic means and initiated by any person authorized by Customer. In its employment of such devices, Customer will safeguard and maintain the confidentiality of all passwords or numbers and will disclose them only to those employees who are to have access to the Account. Custodian may electronically record any instructions or other telephone discussions. Custodian may electronically record any instructions given by telephone, and any other telephone discussions with respect to the Account or transactions pursuant to the Agreement.

K. **OVERDRAFTS.** At the discretion of Custodian in cases concerning overdrafts, the Account may be charged interest at a rate determined by Custodian in its discretion.

Schedule 2

Fee Schedule

DRAFT

OPERATING AGREEMENT

OF

DRAFT

OPERATING AGREEMENT
OF
[redacted]

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OPERATING AGREEMENT
OF
[redacted]

THIS OPERATING AGREEMENT is made and entered into as of the ___ day of _____, 2008 ("Effective Date") by and among [redacted], a Michigan limited liability company, and the persons executing this Operating Agreement as Members of the Company as follows:

ARTICLE I - DEFINITIONS

1.1 Act. Act shall be defined as the Michigan Limited Liability Company Act, being Act No. 23, Public Acts of 1993, as amended.

1.2 Affiliate. Affiliate shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, through an employer and employee relationship, or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

1.3 Agreement. The Agreement shall be defined as the valid written Operating Agreement signed by the Members of the Company executing an organization or subscription agreement, which Agreement specifies the affairs and conduct of the Company, including any provision in the Articles pertaining to the affairs and conduct of the business of the Company.

1.4 Articles. Articles shall be defined as the Articles of Organization as filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division as required by the Act.

1.5 Assignment. Assignment shall include any type of sale or transfer of a Member's Membership Units in the Company.

1.6 Capital Accounts. Capital Account shall be as defined in paragraph 4.5 of this Agreement.

1.7 Code. Code is defined as the Internal Revenue Code of 1986, as amended.

1.8 Company. Company shall be defined as [redacted].

1.9 Contributing Member. Contributing Member shall be defined as a Member choosing to make additional contributions when another Member becomes a Noncontributing Member.

1.10 Contribution. Contribution shall mean anything of value that a person contributes to the Company as a prerequisite for, or in connection with, membership, including cash,

property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

1.11 Control. Control shall be defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management, activities or policies of any person through the ownership of voting securities, by contract, employment or otherwise.

1.12 FSC&S. FSC&S shall be defined as Foster, Swift, Collins & Smith, P.C., a Michigan professional corporation.

1.13 Indemnified Person. An Indemnified Person shall be any individual indemnified pursuant to the provisions of this Agreement.

1.14 Class A Member. The Class A Member is [redacted] ("[redacted]"). The Class A Member shall have all of the voting rights of Members.

1.15 Class B Member. Each Member who (1) contributes $500,000 to purchase one Unit of Membership Interest of the Company; (ii) executes a Subscription Agreement; and (iii) has the Company accept the Subscription Agreement shall become a Class B Member and as such shall have no voting rights as a Member since all voting rights are held by the Class A Member.

1.16 Member Representative. A Member Representative shall be defined as an individual designated by a Member who is authorized to act on behalf of said Member.

1.17 Membership Interest or Interest. Membership Interest or Interest shall be defined as a Member's rights in the Company, including, but not limited to, the right of a Member to receive distributions of the Company's assets and any right of a Member to vote or participate in the Management of the Company.

1.18 Membership Unit or Units. Membership Unit or Units shall be defined as units of equity ownership in the Company, which equal the Members' Membership Interest in the Company. Membership Units shall be uncertificated, unless the Managers determine in their discretion, that certificates shall be issued.

1.19 Noncontributing Member. Noncontributing Member shall be defined as any Member who does not make additional capital contributions according to the Member's pro rata ownership of all Membership Units as provided in this Agreement.

1.20 Offer. Offer shall be defined as a written offer made by a prospective buyer, assignee, or transferee of a Transferring Member's Membership Units in the Company.

1.21 Offered Membership Interest. An Offered Membership Interest shall be defined as that portion of a Membership Interest being sold, assigned, or transferred by a Transferring Member.

1.22 Offerees. Offerees shall be defined as the Members of the Company excluding the Transferring Member.

1.23 Person. Person shall mean an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

1.24 Resident Agent. The Resident Agent of the Company shall be as designated in the Articles or any amendment to the Articles. The Resident Agent may be changed from time to time and such change shall be made in accordance with the Act. If the Resident Agent shall ever resign, the Company shall promptly appoint a successor.

1.25 Registered Office. The Registered Office of the Company shall be as designated in the Articles or any amendment to the Articles. The Registered Office may be changed from time to time and such change shall be made in accordance with the Act.

1.26 Transferring Member. A Transferring Member shall be defined as a Member who sells, assigns, transfers, or exchanges some or all of said Member's Membership Interest in the Company.

ARTICLE II - ORGANIZATION

2.1 Formation. The Company has been organized as a Michigan limited liability company under and pursuant to the Act, by the filing of Articles with the Michigan Department of Energy, Labor and Economic Growth (DELEG), Bureau of Commercial Services, Corporation Division.

2.2 Name. The name of the Company shall be [redacted]. The Company may also conduct its business under one or more assumed names.

2.3 Purposes. The purposes of the Company are to engage in any activity for which Limited Liability Companies may be formed under the Act, including but not limited to holding investments. The Company shall have all the powers necessary or convenient to effect any purpose for which it is formed, including all powers granted by the Act.

2.4 Duration. The duration of the Company shall be perpetual and shall continue until the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

2.5 Intention for Company. The Members have formed the Company as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership (including, a limited partnership) or any other venture, but a Limited Liability Company under and pursuant to the Act. No Member or Manager shall be construed to be a partner in the Company or a partner of any other Member, Manager or person and the Articles, this Agreement and the relationships created thereby and arising therefrom shall not be construed to suggest otherwise. Notwithstanding the foregoing, however, the Members intend that the Company be treated as a partnership for federal income tax purposes.

2.6 Effective Date. The Agreement shall become effective upon the date this Agreement is fully executed, or the date the Articles are filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporation Division, whichever is later.

2.7 Conflict between Articles and Agreement. If there is a conflict between the Company's Articles and the Agreement, the Articles shall control.

ARTICLE III - BOOKS, RECORDS AND ACCOUNTING

3.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act. Such books and records shall be kept at the Company's Registered Office or principal place of business. The books and records shall be open to inspection by any Member or a Member's authorized representative at any reasonable time during business hours.

3.2 Fiscal Year; Accounting. The Company's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Company shall be selected by the Managers from time to time.

3.3 Reports. The Managers shall provide reports concerning the financial condition and results of operation of the Company and the Capital Accounts of the Members to the Members in the time, manner and form as the Managers determine. Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction and credit.

3.4 Members' Capital Accounts. The Company shall maintain a Capital Account for each Member. Each Member's Capital Account shall be adjusted in accordance with the terms of paragraph 4.5.

3.5 Member Tax Treatment. No Member shall treat a Company tax item on such Member's federal, state or local income or other tax returns or permit an affiliate to treat a Company tax item on such affiliate's tax returns in a manner inconsistent with the treatment of such item on the Company's federal, state or local tax returns.

ARTICLE IV - CAPITAL CONTRIBUTIONS

4.1 Initial Commitments and Contributions. By the execution of this Agreement, the initial Members hereby agree to make the capital contributions for the Membership Units as set forth in their Subscription Agreement and which is also designated in the attached Exhibit A. The capital contributions represent each Member's contribution of $500,000.00 in exchange for one Member's Membership Unit. The Membership Units of the respective Members in the Company are also set forth in Exhibit A. Any additional Member (other than an assignee of a Membership Interest who has been admitted as a Member) shall make the capital contribution set forth in a separate written Subscription Agreement at the time of admission. No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution except as provided in this Agreement.

4.2 Additional Capital Contributions. In addition to the initial capital contributions, the Member may determine from time to time that additional capital contributions are needed to enable the Company to conduct its business and affairs. Such additional capital contributions are separate and distinct from amounts that each Member has committed to loan to the Company pursuant to the Funding Agreement described in paragraph 4.3, below.

a. Notice. Upon making such a determination that additional capital contributions are needed, notice shall be given to all Members in writing at least thirty (30) business days prior to the date on which such additional contributions are due. Such notice shall describe, in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is required.

b. Member Contribution. If the Class B Members agree to make additional capital contributions, the additional contributions shall be made by each Class B Member in the proportion that such Member's Membership Units bear to all issued and outstanding Membership Units.

c. If Member Does Not Make Additional Contribution. In the event a Member is a Noncontributing Member, the Contributing Member(s) shall be given the opportunity to make such Noncontributing Member's contribution in the proportion that each such Contributing Member's Membership Units bears to all Contributing Members' Membership Units.

d. Adjustment to Capital Accounts of Members. After the additional capital contributions have been made, each Contributing Member's Capital Account shall be increased to reflect the additional capital contributed to the Company.

4.3 Failure to Contribute.

a. Capital Contributions. If any Member fails to make a capital contribution when required in accordance with the Member's commitment to contribute initial or additional capital, the Company may, in addition to the other rights and remedies the Company may have under the Act or applicable law, take such enforcement action (including, the commencement and prosecution of court proceedings) against such Member as Class A Members considers appropriate.

4.4 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member and assignee.

a. Increases to Capital Accounts. Each Member's Capital Account shall be increased by:

i. the amount of any money actually contributed by the Member to the capital of the Company;

ii. the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of Code § 752); and

iii. the Member's share of net profits and of any separately allocated items of income or gain including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

b. Decreases to Capital Accounts. Each Member's Capital Account shall be decreased by:

i. the amount of any money actually distributed by the Company to the Member;

ii. the fair market value of any property distributed to the Member, as determined by the Company and the receiving Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of Code § 752); and

iii. the Member's share of net losses and of any separately allocated items of deduction or loss including adjustments required by Code § 1.704.1(b)(2)(iv)(b) (e.g. any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

4.5 Distribution of Assets. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the net profits or net losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

4.6 Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Member's Membership Interest in the Company by a Transferring Member, the Capital Account of the Transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the Membership Interest so transferred.

4.7 Compliance with Section 704(b) of the Code. The provisions of this Article IV relate to the maintenance of Capital Accounts, and are intended, shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Exhibit B (Internal Revenue Code § 704(b) Provisions) to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Article V and Article X and the Capital Contributions made pursuant to this Article IV. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the Initial Contribution.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations. Except as may be required by the Code or this Agreement, net profits, net losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated to each Member in the proportion that such Member's Membership Units bears to all issued and outstanding Membership Units.

5.2 Distributions.

a. Determination. Except for the Federal Tax Liability which shall be paid under paragraph 5.2.b. as a mandatory payment, the Managers may make other distributions to the Members from time to time only after the Managers determine, in their reasonable judgment,

that the Company has sufficient cash and/or property on hand which exceeds the current and the anticipated needs of the Company to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, reserves and mandatory distributions, if any).

b. Distributions to Members. All distributions shall be made to the Members in accordance with their Membership Units.

c. Types of Distributions. Distributions shall be in cash and/or property as determined by the Managers.

d. Distribution Not Allowed. No distribution shall be declared or made if, after giving it effect:

i. the Company would not be able to pay its debts as they become due in the usual course of business;

ii. the Company's total assets would be less than the sum of its total liabilities; or

iii. the Company would not have the amount needed if it were to dissolve at the time of the distribution to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

e. Liability of Member in Accepting a Distribution. A Member who accepts or receives a distribution with knowledge of facts indicating the distribution is in violation of the Act or the Agreement is liable to the Company for the amount the Member accepts or receives that exceeds the Member's share of the amount that could have been distributed without violating the Act or the Agreement.

f. Distributions to Cover Tax Liability. If the Company incurs some income that would generate tax liability for its Members, and there is sufficient cash available for distribution to Members, it is the intent of the Company to distribute to Members, based upon their Membership Units, sufficient cash to allow the Members to substantially pay the estimated federal income tax liability associated with the allocation of income to each Member.

ARTICLE VI - DISPOSITION OF MEMBERSHIP INTERESTS

6.1 General. Every sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other disposition of any Membership Interest shall be made only upon compliance with this Article. No Membership Interest shall be disposed of if:

a. the disposition would cause a termination of the Company as defined under the Code;

b. the disposition would be in violation of any applicable state or federal securities law or regulation; or

c. the assignee of the Membership Interest does not provide the Company with the information and agreements that the Members may require in connection with such

disposition. Any attempted disposition of a Membership Interest in violation of this Article is null and void.

6.2 Permitted Dispositions. Subject to the provisions of this Article, a Member may assign such Member's Membership Interest in the Company in whole or in part. The assignment of a Membership Interest does not itself entitle the assignee to participate in the management and affairs of the Company or to become a Member or to vote on any matters submitted to Members to vote upon. Such assignee is only entitled to receive, to the extent assigned, the distributions to which the assigning Member would otherwise be entitled.

An assignee of a Membership Interest shall be admitted as a substitute Member and shall be entitled to all the rights and powers of the assignor only if the Class A Member consents. If admitted, the substitute Member, has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member and therefore is subject to the terms and conditions of this Agreement.

6.3 Right of First Refusal. A Member may not sell, assign, transfer, or exchange any Offered Membership Interest unless the Transferring Member first notifies the Company and the Class A Member of the identity of the prospective buyer, assignee, or transferee and sends to the Company and the Class A Member a copy of the Offer, and the Transferring Member shall do the following:

a. The Transferring Member must first offer to sell the Offered Membership Interest in the Company to the Company, for the same price and on the same terms as those being offered to the Transferring Member in the Offer. The Company shall have thirty (30) days after receiving said offer to accept said offer.

b. Any Offered Membership Interest not purchased by the Company pursuant to paragraph 6.3.a. above shall then be offered to the Class A Member. The Class A Member shall have thirty (30) days after having received the offer to accept said offer.

c. If the Company or the Class A Member receiving said Offer does not elect to purchase the entire original Offered Membership Interest pursuant to paragraphs 6.3.a. or 6.3.b. above, the Transferring Member shall, for a period of ninety (90) days after the expiration of the option periods set forth above, be free to sell the remaining Offered Membership Interest to the person or entity who submitted the Offer for the exact price and upon the exact terms disclosed in the Offer. Such purchaser shall not become a substitute Member of the Company unless the express written unanimous consent of Class A Member is obtained. Otherwise, the purchaser shall become an assignee of a Membership Interest subject to the provisions of this Agreement.

6.4 Registration and Transfer of Interest. Each Member hereby acknowledges and represents that notwithstanding any provisions contained in this Agreement, no Company interest or Membership Interest may be offered or sold and no transfer of such interest will be made either by the Company or the Members unless such interest is registered under the Securities Act of 1933 and any applicable securities laws of the State of Michigan or an opinion of counsel for the Company, is obtained to the effect that there is no violation of applicable federal or state laws and the cost of such is reimbursed to the Company by the Member transferring the Membership Interest.

6.5 Entity Related Transfers. Anything in this Agreement to the contrary notwithstanding, with respect to each Member that is an entity, transfers (i) from the entity to one or more members; (ii) between individual equity owners of the Member, are permitted without triggering any right of first refusal, subject to compliance with securities registration laws as specified under paragraph 6.4 of this Agreement. No transfer under this paragraph is effective unless the transferee executes and becomes a party to this Agreement as a substitute Member. The members of each Member entity as of the date of this Operating Agreement have been provided to the Company.

ARTICLE VII - MEETING AND REPRESENTATIONS OF MEMBERS

7.1 Member Representative. Each Member who is not an individual may designate a Member Representative for purposes of meetings of Members and all decisions, actions and communications on behalf of such Member. A Member may designate a new Member Representative by written notice to the Company and the other Members executed by either the existing Member Representative of such Member or by the chairperson or President of such Member. Each Member Representative, when appointed and designated, and until terminated, shall be deemed to have full and complete authority to act on behalf of the Member the Member Representative represents, and to bind such Member in all matters relating to, arising out of, or in connection with this Agreement, and the management and operation of the Company. No Member Representative shall be personally liable to the Members by reason of said Member Representative's acts as such, except in the case of said Member Representative's gross negligence or actual fraudulent or dishonest conduct, or liable to any third party for the debts and obligations of the Company. If applicable, the Member Representative for a Member shall be set forth in Exhibit A.

7.2 Voting. The Class A Member has all rights to vote as a Member of the Company and shall manage the day to day affairs of the Company. The Class B Members do not have any voting rights under this Operating Agreement. An amended report may be sent to the Class B Members in lieu of any annual meeting of the Members.

7.3 Annual Meetings. An annual meeting of Members for the transaction of such business as may properly come before the Meeting may be held at such place, on such date, and at such time as the Class A Member shall determine.

7.4 Special Meetings. Special meetings of Members for any proper purpose or purposes may be called at any time by the Managers or any Member.

7.5 Notice of Meetings. The Company shall deliver or said written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given by e-mail or by mail through the postal service, not less than ten (10), nor more than sixty (60) days before the date of the meeting. All meetings of the Members shall be presided over by a Chairperson who shall be a Member so designated by the Managers. Presence at a meeting waives the required notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or the transacted business at the meeting.

7.6 Consent. Any action required or permitted to be taken at an annual or special meeting of the Class A Member may be taken without a meeting, without prior notice, and

without a vote, if consents in writing, setting forth the action so taken are signed by the Class A Member. Every written consent shall bear the date and signature of the Class A Member who signs the consent.

7.7 Quorum. The presence of the Class A Member is a quorum for the transaction of business.

7.8 Manner of Acting. The Class A Member may vote or may give its written consent and this shall be action on behalf of the Company and the Members.

7.9 Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member that if the Member is an organization, it is duly organized, validly existing, and in good standing under the laws of its state of organization and that it has full organizational power to execute and agree to the Agreement to perform its obligations hereunder.

7.10 Investment Considerations. Each Member hereby further acknowledges and represents that:

a. the Member has reviewed and understands the investment considerations described in the attached Exhibit C (Investment Considerations);

b. the Member has had the opportunity: (i) to investigate the business of the Company, the qualifications of the other Members, and the tax and financial implications of an investment in the Company, and the merits and risks of investment in the Company, and (ii) to ask questions of, and receive answers from the Company concerning the terms and conditions of membership, to obtain such supplemental information as the Member deemed desirable, and the Member acknowledges and represents that all such information has been made readily available to the Member by the Company;

c. in reaching the conclusion that the Member desires to invest in the Company, such Member has carefully evaluated his financial resources and the risks associated with the investment, including the risks described in subparagraph 7.10.a, above;

d. the Member is familiar with the Company's business, properties, prospects and financial condition; and

e. the Member has agreed to acquire a membership interest in the Company after evaluating these risks, and after obtaining the advice of such professional advisors as the Member deems necessary in the Member's sole discretion;.

7.11 Investment Decision. Each Member hereby further acknowledges and represents that:

a. the Member is acquiring the Membership Interests for investment for the Member's own account and not with a view to, or for, resale, in connection with any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), and the Member does not now have any reason to anticipate any change in his

circumstances or other particular occasion or event which could cause the Member to sell or transfer such Membership Interest;

b. The issuance of the Membership Interest will not be registered under the Securities Act or qualified under applicable state securities laws, including without limitation the Michigan Uniform Securities Act, on the grounds that the issuance of the Interests to such Member is exempt from registration under such laws. The Membership Interest may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements;

c. the Membership Interest is irrevocable, and except as provided in paragraph 6.6, must be held indefinitely by such Member unless the Membership Units are subsequently registered under applicable federal and state securities laws or an exemption from such registration is available;

d. there is no market for the Membership Interest, and it is not anticipated that such a market will develop;

e. the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of the Membership Interest and can bear the economic risk of an investment in the Membership Interest for an indefinite period of time;

f. the Member is an "accredited investor" as defined in Rule 501(a) of the Securities Act;

7.12 Electronic Meetings. The Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

ARTICLE VIII - MANAGEMENT

8.1 Management of Business. The Company shall be managed by the Class A Member. The initial Manager shall be:

_____

8.2 Duties of Class A Member. The Class A Member shall manage the day to day operations of the Company.

8.3 Management Vested with a Manager. Except as may be delegated to the officers of the Company or otherwise be provided in this Agreement, the business and affairs of the Company shall be managed by the Class A Member. The Class A Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including the power to:

a. purchase, lease or otherwise acquire any real or personal property;

b. sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal property;

c. open one or more depository accounts and make deposits into and checks and withdrawals against such accounts;

d. borrow money, incur liabilities, and other obligations;

e. enter into any and all agreements and execute any and all contracts, documents and instruments;

f. engage employees and agents, define their respective duties, and establish their compensation or remuneration;

g. establish pension plans, trusts, profit sharing plans and other benefit and incentive plans for Members, employees and agents of the Company;

h. obtain insurance covering the business and affairs of the Company and its property and on the lives and well being of its employees and agents;

i. commence, prosecute, or defend any proceeding in the Company's name; and

j. participate with others in partnerships, joint ventures or other associations and strategic alliances.

k. the sale, exchange, lease, or other transfer, of all or substantially all of the assets of the Company; and

l. after the sale or transfer of all or substantially all of the assets of the Company, the (i) investment of the proceeds of such sale in one or more investments or businesses; and (ii) the distribution of all or part of such proceeds to the Members.

8.4 Standard of Care; Liability. Class A Member shall discharge said Class A Member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Class A Member reasonably believes to be in the best interests of the Company. The Class A Member shall not be liable for any monetary damages to the Company for any breach of such duties except for receipt of a financial benefit to which the Class A Member is not entitled; voting for or assenting to a distribution to Members in violation of this Agreement or the Act, or a knowing violation of the law.

8.5 Tax Matters Partner. The Class A Member shall be the tax matters partner of the Company pursuant to Code § 6231(a)(7). Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Code § 6223.

8.6 Compensation. The Class A Member, acting on behalf of the Company, shall be reimbursed for reasonable expenses incurred while conducting the business of the Company.

ARTICLE IX - OFFICERS

9.1 Officers. The Class A Member of the Company may, in its sole discretion, elect officers of the Company to conduct the day to day affairs of the Company under the direction and supervision of the Managers. The officers elected by the Class A Member may consist of a President, a Secretary, a Treasurer, and if desired, a Chairman of the Board and one or more Vice Presidents. An officer shall hold office for the term for which said officer is elected or appointed and until said officer's successor is elected or appointed and qualified, or until said officer's resignation or removal. Two or more offices may be held by the same person, but an officer shall not execute, acknowledge or verify an instrument in more than one capacity, if the instrument is required by law or this Agreement to be executed and acknowledged or verified by two or more officers.

9.2 Duties of Officers. The officers of the Company may be charged with the daily operations of the Company and shall perform such duties as specified by Class A Member of the Company.

ARTICLE X - EXCULPATION OF LIABILITY; INDEMNIFICATION

10.1 Exculpation of Liability. Unless otherwise provided by law or expressly assumed, a person who is a Member or Officer, shall not be liable for the acts, omissions, representations, covenants, debts or liabilities of the Company.

10.2 Mandatory Indemnification by the Company. Except as otherwise provided in this Article, the Company shall indemnify any Member, and any officer of the Company, and may (in its sole discretion) indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, employee, or agent of the Company.

a. Indemnification Applied Against Expenses. Any Indemnified Person shall be indemnified against expenses, including attorneys fees, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with the action, suit or proceeding, only if the Indemnified Person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such Indemnified Person reasonably believed to be in the best interests of the Company and, with respect to a criminal action or proceeding, if such Indemnified Person had no reasonable cause to believe such Indemnified Person's conduct was unlawful.

b. Success of Person. To the extent that an Indemnified Person has been successful on the merits or otherwise in defense of an action, suit or proceeding or in defense of any claim, issue or other matter in the action, suit or proceeding, such Indemnified Person shall be indemnified against actual and reasonable expenses, including attorneys fees, incurred by such Indemnified Person in connection with the action, suit or proceeding brought to enforce the mandatory indemnification provided in this Agreement.

c. Events of Indemnification. Any indemnification permitted under this Article, unless ordered by a court, shall be made by the Company only as authorized in the specific case and upon:

i. a determination that the indemnification is proper under the circumstances because the Indemnified Person has met the applicable standard of conduct; and

ii. an evaluation of the reasonableness of expenses and amounts paid in settlement.

This determination and evaluation shall be made by the Class A Member or other members who are not parties or threatened to be parties to the action, suit or proceeding.

d. Events When Indemnification Shall Not Be Provided. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to any Member, employee, or agent of the Company for or in connection with:

i. the receipt of a financial benefit to which such person is not entitled;

ii. voting for or assenting to a distribution to Members in violation of this Agreement or the Act; and

iii. a knowing violation of law.

ARTICLE XI - DISSOLUTION AND WINDING UP

11.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events:

a. at any time specified in the Articles or this Agreement;

b. upon the happening of any event specified in the Articles or this Agreement;

c. by a vote of the Class A Member;

d. unless the Class A Member determines otherwise, fifteen (15) years from the Effective Date of this Agreement.; or

e. upon the entry of a decree of judicial dissolution.

11.2 Winding Up. Upon dissolution, the Company shall cease carrying on its business and affairs and shall commence winding up the Company's business and affairs as soon as practicable. Upon the winding up of the Company, the assets of the Company shall be distributed first to creditors to the extent permitted by law, in satisfaction of Company debts, liabilities, and obligations, and then to Members and former Members in satisfaction of Company liabilities to them, and then the balance of the net proceeds shall be distributed to the Members in accordance with their Membership Units.

ARTICLE XII - VOLUNTARY WITHDRAWAL OR DEATH OF A MEMBER

12.1 Voluntary Withdrawal of a Member. A Member may not voluntarily withdraw from the Company or voluntarily dissolve (if applicable), without the unanimous written consent of Class A Member.

12.2 Death of a Member.

a. Purchase or Liquidation. If an individual Member dies, then the Company has an option for ninety (90) days from the date notified of the death of the Member to either (i) purchase the Membership Interest from the deceased person's heirs or estate, or (ii) allow the deceased Members' heirs to become assignees of the Membership Interest represented by the Units held by the deceased Member. Such purchase shall occur within ninety (90) days.

b. Purchase Price. The purchase price for any deceased Member's Membership Interest where the Company has elected to purchase the Membership Interest shall be $500,000/Unit multiplied by the number of Membership Units owned by the deceased Member.

c. Terms of Payment and Purchase Price. The Company may elect to have the Company pay the purchase price plus interest at 5% per annum to the Member's estate in sixty (60) equal, consecutive monthly installments commencing within ninety (90) days of the date of notice of the death sent to the Company.

ARTICLE XIII - ADDITION OF NEW MEMBERS

13.1 Addition of New Members. The Class A Member may determine that it is in the best interest of the Company to admit additional Members subject to the terms of this Agreement, as amended to reflect the new ownership interests.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Nouns and Pronouns. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

14.2 Headings. The headings contained in this Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.

14.3 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

14.4 Entire Agreement. This Agreement and the Articles for the Company constitute the entire agreement among the parties hereto and contain all of the agreements among said parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

14.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

14.6 Amendment. In conjunction with the provisions of paragraph 7.2 of this Agreement, this Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Agreement. No change or modification to this Agreement shall be valid unless in writing and signed by all of the parties to this Agreement.

14.7 Notices. Any notice permitted or required under this Agreement shall be conveyed to the party at the address reflected in this Agreement on Exhibit A and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission or may be given by e-mail to the e-mail address also listed in Exhibit A or in the Subscription Agreement executed by the Member.

14.8 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

14.9 Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan, without giving effect to conflict of law principles. All actions or proceedings arising from or related to this Agreement shall be brought in a state court of competent subject matter jurisdiction in Ingham County, Michigan, or in the federal courts of competent subject matter jurisdiction in the Western District of Michigan, Southern Division. Each party expressly and irrevocably consents to personal jurisdiction and venue in such courts, and agrees not to object to such jurisdiction or venue on the ground of *forum non conveniens* or otherwise.

14.10 Arbitration. At the Company's election and in its discretion, any dispute, controversy, or claim arising out of or related to this Agreement or the breach thereof to which the Company is a party shall be submitted to and settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration will be conducted by private party administration consisting of either one or three arbitrators selected by the Company at its election, but shall not be conducted by AAA. The arbitrators shall produce a reasoned, written decision as the basis for any award. The parties agree that no awards of punitive damages may be made. Any counterclaims must be brought in the first filing by a party or shall be barred. The costs of such arbitration shall be paid equally by the parties, and each party shall be responsible for its own attorneys fees, costs and expenses. The arbitration award may be entered as a final judgment in any court having jurisdiction thereon. The arbitration shall be held in the metropolitan Lansing, Michigan area. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. This provision shall survive termination of this Agreement without limitation.

14.11 Advice of Counsel. The Members agree, stipulate, and acknowledge that FSC&S has prepared this Agreement on behalf of and in the course of its representation of _____; the Class A Member and that FSC&S has not represented the interest of any Class B Member in connection with this Agreement, and that:

a. each Member has been advised that a conflict of interest may exist between said Member's interest and those of the Company and/or the other Members;

b. each Member has been advised to seek the advice of independent legal counsel; and

c. each Member has had the opportunity to seek the advice of independent legal counsel.

14.12 Securities Legend. With respect to securities registration, each certificate (if any) evidencing a Membership Unit will carry the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THEREOF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date set forth above.

THE COMPANY:

CLASS A MEMBER

By: _____

Its Manager

CLASS A MEMBER:

By: _____

Its Manager

CLASS B MEMBER:
(see executed Subscription Agreements)

By: _____

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EXHIBIT A

OPERATING AGREEMENT OF

____

Dated ______________, 2008

Class A Member Name and Address	Capital Contribution	Membership Units	Membership Interest
______________________	$1,000	5	20%
Class B Members Name and Address			
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
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	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
	$500,000	1	4%
TOTALS:	**$10,001,000**	**25 units**	**100%**

DRAFT

EXHIBIT B
INTERNAL REVENUE CODE §704(B) PROVISIONS

ARTICLE B-I
DEFINITIONS

1.1 Company Minimum Gain. An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

1.2 Company Nonrecourse Liability. A Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in §1.752-2 of the Treasury Regulations) with respect to the liability.

1.3 Member Minimum Gain. An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease of Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code and Treasury Regulations issued thereunder, as the same may be issued and interpreted from time to time.

1.4 Member Nonrecourse Liability. Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor or a guarantor.

1.5 Net Losses. The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.6 Net Profits. The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.7 Nonrecourse Liabilities. Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.8 Offsettable Decrease. Any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation related attributable to depletion allowances under §1.704-1(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year, are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

ARTICLE B-II
CODE SECTION 704(b) PROVISIONS

2.1 Allocations of Net Profits and Net Losses from Operations. Except as may be required by §704(c) of the Code, and §§ 2.2, 2.3, and 2.4 of this Article B-II, net profits, net losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with Article V of the Operating Agreement.

2.2 Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument

causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.752-2 of the regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

2.3 Member Minimum Gain Chargeback. If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of §1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to §704(b) of the Code.

2.4 Qualified Income Offset. In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

2.5 Elections. The Company may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

2.6. Taxes of Taxing Jurisdictions. To the extent that the laws of any taxing jurisdiction requires, each Member requested to do so by the Company will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the, laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Agreement. The Company may, where permitted by the rules of any taxing jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the Members of the amount of such tax interest and penalties so paid.

DRAFT

EXHIBIT C
INVESTMENT CONSIDERATIONS

An investment in the Company involves a high degree of risk. In addition to the risks described elsewhere in the Operating Agreement, the risks described below represent the material risks a Member should carefully consider before making an investment decision. If any of these risks occur, the Company's business, financial condition, liquidity and results of operations could be materially and adversely affected, in which case the value of the Membership Units could decline significantly and a Member could lose all or a part of his or her investment. The risk factors described below are not the only ones that may affect the Company. Additional risks and uncertainties not presently known to the Company may also adversely affect the Company's business, financial condition, liquidity and results of operations.

No Prior Business History. The Company has no prior business history.

No Tangible Assets. The Company has and will likely have no tangible assets other than miscellaneous office supplies and related materials.

Management Structure. Under the Operating Agreement of the Company, the authority to manage the operations and daily business of the Company is delegated to the Class A Member. Unless otherwise agreed, all decisions affecting the Company are to be made by the Class A Member in its discretion, including any decision to invest assets of the Company in another business. The Class B Members in their capacity as Members, will not be actively involved in the management of the Company.

Risks Associated with other Enterprises. The primary purpose of the Company is to invest in what is known as the [redacted]. Any decision to invest in such an enterprise will be made by Class A Members, based upon information available to it at the time. Although information regarding such Project will be compiled by the Company, it will be prepared by others who are beyond the Company's control. The Class A Member has evaluated the Project based upon certain information primarily supplied by the Seller of the Project. No assurance can be given that such information will be accurate or complete.

The performance of the Company depends on the performance of the Project. No assurance can be given that the Project specific performance projections or goals will be met.

Business Risk. The Company and the Project will be constructed within proposed timetables or under proposed costs, or tenants will take occupancy of the Project. This proposed time table is pursuant to proposed rents and it is unclear whether the Company will invest will also be subject to risks facing any other business, including economic downturns, competition, liability claims, and many other risks. If the Class B Member lives outside of the United States, their investments in the Company will be subject to currency fluctuations, and special circumstances attributable to the legal, political, economic and social structures unique to USA, and any restrictions which may be imposed by other _____ Country.

Restricted Securities. The Membership Units issued to Members will be restricted securities under the Securities Act and thus may not be resold except pursuant to registration or

an exemption from registration. The Operating Agreement (and if applicable, any certificate representing the Membership Units) will contain a legend (in addition to any specific legends required under applicable state securities laws) substantially as follows:

> THE SECURITIES REPRESENTED BY THIS [AGREEMENT/ CERTIFICATE] HAVE BEEN ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS ("STATE LAWS"), PURSUANT TO AN INVESTMENT REPRESENTATION BY THE PURCHASER THERE OF. THESE SECURITIES SHALL NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED, DONATED, OR OTHERWISE TRANSFERRED WHETHER OR NOT FOR A CONSIDERATION, BY THE PURCHASER IN THE ABSENCE OF A REGISTRATION EXCEPT UPON THE ISSUANCE TO THE COMPANY OF A FAVORABLE OPINION OF ITS COUNSEL AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL AND TO COMPANY, IN EITHER CASE TO THE EFFECT THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT AND APPLICABLE STATE LAWS.

To ensure that transfers of the Membership Units are made in strict accordance with all limitations upon transfers imposed by the federal and applicable state securities laws, the Company may require an opinion of counsel with respect to the applicability of such laws to a transfer. The books and records of the Company will include respective "stop transfer" notations to the effect that no transfer of any Membership Units shall be effective unless strict compliance with the applicable securities laws shall occur, the determination of which will be at the absolute discretion of the Company.

No Market. There is no present market for the Membership Units and no market for the Membership Units will develop. In addition, the transferability of Membership Units is subject to the terms of this Operating Agreement and each Member will have very limited rights to dispose of the Member's Membership Units prior to dissolution of the Company. Accordingly, an investment in the Membership Units will not be liquid and Members will likely have difficulty selling such Membership Units in the future. The purchase of the Membership Units should be considered only as a long term investment.

Not a Registered Offering. The Membership Units have not been registered under the Securities Act in reliance upon exemptions from registration. Prospective Members must recognize that they do not have the same protections afforded by fully registered securities offerings because they do not have the benefit of prior review by regulatory authorities. Accordingly, each Member must judge the adequacy of disclosure and the fairness of the terms of this venture on his or her own.

Forward Looking Statements. Because of their nature, predictions, forecasts, and projections about the future are inherently risky. In the case of a new company like the Company, such forward looking statements about Company operations are especially likely to be

imperfect, wrong, or unintentionally misleading. All predictions, forecasts, and projections are based on assumptions that may not prove to be accurate. In addition, the estimates and assumptions underlying the projections are based on numerous economic and competitive assumptions that are beyond the Company's control. Potential Members should realize that all such projections are good faith estimates only and that actual results will vary, and may vary significantly. Because of the limitations of these projections, Members are cautioned about placing undue reliance on them. This information was not prepared with a view to public disclosure or to compliance with published guidelines of the Securities and Exchange Commission or any state securities commission.

Foreshadowing statements, without limitation, statements relating to the profitability of a Membership Unit and adequacy of the Company's resources are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Members are advised that such foreshadowing statements involve risks and uncertainties, including without limitation, risks associated with the future economic conditions, and other risks and uncertainties indicated from time to time, many of which are beyond the control of the Company. In addition, when used herein, the words "will", "intends to", "anticipates", "expects", "likely" and other similar expressions are intended to identify foreshadowing statements.

Equity Investment. Investment in any equity unit of ownership such as the Membership Units is risky because there is no guaranteed return or growth, if any, on the investment and the amount and frequency of distributions, if any, and the amount of any growth, if any, is dependent upon the future financial success of the Company, which cannot be predicted with any certainty. Because of restrictions on the sale or other transfer of the Membership Units, no established market for the interests will develop. Members may not, therefore, be able to liquidate their investment in the event of an emergency or for any other reason and must continue to bear the economic risk of the investment for an indefinite period. Members are in no way guaranteed that they will experience gains or not suffer losses in the value of their investment.

Each prospective Member is urged to consult with his or her tax and financial advisors to determine if an investment in the Company is suitable for the Member.

Tax Classification of the Company. While the Company believes that it will be classified as a partnership for federal, state, and local tax purposes, the Company has not obtained (and does not intend to obtain) either an opinion of counsel or an advance ruling from the Internal Revenue Service ("Service"), the Michigan Department of Treasury, or any local tax authority that the Company will, indeed, be classified as a partnership for tax purposes, and not as an association taxable as a corporation. There is a risk the Service, the Michigan Department of Treasury, or a local tax authority will seek to classify the Company as an association taxable as a corporation for income tax purposes, which could have significant adverse tax and perhaps other consequences for Members. EACH PROSPECTIVE MEMBER IS URGED TO CONSULT HIS/HER TAX AND LEGAL ADVISOR(S) REGARDING THE TAX AND OTHER RISKS AND CONSEQUENCES OF AN INVESTMENT IN THE COMPANY.

Tax Risks. The federal income tax aspects of an investment in the Company are complex and their impact may vary depending on a Member's individual circumstances. Members should

consider the following tax risks, among others: (a) the Company has not obtained any opinion on material tax issues or the realization in the aggregate of all potential material tax consequences of an investment in the Company; (b) Members will be taxed currently on their allocable shares of the Company's taxable income, even if they receive no distributions of cash from the Company; (c) the Company was not formed with the intent to produce deductions in excess of income that could be used to offset income from other sources; (d) any losses allocated to a Member are likely to be subject to the limitations on deduction of passive activity losses and may be further limited under the at risk rules; (e) any income realized by a Member from the Company is likely to be taxed as ordinary income rather than as capital gain; (f) the Service may assert that the Company should be characterized as an association taxable as a corporation, which would deprive Members of tax benefits from operating in a partnership form; (g) Members might be deemed to have a status other than partners in a partnership for federal income tax purposes; (h) income allocated by the Company to retirement plans and accounts or other tax exempt investments may be taxable to them as unrelated business taxable income; (i) the Service may challenge the Company's allocation of income, gain, loss, deduction and credit; (j) Members may be precluded from claiming certain deductions by virtue of limitations on miscellaneous itemized deductions; (k) the Company may claim deductions or other tax benefits to which it believes it is entitled, but there can be no assurance that the deductions or other benefits will be allowed on audit; and (l) tax laws, rules, regulations and rulings may change, with or without retroactive effect. No advance ruling will be sought from the Service on any tax issue. EACH POTENTIAL MEMBER IS URGED TO CONSULT HIS TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF INVESTING IN THE COMPANY, WITH SPECIFIC REFERENCE TO HIS OWN TAX SITUATION.

Determination of the Price for Membership Units. The price for the Membership Units was arbitrarily determined by the Company and may have no relationship to book value, assets, earnings or any other generally accepted criteria of value.

Liability of Members. In general, Members in the Company will not be liable for obligations of the Company. However, their capital contributions, and respective shares of the Company's assets and retained profits are subject to the risk of the Company's business and claims of Company creditors.

Return of Distributions and Contributions. If the Company were unable otherwise to meet its obligations, a Member might be obligated to return cash distributions previously received by him or her where the distribution is in violation of the operating agreement or the Michigan Limited Liability Company Act. Under the Michigan Limited Liability Company Act, a member may not receive a distribution from the Company to the extent that, at the time of the distribution and after giving effect to the distribution, all liabilities of the Company, other than liabilities to members on account of their interest in the Company, would exceed the fair value of the Company's assets.

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

JENNIFER M. GRANHOLM
GOVERNOR

STANLEY "SKIP" PRUSS
DIRECTOR

December 30, 2008

Mr. Ken Szymusiak
Lansing Economic Development Corporation
401 S. Washington Sq., Suite. 100
Lansing, MI 48933

Mr. Szymusiak:

I am writing to inform you that per your request, the Michigan Department of Labor and Economic Growth (MDLEG) has determined that the city of Lansing fits the criteria of a "Target Employment Area" in regards to the EB-5 Immigration Regional Center Program.

Due to the nature of the statistical analysis of unemployment the only true comparison between municipalities and the nation is through the comparison of year end data. For our determination, we have utilized seasonally adjusted year end figures from 2007 for the nation and the city of Lansing. The results are as follows:

2007 Year End Seasonally Adjusted Unemployment:

National	4.6%
City of Lansing	8.3%

Data source is the Michigan Department of Labor and Economic Growth and the Bureau of Labor Statistics. The data reflects the official employment and unemployment values as calculated using the methodology outlined by the Bureau of Labor Statistics (BLS) for the Local Area Unemployment Statistic (LAUS) program and supports the INS requirement for calculating unemployment levels to meet qualifications.

Utilizing these figures, the city of Lansing qualifies as a "Target Employment Area" within the EB-5 Immigration Regional Center Program due to the fact that the city's unemployment rate exceeds 150% of the national average.

Sincerely,

Richard H Waclawek, Director
Bureau of Labor Market Information & Strategic Initiatives

3032 W. GRAND BOULEVARD • SUITE 9-100 • DETROIT, MICHIGAN 48202
www.michigan.gov • (313) 456-3100

ENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN D. CHERRY, JR.
LT. GOVERNOR

December 23, 2008

Ms. Barbara Q. Veldarde
Chief, Service Operations
201 Massachusetts Avenue, NW, Room 2123
Washington, D.C. 20529

Dear Ms. Veldarde:

I have designated the Michigan Department of Energy, Labor, and Economic Growth (DELEG) as the state agency responsible for determining whether the city of Lansing meets the high unemployment rate necessary for designation as an EB-5 "Target Employment Area." In this capacity, DELEG will issue a letter on behalf of the Lansing Economic Development Corporation declaring the city is an area of high unemployment and indicating the methodology used in this determination.

Any correspondence regarding this determination should be directed to:

Rick Waclawek, Director
Labor Market Information and Strategic Initiatives
Cadillac Place
3032 W. Grand Boulevard
Suite 9-100
Detroit, MI 48202

Sincerely yours,

Jennifer M. Granholm
Governor

JMG/pd
c: Ken Szymusiak, Lansing Economic Development Corporation
Harry Whalen, Michigan Economic Development Corporation


MARKET PLACE
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VEGETABLES
Changing the
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GILLESPIE GROUP
A New City Market - Downtown Lansing

GILLESPIE
group

2501 Coolidge Rd., Ste. 501
East Lansing, MI 48823
(517) 333-4123

MARKETPLACE and *BALL PARK NORTH*

~ Written Narrative ~

In an effort to continue the positive momentum the City of Lansing has experienced over the past couple of years, Gillespie Group is pleased to present the following detail as it pertains to the proposed revitalization of one of our city's most underutilized and yet greatest potential sites. Located on the Grand River, the site will encompass several acres and be constructed in two phases.

Marketplace

The ***Marketplace*** site contains the existing Lansing City Market which is in poor condition and underutilized. We feel this is "***THE***" site if you're going to be on the river in downtown Lansing, Michigan. We believe this development will help change the river scape and set the tone for additional downtown development.

Our vision is to raze the existing market building and replace it with a new market closer to the river's edge and next to the existing River Walk (paved pathway for bicycles/pedestrians/roller bladers, etc.). Proposed venues in the new market include a coffee shop, wine bar, and ice creamery with organic fruits and vegetables being sold and outdoor seating provided as well. All of this will entice people to the water's edge to enjoy the new diverse market place.

In addition to this activity, we envision semi-motorized and non-motorized boats that will be docked at this site when "in season" and available for rent. A few boat slips will be available for people to utilize so they may enjoy the downtown area. The green, grassy knoll to the east of this building can serve as overflow for seasonal flats of flowers and festive tents for various events the market plans to hold.

We also propose to house a restaurant (with large patio facing the river) 14,000 square foot day spa and 25 (+/-) condominiums in a building just to the northeast of the new market that shares a high-end, eclectic main lobby area. Covered parking will be provided for resident vehicles with surface parking available for patrons and guests.

Ball Park North

On the half block directly to the north of Oldsmobile Park, we would like to construct a building looking down into the stadium, with the outdoor patio seating to provide a view into the ballpark. We propose two levels of parking under this structure and three to four levels above.

We believe this will be a massive structure and need to consist of two or three different structures that are either attached or look as though they are attached. Two different hotel (brand) products may play off

each other well in this format (one in left field and one in right field). There may be a few floors of hotel rooms and a floor or two of condominiums and/or apartments.

This building could also be a very unique use for a corporate headquarters or office, using just a portion of the building. The balance of this phase can be a multitude of things such as office, residential, retail, entertainment or a mix of all.

Elevation

We prefer an urban-edge elevation with a flat roof look but are not opposed to a pitched roof with the right parapet walls and pitch. We envision a roof top that allows 5,000 square feet of roof top dining, entertainment and the like.

Why Lansing will be a very Different City 36 Months from Today

- ***The Stadium District*** development will be up and operating in April 2008
  - 100,000 square foot mixed-use building w/36,000 square feet of retail, 30 apartments, 20 for-sale condominiums

- The new **State Police Headquarters,** located at northeast corner of Grand Avenue and Kalamazoo Street, will be open with an estimated 500+ new jobs

- Board of Water and Light (BWL) defunct power plant will have been transformed into the new corporate headquarters for **The Accident Fund**. Approximately $170 million will be spent on this redevelopment project. Between our development and the BWL development, this part of the river will be a star of the Midwest. Estimated 1,200 jobs upon completion.

- Kalamazoo Gateway - $12 million LEED-certified retail and residential complex, 32 apartments and 10 condominiums

- Capitol Complex – A mixed-use development offering 5,000 square feet of commercial space and for-sale condominiums ranging from 1,000 square feet at an estimated $136,000 each to 2,000 square feet at an estimated $272,000 each

- The Arbaugh – A mixed-use development with commercial space on the first floor and 48 loft apartments on the upper levels

- Capitol Club Tower – 12 to 24 story high-rise housing 80-160 living units, restaurants, a gym, perhaps even a grocery store and swimming pool.

- Prudden Place – An upper-scale full service rental community currently featuring 72 units with another 60 units scheduled for Phase II of this premier property.

We feel that as the developments within the City of Lansing continue to unfold, demand for hotel space will grow immensely. In early 2009 we would hope to have a hotel operation or two on board and ready to proceed with **Phase II – *Ball Park North*** and its mixed uses.

Additional Downtown Lansing Attributes

- **Michigan State Capitol** – Only .63 miles from our developments
- **City of Lansing** government offices – in very close proximity to our developments and employing over 11,400 associates
- Over 32,000 people are in downtown Lansing daily
- **Cooley Law School** – largest law school in the country with 2,300 students in the downtown area and located just .7 miles from our developments
- **Davenport University** – 900-1000 students and located .7 miles from our developments
- **Michigan State University** – Located just 2.9 miles from our developments with a student population of 44,000
- **Entertainment Express Trolley** – The newest addition to our transportation system, this trolley links downtown Lansing and downtown East Lansing, making seven stops every 30 minutes and runs on Thursday, Friday and Saturday evenings.
- **Sparrow Hospital** – Located just three quarters of a mile from our developments, Sparrow Hospital employs 7,800 health care workers and cares for over 567,000 patients each year. This hospital just opened a new 10-story addition that features the region's first and only ER for children, operating rooms that support breakthrough procedures, including robotic surgery, new adult ER with 62 all-private treatment rooms, 4 high-technology trauma rooms and a rooftop helicopter landing pad. It is also the region's only Certified Trauma Center. There is also an expanded oncology facility, 29-bed orthopedic unit and the Heart and Vascular Center of Excellence featuring Stereotaxis technology – the most advanced a safest cardiac catheterization technology available.
- **Lansing Community College** – located in downtown Lansing with 1,634 employees, 14,000+ students and located .69 miles from our developments
- **Lansing Center** – Adjacent to our developments, The Lansing Center is mid-Michigan's premier facility for meetings, hosting many of the greater Lansing area's most prominent events. Featuring over 100,000 square feet of state-of-the-art meeting, exhibit and ballroom space, the Lansing Center hosts nearly 300,000 persons at more than 850 event days on a yearly basis, providing in excess of $13 million dollars of economic impact to the Greater Lansing business community.

- **Oldsmobile Park** – Home of our Lansing Lugnuts, a Single A minor league affiliate of the Toronto Blue Jays and located adjacent to our developments with 350,000+ patrons each year. This stadium is also a venue for many concerts and community events.

- **Impression 5 Science Museum** – ¼ mile from our developments, Impression 5 is a hands-on learning environment that challenges its visitors to experience, discover and explore the world in which they live. Approximately 84,000+ people visit each year with attendance increasing annually.

- **Riverwalk Theater** – This local theater is the home of the Community Circle Players and located on the banks of the Grand River, just three blocks east of the Capitol in downtown Lansing. The theater produces outstanding dramas, comedies, musicals and children's shows and draws over 14,000 guests each year.

Festivals, Races and Special Events

Common Ground Festival – Is a seven day event attracting approximately 90,000 attendees throughout the week. It is mid-Michigan's largest music festival and has featured national recording artists: Steve Miller, Poison, John Legend, Bonnie Raitt, ZZ Top, Alice Cooper, Crosby, Stills & Nash, Beach Boys, Gavin DeGraw, Third Eye Blind, Gladys Knight, Charlie Daniels, Martina McBride, Smokey Robinson and many more! Special events such as the Common Crit and various other athletic events are held throughout Lansing during the festival.

St. Patrick's Day Event – Hosted by the local downtown businesses, the first annual event drew numerous people downtown to celebrate this holiday.

Blues on the Square - This event hosts Blues acts from around the country every Thursday evening beginning in mid-June. The seven-week series runs from 6:00 p.m. to 10:00 p.m. and is held close to the corner of Washtenaw Street and Washington Avenue, drawing people from all areas of the region. 1-2,000

Be a Tourist in Your Own Town Event – This annual event draws over 15,000 "tourists" to the downtown area. Local businesses and entertainment venues open their doors to these tourists, stamp their passport booklet and provide refreshments, tours, information packets, and lots of fun activities for their guests.

Silver Bells in the City – This annual event, which attracted 100,000 people in 2006, is held in mid-November and runs from 5:00 to 9:00 pm. An Electric Light Parade steps off at 6:10 pm at the corner of Lenawee and South Washington Square, followed by the lighting of State of Michigan Official Christmas Tree in front of the State Capitol and a five minute fireworks show over the State Capitol.

The Fitness Festival – This newly created event will be held on September 29th and 30th in 2007. The Capital City ½ Marathon and 5K has partnered with LEPFA and Healthy and Fit Magazine to host a weekend filled with exciting healthy activities and a trade show. We are anticipating over 3,000 runners and cyclist throughout the weekend. Michigan Ave, the Lansing Center, Oldsmobile Park and Adado Riverfront Park will be filled with athletes from around the region and country.

Races –Numerous races, parades and walk-a-thons are held downtown every year, each attracting thousands of attendees. A sampling of events includes: the Michigan Mile, the Memorial Day Parade, the American Cancer Society Relay for Life, the Michigan Pride Parade and Festival, the July 4th Parade, the

Annual African American Parade & Festival, the REO Transportation Museum Car Capitol Celebration, and the Capitol Area Mustangs Car Show "Cruisin' for a Cause."

Festival of the Sun/Festival of the Moon: Sponsored by the Old Town Commercial Association and held over the course of two days, this annual wine tasting event draws over 6,000 patrons annually.

Hopefully this narrative has allowed you to see what we are striving to achieve with this proposed development and we encourage you to contact us with any questions.

Primary Contact:
Jason Kildea
Director of Commercial Development, Sales & Leasing
Gillespie Group
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[Billing Code: 4810-02P; 6720-01P; 6210-01; 7537-01-U; 4810-33-P; 6714-01-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 03-08]

RIN 1557-AC06

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R-1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2003- 16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks.

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: **Effective Date:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874-3295.

Board: Enforcement and Special Investigations Sections at (202) 452-5235, (202) 728-5829, or (202) 452-2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898-3671.

OTS: Compliance Policy Division at (202) 906-6012.

NCUA: Office of General Counsel at (703) 518-6540; or Office of Examination and Insurance at (703) 518-6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905-3590; Office of the General Counsel (Treasury) at (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622-0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107-56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to

facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2) and (c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to

the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the Federal Register (67 FR 48290) applicable to (a) any financial institution defined as a "bank" in 31 CFR 103.11(c)[1] and subject to regulation by one of the Agencies; and (b) any foreign branch of an insured bank. On the same date, Treasury separately published an identical, proposed rule for credit unions, private banks, and trust companies that do not have a Federal functional regulator (67 FR 48299).[2] Treasury and the Agencies proposed general standards that would require each bank to design and implement a customer identification program (CIP) tailored to the bank's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all banks.[3]

Treasury and the Agencies collectively received approximately five hundred comments in response to these proposed rules (collectively referred to as the "proposal" or the "proposed rule" for "banks"), although some commenters sent copies of the same letter to Treasury and to each of the Agencies. The majority of comments received by

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[1] This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

[2] In the preamble for this proposed rule, Treasury explained that a single final regulation would be issued for all financial institutions defined as "banks" under 31 CFR 103.11(c), with modifications to accommodate certain differences between Federally regulated and non-Federally regulated banks. See 67 FR 48299, 48300.

[3] At the same time, Treasury also published (1) together with the SEC, proposed rules for broker-dealers (67 FR 48306) and mutual funds (67 FR 48318); and (2) together with the CFTC, proposed rules for futures commission merchants and introducing brokers (67 FR 48328).

Treasury and the Agencies were from banks, savings associations, credit unions, and their trade associations. Most of these commenters agreed with the largely risk-based approach set forth in the proposal that allowed each bank to develop a CIP based on its specific operations.

Some commenters, however, criticized the specific requirements in the proposed rule and suggested that Treasury and the Agencies issue a final rule containing an entirely risk-based approach without any minimum identification and verification requirements. According to some of these commenters, such a thoroughly risk-based approach would give banks appropriate discretion to focus their efforts and finite resources on specific, high-risk accounts most likely to be used by money-launderers and terrorists.

Other commenters, especially those representing credit card banks and credit card issuers, asserted that the proposed minimum identification and verification requirements should be eliminated because they did not take into account the unique nature of credit card operations. They warned that these requirements, if implemented, would have a chilling effect on credit practices important to U.S. consumers and would impose significant compliance costs on their industry with little benefit to law enforcement.

By contrast, some smaller banks criticized the flexibility of the proposal and stated that a risk-based approach would leave too much room for interpretation by the Agencies. These commenters urged Treasury and the Agencies to issue a final rule establishing more specific requirements. For example, some commenters suggested that the rule prescribe risk assessment levels for each customer type and type of account, along with a specific description of acceptable forms of identification and methods of verification appropriate for each bank's size and location.

While commenters representing various segments of the industry differed on the approach that should be taken in the final rule, the vast majority concluded that Treasury and the Agencies had underestimated the compliance burden that would be imposed by certain elements of the proposal. Commenters were especially concerned about the proposed requirements that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed.

Some commenters also suggested that banks be given greater flexibility when dealing with established customers and urged that banks be permitted to rely on identification and verification of customers performed by a third party, including an affiliate. Other commenters asked for additional guidance regarding the lists of known and suspected terrorists and terrorist organizations that must be checked, and regarding what will be deemed adequate notice to customers for purposes of complying with the final rule. Many commenters requested that the final rule contain a delayed implementation date that would provide banks with the time needed to design a customer identification program, obtain board approval, alter existing policies and procedures, forms and software, and train staff.

Several comments were received from companies engaged in the sale of technology or services that could be used to identify and verify customers, retain records, and check lists of known and suspected terrorists and terrorist organizations. Many of these companies recommended that the proposed rule be modified to make clear that use of specific products and services would be permissible. Some of these commenters urged

that the rule require banks to authenticate any documents obtained to verify the identity of the customer through the use of automated document authentication technology.

A small number of comments were received from individuals. Some of these individuals criticized the proposed requirement that banks obtain a social security number from persons opening an account as an infringement upon individual liberty and privacy. Some individuals were concerned that this requirement would expose them to an added risk of identity theft. Other individuals supported the proposal and concluded that its verification requirements might diminish instances of identity theft and fraud. A few commenters suggested that the government develop a separate national identification number or require that social security cards bear photographs and or other safeguards.

A variety of commenters applauded the efforts of Treasury and the Federal functional regulators to devise a uniform set of rules that apply to banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers.[4] They noted that, without uniformity, customers of financial institutions may seek to open accounts with institutions that customers perceive to have less robust customer identification requirements. These commenters also suggested revisions that would enhance the uniformity of the rules.

Treasury and the Agencies have modified the proposed rule in light of the comments received. A discussion of the comments, and the manner in which the proposed rule has been modified, follows in the section-by-section analysis.

In addition, as suggested by a number of commenters, Treasury and the Agencies expect to issue supplementary guidance following issuance of the final rule.

C. Joint Issuance by Treasury and the Agencies

The final rule implementing section 326 is being issued jointly by Treasury, through FinCEN, and by the Agencies. It applies to (1) a "bank," as defined in 31 CFR 103.11(c), that is subject to regulation by one of the Agencies, and (2) to any non-Federally insured credit union, private bank or trust company that does not have a Federal functional regulator (collectively referred to in the final rule as "a bank").

The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, each of the Agencies is concurrently publishing a provision in its own regulations[5] to cross-reference this final rule in order to clarify the applicability of the final rule to the banks subject to its jurisdiction.

Regulations governing the applicability of section 326 to certain financial institutions that are regulated by the SEC and the CFTC are the subject of separate rulemakings. Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all joint rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

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[4] See footnote 3, supra.

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

D. Compliance Date

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided

[5] 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis of Final Rule Implementing Section 326

Section 103.121(a) Definitions.

Section 103.121(a)(1) Account. The proposed rule defined "account" as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an "account."[6] The proposal also explained that the term "account" was limited to formal banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of "account" was either too broad or needed clarification. Some commenters suggested that the definition of "account" be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of "account."

[6] The definition of "account" in the proposed rule was based on the statutory definition of "account" that is used in section 311 of the Act.

Most commenters requested that the final rule provide additional examples of the relationships that would constitute an "account." Many commenters requested that the rule clarify the meaning of "ongoing services." These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an "account." Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal -- which commenters characterized as the "transfer exception" – be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term "business relationship" has been deleted from the definition of "account." This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general "business" dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an "account."

The definition of "account" also has been changed to include a list of products and services that will not be deemed an "account." The preamble for the proposed rule had used the term "ongoing services" to define accounts covered by the final rule, and had referred to the exclusion of "occasional" transactions and "infrequent" purchases

(which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that "account" excludes products and services where a formal banking relationship is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.[7] Treasury and the Agencies note that part 103 already requires verification of identity in connection with many of these products and services. See, e.g., 31 CFR 103. 29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for $3000 or more); 31 CFR 103.33 (funds transfers of $3000 or more).

In addition, the final rule codifies and clarifies the "transfer exception." Under the final rule, the definition of "account" excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.[8] Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for "verifying the identity of any person seeking to open an account." Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.[9]

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[7] This exclusion is consistent with legislative history indicating that by referencing the term "customers," Congress intended "that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined 'customers' and 'customer relationship' for purposes of the financial privacy rules." H.R. Rep. No. 107-250, pt. 1, at 62 (2001). The definitions of "customer" and "customer relationship" in the financial privacy rules apply only to a consumer who has a "continuing relationship" with a bank, for example, in the form of a deposit or investment account, or a loan. See .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

[8] In many cases, these third parties are themselves "financial institutions" for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

[9] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of "account" for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements.

Section 103.121(a)(2) Bank. The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a "bank" in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included "any foreign branch of an insured bank" to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.[10] As

[10] All insured depository institutions currently must have a BSA compliance program. See 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, i.e., the requirement to

described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a "bank" in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, "bank" includes all financial institutions covered by both of the proposals described above, except that "bank" does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,[11] Treasury and the Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-

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implement a BSA compliance program. See 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. See 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

[11] See, e.g., 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled "Anti-Money Laundering Requirements –Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for Foreign Banks" implementing sections 313 and 319(b) of the Act).

specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

Section 103.121(a)(3) Customer. The proposal defined "customer" to mean any person[12] seeking to open a new account. In addition, the proposal defined a "customer" to include any signatory on an account. The preamble for the proposal explained that the term "customer" included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a "customer," regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that "customer" does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define "customer" to mean "a person who opens a new account," as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines

[12] The proposed rule defined "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal

a "customer" as "a person that opens a new account."[13] For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.[14] In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether "customer" includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that "customer" means "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."

A few banks stated that defining "customer" to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business

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personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

[13] Therefore, each person named on a joint account is a "customer" under this final rule unless otherwise provided.

[14] However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves – many of whom simply work as employees for firms with corporate accounts -- and would outweigh any benefit.[15] One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

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[15] Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. See 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

After revisiting the issue of whether a signatory should be a "customer," Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining "customer" to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)-(iv).[16] Section 103.22(d)(2)(iv) exempts such companies only to the

[16] Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. See 31 CFR 103.22(d)(1).

extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

Treasury and the Agencies acknowledge that the proposed rule might have had unintended consequences for bank-customer relationships and that the risk-based approach suggested by commenters would avoid these consequences. Accordingly, the final rule excludes from the definition of "customer" a person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[17]

[17] As a foreign branch of an insured U.S. bank is no longer a "bank" for purposes of this rule, a customer of a bank's foreign branch will no longer be "a person who has an existing account with the bank." Therefore, the bank must verify the identity of a customer of its foreign branch in accordance with its CIP if such a customer opens a new account in the U.S.

Section 103.121(a)(4) Federal functional regulator. The proposed rule defined "Federal functional regulator" by reference to § 103.120(a)(2), meaning each of the Agencies, the SEC, and the CFTC. There were no comments on this definition, and Treasury and the Agencies have adopted it as proposed.

Section 103.121(a)(5) Financial institution. The final rule includes a new definition for the term "financial institution" that cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

Section 103.121(a)(6) Taxpayer identification number. The proposed rule repeated the language from § 103.34(a)(4), which states that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes "a taxpayer identification number." There were no comments on this approach, and Treasury and the Agencies have adopted it substantially as proposed, with minor technical modifications.

Section 103.121(a)(7) and (8) U.S. Person and non-U.S. person. The proposed rule provided that "U.S. person" is an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States. A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.

As described in greater detail below, a bank is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the bank may obtain

an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Several commenters suggested that it would be less confusing to bankers if "U.S. person" meant both a U.S. citizen and a resident alien, consistent with the definition of this term used in the Internal Revenue Code (IRS definition).[18] A few commenters criticized the proposed definition because it would require banks to establish whether a customer is or is not a U.S. citizen.

Treasury and the Agencies believe that the proposed definition of "U.S. person" is a better standard for purposes of this final rule than the IRS definition. Adoption of the IRS definition of "U.S. person" would require bank staff to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a bank will not necessarily need to establish whether a potential customer is a U.S. citizen. The bank will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification. For these reasons, the definition is adopted as proposed.

Section 103.121(b)Customer Identification Program: Minimum Requirements.

Section 103.121(b)(1) General Rule. The proposed rule required each bank to implement a CIP that is appropriate given the bank's size, location, and type of business. The proposed rule required a bank's CIP to contain the statutorily prescribed procedures, described these procedures, and detailed certain minimum elements that each of the

[18] 26 U.S.C. 7701(a)(30)(A).

procedures must contain. In addition, the proposed rule required that the CIP be written and that it be approved by the bank's board of directors or a committee of the board.

The proposed rule also stated that the CIP must be incorporated into the bank's BSA[19] compliance program and should not be a separate program. A bank's BSA compliance program must be written, approved by the board, and noted in the bank's minutes. It must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The preamble for the proposal explained that the CIP should be incorporated into each of these four elements of a bank's BSA program.

Most commenters agreed with the proposal's approach of allowing banks to develop risk-based programs tailored to their specific operation, though some of these commenters recommended that Treasury and the Agencies adopt an entirely risk-based approach without any minimum requirements while others recommended a more prescriptive approach. Many commenters suggested that Treasury and the Agencies clarify the extent to which a bank could rely on a third party, especially an affiliate, to perform some or all aspects of its CIP.

Other commenters focused on the requirement that a bank's board of directors approve the CIP. These commenters urged Treasury and the Agencies to adopt a regulation that states that the role of a bank's board of directors need only be to approve broad policy rather than the specific methods or actual procedures that will be a part of a bank's CIP. One commenter recommended that the governing body of a financial institution be permitted to delegate its responsibility to approve the CIP.

The final rule attempts to strike an appropriate balance between flexibility and detailed guidance by allowing a bank broad latitude to design and implement a CIP that is tailored to its particular business practices while providing a framework of minimum standards for identifying each customer, as the Act mandates. Following the description of the procedures and minimum requirements for each element of a bank's CIP (identity verification, recordkeeping, comparison with government lists, and customer notice), the final rule contains a new section describing the extent to which a bank may rely on a third party to perform these elements, described in detail below.

The final rule removes the requirement that the bank's board of directors or a committee of the board must approve the bank's CIP because this requirement is redundant. A bank's BSA compliance program must already be approved by the board. Treasury and the Agencies regard the addition of a CIP to the bank's BSA compliance program to be a material change in the BSA compliance program that will require board approval. The board of director's responsibility to oversee bank compliance with section 326 of the Act is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

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[19] See footnote 10, supra.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.[20] Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.[21]

Section 103.121(b)(2) Identity Verification Procedures. The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide "an affidavit of identity" on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures "that enable the bank to form a reasonable belief that it knows the true identity of the customer" as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

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[20] See footnote 10, supra.

[21] The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.[23]

Section 103.121(b)(2)(i) Customer Information Required. The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3) date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

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[23] H.R. Rep. No. 107-250, pt. 1, at 62 and 63 (2001).

identification, verification, and recordkeeping provisions of the Act, taken together, should provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing. The final rule therefore provides that a bank generally must obtain a residential or business street address for a customer who is an individual because Treasury and the Agencies have determined that law enforcement agencies should be able to contact an individual customer at a physical location, rather than solely through a mailing address. Treasury and the Agencies recognize that this provision may be impracticable for members of the military who cannot readily provide a physical address, and other individuals who do not have a physical address but who reliably can be contacted. Accordingly, the final rule provides an exception under these circumstances that allows a bank to obtain an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual. For a customer other than an individual, such as a corporation, partnership, or trust, the bank may obtain the address of the principal place of business, local office, or other physical location of the customer. Of course, a bank is free to obtain additional addresses from the customer, such as the customer's mailing address, to meet its own or its customer's business needs.

The proposal required that banks obtain an identification number from customers. For U.S. persons, a bank would have been required to obtain a U.S. taxpayer identification number. For non-U.S. persons, a bank would have been required to obtain a number from various alternative forms of government-issued identification.

One commenter stated that this requirement would not be burdensome. Commenters representing certain consumer advocacy groups commended Treasury and

the Agencies for providing banks with the discretion to accept alternative forms of identifying information from non-U.S. citizens. These commenters stated that this position would assist low-income immigrants in gaining financial stability. By contrast, some commenters stated that the final rule should not permit a bank to open an account for a customer using only a foreign identification number when the customer provides a U.S. address. Other commenters asked for guidance on whether a bank is permitted to accept a number from the identification document issued by a foreign government. A few commenters urged the government to require a national identification document for all individuals.

Other commenters, primarily credit card banks, stated that the requirement that a bank obtain a U.S. taxpayer identification number from U.S. persons would create considerable hardship. They stated that new credit card customers are reluctant to give out their social security numbers, especially over the telephone. They urged that banks be given the discretion to collect identifying information, other than social security numbers, when appropriate in light of consumer privacy and security concerns. In the alternative, they recommended that banks be permitted to obtain a U.S. taxpayer identification number for U.S. persons from a trusted third party source, such as a credit reporting agency.

Some commenters questioned what number to use for accounts opened in the name of a bowling league or class reunion, or to accept donations for a special cause. Other commenters questioned what number could be obtained from foreign businesses and enterprises that have no taxpayer identification number or other government-issued documentation.

The final rule provides that a bank must obtain an "identification number" from every customer. As discussed above, under the definition of "customer," the final rule permits a bank to obtain the identification number of the individual who opens an account in the name of an individual who lacks legal capacity, such as a minor, or a civic group, such as a bowling league.

After reviewing the comments, Treasury and the Agencies have determined that requiring a bank to obtain a customer's identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks' current practices and could alienate many potential customers. Accordingly, Treasury and the Agencies have adopted an exception for credit card accounts that will permit a bank offering such accounts to acquire information about the customer, including an identification number, from a trusted third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

The final rule also provides that for a non-U.S. person, a bank must obtain one or more of the following: a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This standard provides a bank with some flexibility to choose among a variety of identification numbers that it may accept from a

non-U.S. person.[25] However, the identifying information the bank accepts must permit the bank to establish a reasonable belief that it knows the true identity of the customer.

Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself, based upon appropriate risk factors, including those discussed above (the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the other types of identifying information available, and the bank's size, location, and customer base), whether the information presented by a customer is reliable.

Treasury and the Agencies recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore, the final rule notes that when opening an account for such a customer, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposal also contained a limited exception to the requirement that a bank obtain a taxpayer identification number from a customer opening a new account. The exception permitted a bank to open an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number (EIN), provided that the bank obtains a copy of the application before it opens the account and obtains the EIN within a reasonable period of time after the account is established. The preamble for the proposed rule explained that

[25] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a bank. See Treasury Department, "A Report to Congress in Accordance with

this exception was included for a new business that might need access to banking services, particularly a bank account or an extension of credit, before it has received an EIN from the Internal Revenue Service.

Some commenters questioned this limited exception for certain businesses. A few commenters suggested expanding the exception to include individuals who have applied for, but have not yet received a taxpayer identification number. Another commenter stated that the exception provided no added benefit and would add to a bank's recordkeeping and monitoring burden.

Treasury and the Agencies have determined that a bank should be afforded more flexibility in situations where a person, including an individual, has applied for, but has not yet received, a taxpayer identification number. Therefore, the final rule states that instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a taxpayer identification number.[26] To lessen the recordkeeping burden for a bank that elects to use this exception, the final rule also provides that the bank's CIP need only include procedures requiring the bank to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened. Thus, a bank will be able to exercise its discretion[27] to determine how to confirm that a customer has filed an

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Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[26] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting–TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (i.e., interest and dividends) on certain accounts. See 26 CFR 31.3406(g)-3.

[27] For example, the bank may wish to examine a copy of the application filed.

application for a taxpayer identification number rather than having to keep a copy of the application on file.

Section 103.121(b)(2)(ii) Customer Verification. The proposed rule provided that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened.[28] The proposed rule also described when a bank is required to verify the identity of existing customers.

Several commenters asked Treasury and the Agencies to underscore that these verification procedures may be risk-based by noting that a bank may verify less than all of the identifying information provided by the customer. Many commenters noted that there is currently no reliable, efficient, or effective means of verifying a customer's social security number. Some of these commenters asked the government to establish a method that would permit banks to establish the authenticity and accuracy of a customer's name and taxpayer identification number.

Treasury and the Agencies recognize that there currently is no method that would permit a bank to verify, for example, a taxpayer identification, passport or alien identification number through an official source. Accordingly, the final rule provides that a bank's CIP must contain procedures for verifying the identity of the customer, "using the information obtained in accordance with paragraph (b)(2)(i)," namely, the identifying information obtained by the bank. Thus, a bank need not establish the accuracy of every

[28] The preamble for the proposed rule noted that, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provided the bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.

element of identifying information obtained but must do so for enough information to form a reasonable belief it knows the true identity of the customer.

Some commenters stated that they appreciated the flexibility of the proposal permitting an institution to determine how soon identity must be verified. Other commenters asked Treasury and the Agencies to clarify what is a "reasonable period of time." As stated in the preamble for the proposal, Treasury and the Agencies believe that the amount of time it will take an institution to verify a customer's identity may depend upon various factors, such as the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. For the same reasons, the final rule provides banks with the flexibility necessary to accommodate a wide range of situations by stating that the bank must verify the identifying information within a reasonable time after the account is opened.[29]

As discussed above in the definition section, many commenters criticized the proposed approach regarding verification of existing customers that open new accounts. The final rule addresses these concerns by modifying the definition of "customer" to exclude a person who has an existing account with the bank if the bank has a reasonable belief that it knows the true identity of the person.

Many commenters urged that the final rule continue to allow, but not mandate, documentary verification. A few commenters requested that the final rule provide additional guidance on verification. Some commenters asked that the final rule clarify that a bank may choose to use only documentary methods and may refuse to open an

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[29] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. See, e.g., 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control (OFAC) prohibiting transactions involving designated foreign countries or their nationals).

account using other methods.

The final rule addresses these comments by stating that a bank's CIP's verification procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.

Section 103.121(b)(2)(ii)(A) Verification Through Documents. The proposed rule provided that the CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. It then gave examples of documents that could be used to verify the identity of individuals and other persons such as corporations, partnerships, and trusts.

Most commenters noted that banks do not have the means to authenticate or validate documents provided by their customers and urged Treasury and the Agencies to clarify that document authentication is not a CIP requirement. Treasury and the Agencies wish to confirm that once a bank has obtained and verified the identity of the customer through a document such as a driver's license or passport, the bank will not be required to take steps to determine whether the document has been validly issued. A bank generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the bank must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Some commenters also asked that Treasury and the Agencies provide more examples and discuss appropriate types of documentary identification in the final rule or in separate guidance that banks may easily access. Commenters asked whether a utility bill, or library card addressed to the same physical address and name of the person

seeking the account, or a foreign identification card, such as a foreign voter registration card or driver's license, would be acceptable. Some commenters questioned whether copies of documents would suffice.

Given the recent increases in identity theft and the availability of fraudulent documents, Treasury and the Agencies agree with a commenter who suggested that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, a bank is encouraged to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, banks are encouraged to use a variety of methods to verify the identity of a customer, especially when the bank does not have the ability to examine original documents.

The final rule attempts to strike the appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement by providing that a bank's CIP must state the documents that a bank will use. This will require each bank to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.

The final rule continues to provide an illustrative list of identification documents. For an individual, these may include an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. For a person other than an individual, these may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Some commenters questioned whether the examples of identification documents

given for persons other than individuals would be reliable. One commenter questioned whether trust documents alone would be sufficient verification of identity. Another commenter suggested allowing banks to rely on a certification by the trustee, or an appropriate legal opinion, rather than the trust instrument to verify the existence of a trust. Someone else suggested that banks should be allowed to rely on documentation consisting of evidence that a business is either publicly traded or is authorized to do business in a state or the United States.

The examples provided in the final rule were intended only to illustrate the documents a bank might use to verify the identity of a customer that is a corporation, partnership, or trust. A bank may use other documents, provided that they allow the bank to establish that it has a reasonable belief that it knows the true identity of its customer. Accordingly, the final rule makes no significant changes to the examples.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. Recognizing that some accounts are opened by telephone, by mail, and over the Internet, the proposed rule provided that a bank's CIP also must contain procedures describing what non-documentary methods the bank will use to verify identity and when the bank will use these methods (whether in addition to, or instead of, relying on documents). The preamble for the proposed rule also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.

The proposed rule gave examples of non-documentary verification methods that a bank may use, including contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is

associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The preamble for the proposed rule stated that a bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).

The proposal required that the procedures address situations where an individual, such as an elderly person, legitimately is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction, for example over the phone, by mail, or through the Internet; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Several commenters asked for additional guidance regarding when non-documentary verification methods should be used in addition to documentary verification methods and the circumstances in which only one or all of the non-documentary verification methods listed are necessary. Commenters also asked for guidance on audit methodology, and an explanation of the due diligence required for verification of accounts opened by telephone, mail, and through the Internet. A few commenters suggested that reference to verification, where a bank compares information provided by

the customer with information from trusted third party sources, be expressly mentioned in the final rule.

As the large number of comments on this section illustrates, a rule that attempted to address every scenario and combination of risk-factors that a bank might confront would be extremely complex and invariably would fail to address many situations. Rather than adopt a lengthy and potentially unwieldy rule that still would not address every situation, Treasury and the Agencies have concluded that it would be more effective to adopt general principles that are fleshed out through examples. Therefore, the final rule states that for a bank relying on non-documentary verification methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

The final rule generally retains the illustrative list of non-documentary methods contained in the proposal. Treasury and the Agencies have clarified that one method is "independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source," rather than verifying "documentary information" through such sources.

The final rule also retains the variety of situations that the procedures must address that were identified in the proposal, with the following two changes. First, because "transaction" is a defined term in 31 CFR part 103, instead of using the term "face-to-face transaction," the final rule states that the procedures must address the situation where a customer opens an account without appearing in person at the bank. Second, the final clause of this provision provides that the CIP must include procedures

to address situations where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents. This clause acknowledges that there may be circumstances beyond those specifically described in this provision when a bank should use non-documentary verification procedures.

As stated in the preamble for the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the Agencies encourage banks to use non-documentary methods even when the customer has provided identification documents.

Section 103.121(b)(2)(ii)(C) Additional Verification for Certain Customers. As described above, the proposed rule required the identification and verification of each signatory for an account. Most commenters objected to this requirement as overly burdensome, and, upon consideration of the points raised by the commenters, Treasury and the Agencies agree that it is appropriate to delete it. For the reasons discussed below, however, the rule does require that a bank's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the Agencies believe that while the majority of customers may be verified adequately through the documentary or non-documentary verification methods described in paragraphs (b)(2)(ii)(A) and (B), there may be instances where this is not possible. The risk that the bank will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that

has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. Treasury and the Agencies believe that a bank must identify customers that pose a heightened risk of not being properly identified, and a bank's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the entity in whose name such an account is opened when standard documentary and non-documentary methods prove to be insufficient.

For these reasons, the requirement to verify the identity of signatories has been replaced by a new provision in the final rule that requires that a bank's CIP address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank also will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This additional verification method will only apply when the bank cannot adequately verify the customer's identity using the documentary and non-documentary verification methods described in (b)(2)(ii)(A) and (B). Moreover, a bank need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity using standard documentary and non-documentary verification methods.

Section 103.121(b)(2)(iii) Lack of Verification. The proposed rule stated that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. The

preamble for the proposed rule listed what these procedures should include. In addition, the proposal stated that a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[30]

The final rule retains the general requirement that a bank's CIP include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the customer. However, the rule text itself now states that the procedures should describe the following: when a bank should not open an account for a potential customer; the terms under which a customer may use an account while the bank attempts to verify the customer's identity; when the bank should close an account after attempts to verify a customer's identity have failed; and when the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

One commenter stated that requiring a bank to close an account if it cannot verify a customer's identity would conflict with state laws and would subject the bank to legal liability. The commenter urged that if this provision is retained, the final rule also should shield banks from state regulatory and borrower liability in these circumstances. Other commenters asked that Treasury and the Agencies clarify that further investigation that results in failure to open an account will not trigger adverse action requirements under the FCRA, 15 U.S.C. 1681 et seq. or the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq.

[30] The preamble also explained that there are some exceptions to this basic rule. For example, a bank may maintain an account at the direction of a law enforcement or intelligence agency, even though the bank does not know the true identity of the customer.

The final rule does not specifically require a bank to close the account of a customer whose identity the bank cannot verify, but instead leaves this determination to the discretion of the bank. Treasury and the Agencies have determined that there is no statutory basis to create a safe harbor that would shield banks from state regulatory or borrower liability if a bank should choose to close a customer's account. Any such closure should be consistent with the bank's existing procedures for closing accounts in accordance with its risk management practices. Treasury and the Agencies also note that a bank must comply with other applicable laws and regulations, such as the adverse action provisions under ECOA and the FCRA, when determining not to open an account because it cannot establish a reasonable belief that it knows the true identity of the customer.[31]

Section 103.121(b)(3) Recordkeeping.

Section 103.121(b)(3)(i) Required Records. The proposed rule set forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank would have been required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the proposal would have required the bank to maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain. The bank also would have been required to record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the

[31] See 12 CFR 202.9(b) (Federal Reserve Regulation B that prescribes the form of ECOA notice and statement of specific reasons); 15 U.S.C. 1681m (FCRA provision that provides for duties of users taking adverse actions on the basis of information contained in consumer reports from other third parties or affiliates).

bank would have been required to record the resolution of any discrepancy in the identifying information obtained.

This section of the proposed rule prompted the most comment. Though one commenter felt that the recordkeeping requirements in the proposed rule were weak, almost all other commenters identified the proposed documentation and record retention requirements as overly burdensome. Commenters urged Treasury and the Agencies to permit a bank to record the information from the documents obtained rather than requiring banks to maintain copies of these documents for the life of the account. Commenters generally argued that it would be difficult and very burdensome to store and retrieve copies of documents used to verify the identity of the customer. In addition, some commenters noted that many kinds of identification documents, particularly some new driver's licenses, have security features that prevent them from being copied legibly. Other commenters stated that copies of documents would be difficult to safeguard and could facilitate identity theft.

Commenters stated that requiring banks to keep copies of documents would substantially deviate from current banking practice and would violate certain states' laws. Banks offering credit card accounts through retailers, who require the customer to provide identifying documents at the point of sale, strenuously opposed this requirement if it were interpreted to cover documents presented to the merchant. These commenters stated that copy machines are not usually available at the point of sale, and that the rule as proposed would require merchants to purchase large numbers of additional copy machines. The commenters also anticipated that consumers would be greatly inconvenienced by this requirement and might have to endure lengthy waits during any

busy shopping season. These commenters questioned whether the risks of money-laundering and the financing of terrorism through retail store credit cards, which generally have relatively low credit limits, restrictions on pre-payment, and other features to detect fraud, warrant the imposition of these additional costs.

Other commenters stated that requiring banks to keep copies of documents that have pictures, such as driver's licenses, could expose the bank to allegations of unlawful discrimination, even if the retention of this information were not prohibited under ECOA. Some banks objected to this requirement on the grounds that it directly conflicted with the position that the Agencies have traditionally taken on this issue, including the criticism of banks that have retained such information in their files when extending credit.

Other commenters asked that a bank be permitted to record the processes and procedures generally used for verification rather than being required to keep records of the methods used and the resolution for each and every account, especially where the bank uses standardized procedures for all customers and could demonstrate that these procedures were applied. Some commenters suggested that the final rule permit banks to use a risk-based approach for recordkeeping.

In light of the comments received, Treasury and the Agencies have reconsidered and modified the recordkeeping requirements of the proposed rule. The final rule provides that a bank's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a bank develop and implement a CIP. However, the final rule affords banks significantly more flexibility than did the recordkeeping provisions contained in the proposal. Under

the final rule, a bank's records are to include "a description," rather than a copy, of any document upon which the bank relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. The final rule also clarifies that the record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.

As Treasury and the Agencies indicated in the preamble for the proposal, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this final rule, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(3)(ii) Retention of Records.

The proposal required a bank to retain all of the records specified in the recordkeeping provision for five years after the date the account is closed.

This requirement prompted strenuous objections. Assuming that copies of the documents used to verify the identity of the customer would have to be retained, commenters asserted that retaining records until five years after the account is closed would be very burdensome. Some commenters noted that imaging is not a routine practice for community banks and could be costly. Banks offering credit card accounts stated that the record retention requirement would require a change in forms, processes,

and systems, while also increasing storage costs. As credit cards do not have a specific term, commenters noted that banks would be required to keep these records forever, unless they are culled manually. Some commenters suggested that the retention period be shortened, with suggestions ranging from one to three years after the account is closed, while other commenters suggested that the period be shortened to five years from when the account is opened. Many commenters stated that two years from when the information is obtained would be consistent with other regulatory requirements, such as the record retention requirements for an application for an extension of credit subject to ECOA (12 CFR 202.12(b)).

By eliminating the requirement that a bank retain copies of the documents used to verify the identity of the customer, Treasury and the Agencies believe that the final rule largely addresses the main concern of these commenters. However, Treasury and the Agencies also have determined that, while the identifying information provided by the customer should be retained, there is little value in requiring banks to retain the remaining records for five years after an account is closed because this information is likely to have become stale. Therefore, the final rule now prescribes a bifurcated record retention schedule that is consistent with the general five-year retention requirement in 31 CFR 103.38. First, the bank must retain the information referenced in paragraph (b)(3)(i)(A) (that is, information obtained about a customer), for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. Second, the bank need only retain the records that it must make and maintain under the remaining parts of the recordkeeping provision, paragraphs

(b)(3)(i)(B), (C), and (D) (that is, information that verifies a customer's identity) for five years after the record is made.

Section 103.121(b)(4) Comparison with Government Lists. The proposed rule required a bank to have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any Federal government agency. In addition, the proposal stated that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists.

Most commenters were concerned about how a bank would be able to determine what lists should be checked for purposes of this provision and how these lists would be made available. Some commenters asked that the final rule confirm that a bank will not have an affirmative duty to seek out all lists compiled by the Federal government and would only be required to check lists provided to it by the Federal government. Some commenters noted that lists published by OFAC are published but are not provided to financial institutions.[32] Many commenters urged that all lists within the meaning of section 326 of the Act, be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single website that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

[32] Nevertheless, the legislative history for this provision indicates that the lists Congress intended financial institutions to consult "are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon." H.R. Rep. No. 107-250, pt. 1, at 63 (2001).

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to when a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

Section 103.121(b)(5) Customer Notice. The proposed rule would have required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued "shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures" that satisfy the statute. Based upon this statutory

requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's customers when provided in accordance with the requirements of this final rule.

Section 103.121(b)(6) Reliance on Another Financial Institution. Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution

having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a

customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks[33] will be subject to regulation and examination by the Agencies under other applicable laws and regulations. See, e.g., 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

Section 103.121(c) Exemptions. The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The

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[33] Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.

proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of "account" and "customer" for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

Section 103.121(d) Other Information Requirements Unaffected. The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the

customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons[34] opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

[34] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number)." Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the

exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule -- rather than withdrawing § 103.34(a) – amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.[35]

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." The definition of "customer" in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

[35] Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

Section 103.11(j), which defines the term "deposit account," contains an obsolete reference to the definition of "transaction account," which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[36] See 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[37]

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[36] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. See 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87-2, developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

[37] See footnote 10.

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.[38] Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. See 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists[39] and already use identity verification software, both as part of their customer due diligence obligations under existing BSA compliance program requirements and to detect fraud.

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[38] See, e.g., identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

[39] We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be de minimis.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of "customer," no longer requires a bank to keep copies of documents used to verify a

the final rule excludes from the definition of "customer" the following readily-identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)-(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[42]

Second, recordkeeping burden was further reduced by:

- eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include "a description" of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include "a description" of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and
- reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

[42] The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term "adequate notice."

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (see, e.g., 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and provided in accordance with the final rule, will be deemed adequate notice. In addition, it continues to permit banks to choose among a variety of low-cost methods of providing adequate notice and to select the least burdensome method, given the circumstances under which customers seek to open new accounts.

Treasury and the Agencies also believe that nominal burden is associated with the new recordkeeping requirement in § 103.121(b)(6). This section permits a bank to rely on another financial institution to perform some or all its CIP under certain conditions, including the condition that the financial institution enter into a contract with the bank providing that it will certify annually to the bank that it (1) has implemented its anti-money laundering program and (2) will perform (or its agent will perform) the specified requirements of the bank's CIP. Not all banks will choose to rely on a third party. For

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proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

those that do, the minimal burden of retaining the certification described above should allow them to reduce net burden under the rule by such reliance.

Burden Estimates

Treasury and the Agencies have reconsidered the burden estimates published in the proposed rule, given the comments stating that the burdens associated with the paperwork collections were underestimated. Having done so, and considering the reduction in burden taken in this final rule, Treasury and the Agencies have adjusted their estimates of the paperwork burden of this rule. The burden estimates that follow are estimates of the incremental burden imposed upon banks by this final rule, recognizing that some of the requirements in this rule are a usual and customary practice in the banking industry, or duplicate other regulatory requirements.

The potential respondents are national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); Federally insured credit unions (NCUA financial institutions); and certain non-Federally regulated credit unions, private banks, and trust companies (FinCEN institutions).

Estimated number of respondents:

OCC: 2207.

Board: 1240.

FDIC: 5,500.

OTS: 962.

NCUA: 9,688.

FinCEN: 2,460.

Estimated average annual recordkeeping burden per respondent: 10 hours.

Estimated average annual disclosure burden per respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 242,627 hours.

Treasury and the Agencies invite comment on the accuracy of the burden estimates and invite suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506-0026), Washington, DC 20503 (or by the Internet to jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

Executive Order 12866

Treasury, the OCC, and OTS have determined that the final rule is not a "significant regulatory action" under Executive Order 12866 for the following reasons.

The rule follows closely the requirements of section 326 of the Act. Moreover, Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the final rule because the procedures are a matter of good business practice. In addition, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this final rule.

At the proposed rule stage, Treasury, the OCC, and OTS invited national banks, the thrift industry, and the public to provide any cost estimates and related data that they

think would be useful in evaluating the overall costs of the rule. Most of the cost estimates provided by commenters related to the requirements in the proposed rule that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed. As described in the preamble, the final rule eliminates signatories from the definition of "customer," and no longer requires a bank to keep copies of documents used to verify a customer's identity. The final rule also reduces the universe of records that must be kept for five years after an account is closed. Treasury, the OCC and the OTS have taken other steps that significantly reduce the scope of the rule and the burden of the rule. These burden-reducing measures are described in the Paperwork Reduction Act discussion and Regulatory Flexibility Act discussion, above. [43]

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

[43] For these same reasons, and consistent with section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Treasury, the OTS and the OCC have also determined that this final rule will not result in expenditures by
State, local, and tribal governments in the aggregate, or by the private sector of $100 million or more in any one year, and therefore the rule is not subject to the requirements of section 202 of that Act.

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and Recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 748

Credit unions, Crime, and Security measures.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements,
Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103-FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107-56, 115 Stat. 307.

§ 103.11 [Amended]

2. Section 103.11(j) is amended by removing "paragraph (q)" and adding "paragraph (hh)" in its place.

§ 103.34 [Amended}

3. Section 103.34 is amended as follows:

a. By amending the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "May 31, 1978" and after the words "June 30, 1972";

b. By amending paragraph (b)(11) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number;" and

c. By amending paragraph (b)(12) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number."

2. Subpart I of part 103 is amended by adding new §103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) Definitions. For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3) (i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii)-(iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) Customer Identification Program: minimum requirements.

(1) In general. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's

assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) Customer information required. (A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or

number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) Credit card accounts. In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a bank may use the following sample language to provide notice to its customers:

> IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
>
> To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.
>
> What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) Exemptions. The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) Other requirements unaffected. Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions

concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: _____

_____

James F. Sloan,
Director, Financial Crimes Enforcement Network.

Dated: _____

In concurrence:

_____

John D. Hawke, Jr.,
Comptroller of the Currency.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Governors of the Federal Reserve System, _____, 2003.

_____

Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

In concurrence:

By order of the Board of Directors of the Federal Deposit Insurance Corporation this _____ day of _____.

_____

Valerie J. Best,
Assistant Executive Secretary.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS."]

Dated: _____

In concurrence:

_____

James E. Gilleran,
Director, Office of Thrift Supervision.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 21– MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

SUBPART C-PROCEDURES FOR MONITORING BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881-1884 and 3401-3422; 31 U.S.C. 5318.

2. In § 21.21:

A. Revise the section heading; and

B. Revise § 21.21(b) to read as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations

issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated:

John D. Hawke, Jr.,
Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Revise § 208.63(b) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(b) Establishment of BSA compliance program. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., and 3901 et seq.; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

2. In § 211.5, add new paragraph (m) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Each Edge or agreement corporation is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

3. In § 211.24, add new paragraph (j) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) Procedures for monitoring Bank Secrecy Act compliance.

(1) [Reserved]

(2) Customer identification program. Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

By order of the Board of Governors of the Federal Reserve System, April ___, 2003.

Jennifer J. Johnson,
Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set out in the preamble, the FDIC amends title 12, chapter III of the Code of Federal Regulations, as set forth below:

PART 326 – Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

1. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881-1883; 31 U.S.C. 5311-5314 and 5316-5332.2.

2. Revise § 326.8(b) to read as follows:

§ 326.8 Bank Secrecy Act compliance.

* * * * *

(b) Compliance procedures. (1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the Bank Secrecy Act compliance program required under this section.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation this __ day of April 2003.

Valerie J. Best,
Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set out in the preamble, OTS amends title 12, chapter V of the Code of Federal Regulations, as set forth below:

PART 563 - SAVINGS ASSOCIATIONS - OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

2. In § 563.177:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 563.177 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) Customer identification program. Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OTS and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: _____

James E. Gilleran,
Director, Office of Thrift Supervision.

National Credit Union Administration

12 CFR Chapter VII

For the reasons set out in the preamble, NCUA amends title 12, chapter VII of the Code of Federal Regulations, as set forth below:

PART 748 – SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

2. In § 748.2:

A. Revise the section heading; and

B. Revise paragraph (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * *

(b) Establishment of a BSA compliance program. (1) Program requirement. Each federally-insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR Part 103. The compliance program must be written, approved by the credit union's board of directors, and reflected in the minutes of the credit union.

(2) Customer identification program. Each federally-insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * *

Dated: April ___, 2003.

Becky Baker,
Secretary of the Board, National Credit Union Administration.