IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 11-11976
)	Hon. Lawrence P. Zatkoff
v.)	Magistrate Judge Laurie J. Michelson
)	
CITIZENS REPUBLIC BANCORP, INC.)	
AND CITIZENS BANK,)	
)	
Defendants.)	
_____)	

MOTION FOR ENTRY OF PROPOSED AGREED ORDER

For the reasons set forth in the attached memorandum, the United States hereby moves for entry of the attached proposed Agreed Order. Pursuant to Local Rule 7.1(a), the United States sought concurrence in the relief requested from counsel for Defendants Citizens Republic Bancorp, Inc. and Citizens Bank on May 11, 2011. Defendants responded that they support approval of the Agreed Order and will file a separate document describing their reasons.

Respectf ully submitted,

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Defendants.	)	
_____	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY OF PROPOSED AGREED ORDER

I. INTRODUCTION

On May 5, 2011, the United States filed a Complaint against Citizens Republic Bancorp, Inc. ("CRBC") and Citizens Bank (collectively, "Citizens Bank" or "the bank") alleging that the bank has engaged in a pattern or practice of discrimination on the basis of race and color in majority-black census tracts in the Detroit metropolitan area in the operation of their residential lending, a practice commonly known as "redlining,"[1] in violation of the Fair Housing Act

[1] "Redlining" is generally defined as mortgage credit discrimination based on the characteristics of the neighborhood surrounding the would-be borrower's dwelling, and the term derives from loan officers evaluating home mortgage applications based on a residential map where integrated

("FHA"), 42 U.S.C. §§ 3601 *et seq.*, and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691 *et seq.* Simultaneously with the Complaint, the United States and Citizens Bank jointly submitted for entry by the Court a proposed Agreed Order to resolve fully the claims of the United States. *See* proposed Agreed Order attached as Exhibit A. On May 10, 2011, the Court entered an order stating it would not enter the Agreed Order at this time because (1) no attorney had filed a notice of appearance on behalf of Defendants; (2) Defendants had not filed a Statement of Disclosure of Corporate Affiliations and Financial Interest as required by L.R. 83.4; (3) its internal inconsistencies; (4) the multiple deficiencies therein; and (5) the absence of a clear indication why it is necessary for the court to enter the Order. Defendants filed a notice of appearance and Statement of Disclosure of Corporate Affiliations and Financial Interest on May 11, 2011. The United States now moves for entry of the proposed Agreed Order and in this memorandum of law explains more fully the bases for its provisions. The Defendants support approval of the Agreed Order and will file a separate document describing their reasons.

The proposed Agreed Order is the product of approximately five months of intense negotiations between counsel following an investigation by the United States and examination and referral from the Board of Governors of the Federal Reserve System ("Board"). The proposed Agreed Order represents a compromise by both sides, and as explained herein, is fair, adequate, and reasonable. *See Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983) (setting forth the standard for consent decrees). Each term within the proposed Agreed Order is necessary and appropriate to achieve the parties' purpose and is consistent with the FHA and ECOA, which provides the statutory basis for the United States' suit in this matter.

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and minority neighborhoods are marked off in red as poor risk areas. *Hood v. Midwest Sav. Bank*, 95 Fed. App'x 768, 2004 WL 771216, at *3 (6th Cir. 2004) (citations omitted).

II. BACKGROUND

A. Referral

During 2007, Federal Reserve System bank examiners initiated a fair lending examination of Citizens Bank for possible redlining activity. The examination included an evaluation of lending data from 2006-2008 related to the performance of the Republic Bank and Citizens Bank in Wayne County and the six-county Detroit Primary Metropolitan Statistical Area ("PMSA"). Based on the information gathered in its examination, the Board concluded that there was reason to believe that Citizens Bank engaged in a pattern or practice of redlining in violation of the Equal Credit Opportunity Act and the Fair Housing Act. On April 19, 2010, the Board referred this matter to the United States pursuant to 15 U.S.C. § 1691e(g). *See* Complaint, ¶¶7-8.

B. The United States' Investigation and Complaint

The United States conducted an investigation of Citizens Bank, including evaluation of extensive information regarding the bank's home mortgage lending practices over time and statistical analyses that compared Republic Bank's and Citizens Bank's pattern of lending activity to other area lenders. The United States determined that, in operating and expanding the scope of its business over time, Citizens Bank, and Republic Bank before it, served the credit needs of residents of the majority-white residential census tracts (defined as those with a population greater than 50% white) of the Detroit Consolidated Metropolitan Statistical Area ("CMSA"), especially in the Detroit PMSA, to a significantly greater extent than it has served the similar credit needs of majority African-American census tracts. *See id.* at ¶¶29-30, 36-37.

CRBC bears liability for the redlining practices of the prior Republic Bank. In April 2007, the Board approved Citizens Banking Corporation's application to acquire Michigan-based

Republic Bancorp Inc. and its wholly-owned subsidiary, Republic Bank.[2] Pursuant to the merger agreement between the parties, Republic Bank merged "with and into" Citizens Banking Corporation, which continued as the surviving company.[3] Thus, under Michigan's traditional merger principles,[4] CRBC bears liability as the acquirer of Republic Bank.[5] *See D.F. Broderick*

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[2] Notice, 71 Fed. Reg. 54, 991 (September 20, 2006). *Citizens Banking Corporation, Flint, Michigan – Order Approving the Acquisition of a Bank Holding Company*, Federal Reserve Bulletin, Volume 93 (2007).

[3] *See* Citizens Banking Corporation, Proxy and Proposed Prospectus (filed October 26, 2006), available at: http://www.sec.gov/Archives/edgar/data/351077/000095012406006154/k08054b3e424b3.htm. The merger was structured and approved using the "purchase method of accounting," with Citizens Banking Corporation treated as the acquirer. *Id.*

[4] The Sixth Circuit applies a state's law on corporations when determining issues of successor liability. *See*, *e.g.*, *City Mgmt. Corp. v. U.S. Chem. Co., Inc.*, 43 F.3d 244, 250 (6th Cir. 1994). However, CRBC would also likely be held liable for Republic Bank's discriminatory practices under federal common law principles. *See Kennedy v. City of Zanesville, Oh.*, 505 F. Supp. 2d 456, 478 (S.D. Ohio 2007) (holding a municipality liable for discrimination under the FHA in the provision of public services by a previously independent utility it had purchased, under a *de facto* merger theory); *see also Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 171-174 (1973) (upholding the NLRB's order requiring a successor company to reinstate with back pay an employee discharged by the predecessor company, after noting that the successor acquired the predecessor with notice of unfair labor practice litigation and continued the business without substantial interruption or change in operations, employee, or supervisory personnel); *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086, 1091 (6th Cir. 1974) (stating that it is appropriate to impose successor liability in cases of discrimination where equitable concerns favor a successor's liability).

[5] The United States has previously asserted in a redlining case in the Eastern District of Michigan that a successor corporation is liable for the discriminatory acts of its predecessor. *United States v. Old Kent Financial Corp. & Old Kent Bank*, 2004 WL 1157779, No. 04-71879 (E.D. Mich.) (Settlement Agreement entered May 19, 2004). In *Old Kent*, the complaint named the two defendants "through their Successors in Interest." There, the "Old Kents" had been acquired by Fifth Third Bank pursuant to a merger agreement under which they "merged with and into" Fifth Third through a stock purchase agreement, with Fifth Third being the surviving corporation. The merger was structured and approved as a "pooling of interests" under generally

v. Cont'l Credit Corp., 309 Mich. 546, 550 (1944) (holding that if two corporations merge, the obligations of each become the obligations of the resulting corporation). The United States' Complaint also alleges that Citizens Bank is liable for its own redlining practices conducted after the merger with Republic Bank. *See* Complaint at ¶¶20, Exhibit C (Citizens Bank's post-merger southeast Michigan plans did not include Wayne County), 21-23 (branching), 26-27 (assessment area pursuant to Community Reinvestment Act ("CRA"), 12 U.S.C. §§ 2901-2906), 28 (advertising and outreach), 33-35 (statistical analyses of Citizens Bank's residential mortgage lending activity).

After the United States notified the bank of its authorized lawsuit, the parties entered into pre-suit negotiations, the product of which is the proposed Agreed Order for which the United States now seeks entry.

C. The Court's Review of Consent Decrees

In reviewing a consent decree, the Court need only determine that the settlement is fair, adequate, and reasonable.[6] *Williams*, 720 F.2d at 921; *Metro. Hous. Dev. Corp. v. Village of*

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accepted accounting principles, whereby the assets and liabilities of both corporations are combined. Fifth Third was not named in the caption of the case.

[6] In contrast, courts generally scrutinize consent decrees more searchingly in the context of class action settlements. *See generally Int'l Union v. Gen. Motors Corp.*, 497 F.3d 615, 628 (6th Cir. 2007). In such cases, a primary concern is the possibility of collusion between the defendant and class counsel, whose interests may run counter to that of the represented class. *See id.* (noting the potential for collusiveness but holding that the class representatives must be afforded the normal presumption that they handled their responsibilities independently and zealously). No such potential conflict of interest exists in FHA suits brought by the Attorney General. *United States v. City of Miami*, 614 F.2d 1322, 1332 n.18 (5th Cir. 1980) ("Unlike . . . class actions litigation, [w]hen the Department of Justice advocates a settlement, we need not fear that its pecuniary interests will tempt it to agree to a settlement unfair to represented persons."). In any

Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980); *see also Toledo Fair Hous. Ctr. v. Nationwide Mut. Ins. Co.*, 94 Ohio Misc. 2d 186, 188 (Ohio Com. Pl. 1998). In *Toledo Fair Hous. Ctr.*, the court held that the redlining settlement negotiated between the parties, which required Nationwide to make affirmative efforts to increase its presence in predominantly African-American neighborhoods in Toledo and included provisions for employee training, targeted advertising, and a loan subsidy fund for community reinvestment, was fair and reasonable based in part on the presence of good faith of the parties and the recommendation and experience of trial counsel. *Id.* at 188-89, App'x A.

Consent decrees are the most favored means of resolving suits under the FHA. *See Village of Arlington Heights*, 616 F.2d at 1014 ("in this case under the Fair Housing Act national policy . . . strongly favors settlement"); *Jones v. Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355, 358-39 (E.D.N.Y. 1982) ("voluntary out of court settlement of disputes is highly favored in the law, . . . particularly . . . in Fair Housing Act cases, where the alternative to voluntary agreement – a court-ordered injunction – may inhibit cooperation and voluntary compliance). *Cf. Local No. 93 v. City of Cleveland*, 478 U.S. 501, 515 (1986) ("We have on numerous occasions recognized that Congress intended voluntary compliance to be the preferred means of achieving the objectives of Title VII"); *Williams*, 720 F.2d at 923 ("Voluntary settlement is the preferred method of eliminating employment discrimination . . . Congress has expressed a 'strong preference' for encouraging voluntary settlement of Title VII actions."); *Huguley v. Gen. Motors Corp.*, 128 F.R.D. 81, 87 (E.D. Mich. 1989) (noting the overriding public interest in settling and quieting litigation). "Because of the consensual nature of the decree, voluntary

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event, even in class action settlements, courts generally favor and encourage the settlements of class actions. *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981).

compliance is rendered more likely," and "[s]ettlements also contribute greatly to the efficient utilization of scarce federal judicial resources." *Village of Arlington Heights*, 616 F.2d at 1014 n.10.

Consistent with these principles, the United States seeks to resolve FHA and ECOA cases, such as this one, through consent decrees whenever possible. *See*, *e.g.*, *United States v. AIG Fed. Sav. Bank and Wilmington Fin., Inc.*, No. CV-10-178 (D. Del.) (Consent Order filed Mar. 19, 2010). As the Supreme Court stated in *United States v. Armour & Co.*, 402 U.S. 673, 681-81 (1981), "[c]onsent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation." *See also Blakely v. United States*, 276 F.3d 853, 867-68 (6th Cir. 2002) (quoting *Armour*).

"The source of the court's authority to require the parties to act [pursuant to a consent judgment] is the parties' acquiescence, not rules of law." *City of Warren v. City of Detroit*, 495 F.3d 282, 287 (6th Cir. 2007). Thus, a court's review of a proposed consent decree is governed by its nature as a settlement. As the Sixth Circuit has instructed, a consent decree is essentially an agreement between the parties and should be construed as a contract. *Blakely*, 276 F.3d at 867; *see also United States v. IBM*, 163 F.3d 737, 740 (2d Cir. 1998) (the court should make "only the minimal determination of whether the agreement is appropriate to be accorded the status of a judicially enforceable decree.") (citation omitted). In particular, in reviewing a proposed consent decree, "the court will not substitute its judgment for that of counsel," *Local No. 93*, 478 U.S. at 522, and "need not inquire into the precise rights of the parties nor reach and resolve the merits of the case or controversy," *Village of Arlington Heights*, 616 F.2d at 1014.

The scope of a consent decree need not reference what "'might have been written had the plaintiff established his factual claim and legal theories in litigation.'" *Firefighters Local Union 1784 v. Stotts*, 467 U.S. 561, 574 (1984), quoting *Armour*, 402 U.S. at 681-82. Indeed, where, as here, the agreement is the result of arms-length negotiations, "a decree is presumptively reasonable." *Williams*, 720 F.2d at 921; *Bronson v. Bd. of Educ. of City Sch. Dist. of Cincinnati*, 604 F. Supp. 68, 71 (S.D. Ohio 1984).

Consent decrees entered in FHA cases may properly impose broad and diverse forms of relief. "[P]articularly in a fair housing situation, the existence of a federal statutory right implies the existence of all measures necessary and appropriate to protect federal rights and implement federal policies." *Village of Arlington Heights*, 616 F.2d at 1011. "More importantly, it is the agreement of the parties, rather than the force of the law on which the complaint was originally based, that creates the obligations embodied in a consent decree." *Local No. 93*, 478 U.S. at 522. "Therefore, a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial." *Id.* at 525; *see also Local 28 of Sheet Metal Workers' Intern. Ass'n v. EEOC*, 478 U.S. 421, 482 (1986) (Title VII does not preclude district court from entering preferential relief benefiting individuals who were not actual victims of discrimination); *Geier v. Alexander*, 801 F.2d 799, 809 (6th Cir. 1986) (approving entry of a consent order that provided relief for individuals who were not the actual victims of defendant's discriminatory practices).

III. THE COURT SHOULD ENTER THE PROPOSED AGREED ORDER

The proposed Agreed Order is structured to provide an effective remedy commensurate with the scope of the damage caused by the alleged redlining of the majority African-American census tracts in the Detroit CMSA, while recognizing the depressed economic conditions in

Detroit and the bank's current status.[7] The proposed Agreed Order commits the bank to the nondiscriminatory provision of residential banking and lending services in a market area that does not reflect the discriminatory exclusion of particular census tracts and also contains requirements designed to fulfill that commitment, to invest in the previously redlined areas to compensate for the past failure to provide equal loan services, and to provide targeted assistance to the local community. The proposed Agreed Order makes clear that Citizens Bank is not required under the Order to alter its standards for underwriting a mortgage loan or conduct lending practices that the bank considers unsafe or unsound. Proposed Agreed Order at ¶31. Instead, the proposed Agreed Order seeks to increase the bank's residential mortgage lending to qualified, eligible applicants in the Detroit metropolitan area. *Id.* at ¶¶29-30.

Many of the components of the proposed Agreed Order, which are each described in detail below, are similar to those the United States has included in settlements of fair lending cases alleging redlining brought in the past several years against banks, including in the Eastern District of Michigan. *Old Kent*, 2004 WL 1157779, No. 04-71879; *United States v. First United Security Bank*, No. 09-0644 (S.D. Ala.) (Agreed Order for Resolution entered Nov. 18, 2009); *United States v. Centier Bank*, No. 2:06-CV-344 (N.D. Ind.) (Consent Order entered Oct. 16, 2006); *United States v. First American Bank*, No. 04C 4585 (N.D. Ill.) (Consent Order entered

[7] The Complaint notes the bank's specific practices that served to avoid Wayne County and the City of Detroit. Complaint at ¶¶20-23, 25, 27-28. The proposed Agreed Order is intended to remedy the bank's alleged redlining practices in all majority African-American census tracts in the Wayne County, although some provisions, such as the partnership with the City of Detroit, pertain specifically to the City. Based on data from the 2000 Census, 93.2% of the majority African-American census tracts in Wayne County are located in the City of Detroit. *See* Census 2000 Summary File 1 (SF 1) 100-Percent Data.

July 19, 2004).[8] In *Old Kent*, the United States' lawsuit alleged that Old Kent Financial Corporation and Old Kent Bank, subsequently acquired by Fifth Third Bancorp, engaged in a pattern of discrimination on the basis of race by unlawfully avoiding and refusing to provide their business and residential lending products and services to Detroit's predominantly African-American minority neighborhoods in violation of the FHA and ECOA. The parties agreed to settle the lawsuit through a judicially-enforceable settlement agreement, which included many of the same components as the proposed Agreed Order, including: a general injunction against discrimination, a loan subsidy fund in the amount of $3 million, three new full-service branches in the City of Detroit, a team of lenders specifically assigned to the City of Detroit, fair lending training, a targeted advertising program, and consumer education.

A. General Prohibitory Injunction

As with past redlining cases brought by the United States, the proposed Agreed Order includes a general injunction that prohibits Citizens Bank from engaging in any act or practice that discriminates on the basis of race or color in any aspect of a residential real estate-related transaction in violation of the FHA and ECOA. *See* proposed Agreed Order at ¶¶1-4. This provision ensures that moving forward, Citizens Bank will comply with the FHA and ECOA and their respective implementing regulations, which prohibit financial institutions from discriminating on the basis of, *inter alia*, race and color in their mortgage lending practices. This provision is standard in redlining settlement agreements. *See Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189, App'x A (approving redlining settlement that included general prohibitory injunction against discrimination).

[8] The redlining consent decrees filed by the United States are available online at http://www.justice.gov/crt/about/hce/caselist.php.

B. CRA Assessment Area

As a depository bank, Citizens Bank is subject to the requirements of CRA and its enabling regulations promulgated by the Board, Regulation BB, 12 C.F.R. § 228 (Reg. BB). Thus, Citizens Bank has a "continuing affirmative obligation . . . to help meet the credit needs of the local communit[y] in which [it is] chartered." 12 U.S.C. § 2901(a)(3). Specifically, the CRA and Reg. BB require most banks to delineate one or more assessment areas for federal regulators to use in evaluating whether the institution is meeting the credit needs of its entire community, the CRA's primary statutory purpose. Under Reg. BB, a bank's assessment area may not reflect illegal discrimination, taking into account its size and financial condition. *See* 12 C.F.R. § 228.41(e).

Following the merger with Republic Bank, Citizens Bank adopted Republic Bank's CRA assessment areas in southeast Michigan, which the Complaint alleges formed a virtual horseshoe around and excluded most of the majority-black census tracts in the City of Detroit. Complaint at ¶25. Citizens Bank did not provide a final assessment area that included all of the City of Detroit and all of Wayne County to Federal Reserve System staff until 2010. *Id.* at 27. In order to ensure the bank's compliance with the CRA, the Agreed Order provides that Citizens Bank will continue to include the entirety of Wayne County and the City of Detroit in its CRA assessment area during the term of this Order. *See* proposed Agreed Order at ¶5.

C. Fair Lending Training

The proposed Agreed Order provides that the bank will continue to provide periodic training to all employees with significant involvement in residential lending to ensure that its activities are conducted in a nondiscriminatory manner. This training will encompass the bank's

fair lending obligations under the FHA, ECOA, obligations under the CRA, and responsibilities under the proposed Agreed Order. *See* proposed Agreed Order at ¶6.

Fair lending training of defendants' employees has been a component in all of the United States' recent redlining settlements and has been approved in the Sixth Circuit. *See*, *e.g.*, *United States v. City of Parma*, 661 F.2d 562, 577 (6th Cir. 1981) ("It is common in [FHA] pattern or practice suits against private defendants to require educational programs for employees and advertising programs to advise the public of the nondiscriminatory policies which will be followed."); *see also Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189, App'x A (approving redlining settlement requiring fair housing training of Nationwide employees).

D. Partnership with City of Detroit

Citizens Bank and the City of Detroit have agreed to a partnership in which the bank will assist the City's efforts to promote sustained home ownership by providing grant funds to stabilize and revitalize neighborhoods. Citizens Bank will devote $1.625 million to this grant program, which will be available to residents of neighborhoods identified by the City as part of Project 14 and the Detroit Works Project. Under the program, the bank has agreed to provide existing homeowners in targeted neighborhoods in the City of Detroit with a matching grant of up to $5,000 for exterior improvements for projects of $10,000 or more. These improvements include a wide range of beautification, weatherization and restoration projects. *See* proposed Agreed Order at ¶¶7-13.

The United States' Complaint alleges that Citizens Bank engaged in pattern of redlining throughout its expansion and growth efforts, particularly through its acquisition of Republic Bank. Complaint at ¶¶21, 33, 37. In light of the declining economic state of the area throughout the period from 2004-2009, the effect of Citizens Bank's and Republic Bank's redlining in the

Detroit CMSA, especially in Wayne County, is not easily quantifiable; however, this area is severely under-served in its banking and homeownership needs. The bank's partnership with the City of Detroit is intended to assist in remedying the effects of the bank's redlining practices and allow the bank to increase its physical presence in the City of Detroit, while accounting for the feasibility of branch expansion by the bank, the economy in the Detroit metropolitan area, and the need for community stabilization.

E. Credit Needs Assessment

Under the proposed Agreed Order, the bank will take into account the most recently available credit needs assessments conducted by the City of Detroit and other community-based organizations when implementing the terms of the proposed Agreed Order. Significantly, the credit needs assessments will assist the bank in increasing its residential mortgage lending in majority African-American areas in Wayne County in a safe and sound manner. *See* proposed Agreed Order at ¶14. This type of provision is standard in redlining settlements filed by the United States. *See*, *e.g.*, *First United Security Bank*, No. 09-0644 (Agreed Order requiring bank to conduct credit needs assessment of majority African-American census tracts in west central Alabama within three months of entry of the agreement); *Centier*, No. 2:06-CV-344 (Consent Order required bank to begin an assessment of the residential real-estate related and small business credit needs of the Gary, Indiana-area's majority-minority census tracts within two months of entry of the Order); *First American Bank*, No. 04C 4585 (Consent Order required the bank to undertake actions to assess its progress in meeting the goals of the Order and other measures the bank had instituted to meet the credit needs of minority communities in the Chicago and Kankakee MSAs on or before the second anniversary of the entry of the Order).

F. Community Development Lenders

The proposed Agreed Order further provides that Citizens Bank will employ two Community Development Lenders to focus primarily on generating residential mortgage loans in the majority-black census tracts within Wayne County, as well as facilitating the bank's grant programs. *See* proposed Agreed Order at ¶15. These Community Development Lenders will assist the bank in meeting the goals of the proposed Agreed Order and have been included in past redlining settlements brought by the United States and private plaintiffs. *See*, *e.g.*, *Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189, App'x A (approving redlining settlement that required Nationwide to place an insurance agent in an area of Toledo with a significant African-American presence).

G. Physical Expansion in Wayne County

The Complaint alleges that Citizens Bank's residential lending in Michigan has been generated primarily by the activities conducted within its branch offices. Complaint at ¶14. Thus, a key component of the overall remedial undertaking is increasing Citizens Bank's physical presence in the redlined tracts as the bank has increased its presence in majority-white areas of southeast Michigan – a visible sign to those areas that the bank is a readily available source for lending products and services. However, additional branch locations are not feasible at this time, proposed Agreed Order at ¶16, and thus the proposed Agreed Order provides that the bank will open a Loan Production Office ("LPO") in a majority African-American area in the City of Detroit within ninety days of entry of the Order. The LPO will focus on the marketing and intake of residential mortgage loan applications from residents of the majority African-American census tracts in Wayne County and grant applications for the partnership program, and will provide the base of operation for the Community Development Lenders. Under the

proposed Agreed Order, Citizens Bank will continue to evaluate the feasibility of branch expansion in the majority African-American census tracts of Wayne County and will report to the United States on the feasibility of converting the LPO into a full-service branch or opening a branch in another location in a majority African-American census tract of Wayne County. *See* proposed Agreed Order at ¶¶16-21.

H. Advertising and Consumer Education

Under the proposed Agreed Order, Citizens Bank will enhance and continue its current plan for targeted advertising and marketing to majority African-American residential areas of Wayne County. The bank's program will include some of all of the following: (a) print media specifically directed to African-American readers; (b) radio advertisements on African-American-oriented Detroit-area stations; (c) point-of-distribution materials targeted toward the majority African-American census tracts in Wayne County to advertise the bank's products and services; and (d) direct mailings. Citizens Bank will also provide a minimum of four outreach programs per year for real estate brokers and agents, developers, and public or private entities doing business in the majority-black census tracts in Wayne County. Further, the bank will provide credit counseling, financial literacy, and other related educational programs to residents in the majority African-American census tracts, to help identify and develop qualified loan and/or grant applicants from these areas. This program will include a minimum of six outreach seminars each year targeted towards residents of majority African-American census tracts in Wayne County. *See* proposed Agreed Order at ¶¶22-25.

The United States' previous redlining consent orders have included provisions relating to advertising, marketing, and consumer education, as a means to engage the residents of the redlined areas and to increase financial and credit literacy in redlined communities. The

historical lack of full and open competition in the banking sector has resulted in the absence of mainstream financial institutions from, and the increased presence of non-traditional financial institutions in, segregated minority communities. The advertising and consumer education plan described in the proposed Agreed Order will enable the bank to reach the African-American community and assist it in increasing its residential mortgage lending to this community. These types of programs have been accepted as fair and reasonable in other FHA and redlining suits. *See City of Parma*, 661 F.2d at 577 (acknowledging that advertising programs are a common component in FHA pattern or practice suits against private defendants); *Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189, App'x A (approving redlining settlement that included targeted advertising program).

I. Program for Loan Subsidies

The proposed Agreed Order provides that Citizens Bank will invest a minimum of $1.5 million in a special program to increase the residential mortgage credit that the bank extends to residents of majority African-American census tracts of Wayne County. This "special financing program" will offer residents in majority-black census tracts in Wayne County, regardless of race, loan products at interest rates and/or on terms that are more advantageous to the applicant than Citizens Bank would normally provide, such as an interest rate subsidy, down payment assistance, or closing cost assistance. *See* proposed Agreed Order at ¶¶26-32. This type of program has been a central element in redlining settlements brought by the United States and private plaintiffs and is especially significant given that there are no individual, identified "victims" in most redlining cases. *See*, *e.g.*, *Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189, App'x A (approving redlining settlement that included loan subsidy fund in the form of, *inter alia*, down payment and closing cost assistance for low and moderate income home buyers

seeking to purchase and/or repair single-family homes in predominantly African-American neighborhoods in Toledo). The loan subsidy program in the proposed Agreed Order is intended to compensate the African-American community in Wayne County at large for the bank's prior redlining practices. As stated above, the proposed Agreed Order makes clear that Citizens Bank is not required to alter its standards for underwriting a mortgage loan or conduct lending practices that the bank considers unsafe or unsound. *See* proposed Agreed Order at ¶31.

J. Duration of the Proposed Agreed Order

The proposed Agreed Order includes typical record retention and periodic reporting provisions with respect to compliance-related information and documents, *see* proposed Agreed Order at ¶¶33-36, as well as a term of five years, all of which are typical in fair lending cases brought by the United States. *Id.* at ¶37. The five-year term will allow time for the proposed changes in the bank's business practices and the community stabilization of Detroit to take full effect. However, the proposed Agreed Order provides that if Citizens Bank meets its investment requirements within four years, the parties will jointly move this Court to terminate the Order at that time. *Id.*

Courts typically retain jurisdiction for a number of years to ensure compliance with consent decrees. Most such orders have durations of between one and five years, with their length being affected by factors such as the nature and seriousness of the violation, and whether the lawsuit involved a single incident or a pattern of conduct. *United States v. DiMucci*, 879 F.2d 1488, 1493 (7th Cir. 1989) (record keeping and reporting requirements for three years); *United States v. West Peachtree Corp.*, 437 F.2d 221, 231 (5th Cir. 1971) (record keeping and reporting requirements for two years); *Toledo Fair Hous. Ctr.*, 94 Ohio Misc. 2d at 189 (approving four-year term for redlining settlement). Several redlining settlements brought by the

United States have five-year terms. *See*, *e.g.*, *Centier Bank*, No. 2:06-CV-344; *First American Bank*, No. 04C 4585. As described above, the Court's continuing jurisdiction for five years is necessary to ensure compliance with the Order.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court enter the attached proposed Agreed Order.

Respectf ully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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