

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	1:09-cv-00644-WS-M
v.	)	
	)	
FIRST UNITED SECURITY BANK,	)	
	)	
Defendant.	)	
_____	)	

JOINT MOTION TO AMEND AGREED ORDER FOR RESOLUTION

Plaintiff United States and Defendant First United Security Bank ("FUSB" or "the Bank") (collectively, the "Parties") respectfully move this Court to enter the signed Amended Agreed Order for Resolution attached to this Motion as Exhibit A. The Parties state the following in support of this Motion:

1. On November 18, 2009, this Court entered the Parties' proposed Agreed Order for Resolution. (Dkt. No. 5)
2. Among other things, the Agreed Order for Resolution requires FUSB to invest a minimum of five hundred thousand dollars (\$500,000) in a special financing program for the Bank to use to offer specified forms of financial assistance for residential and CRA small business and community development loans to applicants located in previously-underserved majority-minority census tracts.
3. While FUSB has worked diligently to achieve the goals of the special financing program, it has been unable to offer the specified forms of financial assistance at a volume that

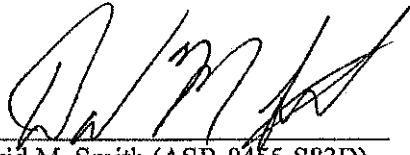
exhausted the requisite subsidy for the special financing program during the four-year term initially prescribed in the Agreed Order for Resolution.

4. For the reasons set forth in the accompanying memorandum, the Parties request that the Court enter the attached Amended Agreed Order for Resolution. The Amended Agreed Order provides FUSB with additional instruments for providing financial assistance intended to facilitate its ability to expend the subsidy through the special financing program by amending paragraph 30 of the Order. All other changes incorporated into the Amended Order are technical changes to the original Agreed Order.

WHEREFORE, the United States and First United Security Bank respectfully request that this Court enter the Amended Agreed Order for Resolution attached to this Motion as Exhibit A.

Respectfully submitted on May 6, 2014.

For First United Security Bank



David M. Smith (ASB-0455-S83D)
John P. Dulin, Jr.
Maynard, Cooper and Gale, P.C.
1901 6th Ave N # 2400
2400 Regions/Harbert Plaza
Birmingham, AL 35203
(205) 254-1000
(205) 254-1999 (fax)
dsmith@maynardcooper.com

For the United States

Steven H. Rosenbaum
Chief
Housing and Civil Enforcement
Section



Jon M. Seward
Deputy Chief
Marta Campos
Attorney
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement
Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
marta.campos@usdoj.gov
(202) 514-4733
(202) 514-1116 (fax)

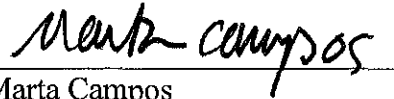
Kenyen R. Brown
United States Attorney



Holly L. Wiseman (WISLH7352)
Special Assistant United States
Attorney
63 South Royal Street, Suite 600
Mobile, Alabama 36602
holly.wiseman@usdoj.gov
(251) 415-7104
(251) 441-5051 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May 2014, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

A handwritten signature in black ink, reading "Marta Campos", is written over a horizontal line.

Marta Campos
Attorney
U.S. Department of Justice

Attachment A

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	1:09-cv-00644-WS-M
	)	
FIRST UNITED SECURITY BANK,	)	
	)	
Defendant.	)	
_____	)	

AMENDED AGREED ORDER FOR RESOLUTION

I. INTRODUCTION

This Amended Agreed Order ("Agreement") is submitted jointly by the parties for approval and entry by the Court to modify the Agreed Order that was submitted jointly by the parties simultaneously with the filing of the United States' Complaint in this action and approved and entered by the Court on November 18, 2009.

The Agreement resolves the claims of the United States that the defendant, First United Security Bank ("FUSB" or "the Bank"), violated the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, by engaging in a pattern or practice of racial discrimination in the setting of interest rates for first-lien refinance loans originated in 2004 for owner-occupied one-to-four family houses and by failing to serve the lending needs of majority African-American census tracts in west central Alabama on an equal basis with majority-white tracts.

Under the provisions of this Agreement, the Bank has implemented and will continue to implement policies and procedures to ensure that the pricing of its residential loan products is

done in a nondiscriminatory manner, consistent with the requirements of the FHA and ECOA, and will compensate certain African-American borrowers. Under the provisions of this Agreement, the Bank also will seek to improve its performance in meeting the credit needs of residents located in majority-minority¹ census tracts and ensure that its loan products and lending services are available on an equal basis in all residential areas in its market area, regardless of racial composition.

The Bank denies any alleged violation of the FHA or the ECOA and maintains that at all times it conducted its lending in compliance with the letter and spirit of the fair lending laws and in a non-discriminatory manner. There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Agreement is not, and is not to be construed as, an admission or finding of any violation of the FHA or the ECOA by the Bank. Rather, both parties have entered into this Agreement to resolve voluntarily the claims asserted by the United States in order to avoid the costs, risks and burdens of litigation.

II. FAIR LENDING INITIATIVES

1. Unless otherwise stated herein, the provisions of this Section II of the Agreement shall be implemented within forty five (45) days of the effective date of this Agreement and shall continue throughout its term. The effective date of this Agreement shall be the date on which it is approved and entered by the Court.

A. **General Nondiscrimination Injunction**

2. The Bank, including all of its officers, employees, agents, representatives,

¹ For purposes of this Agreement, the term "majority-black," "majority African-American" or "majority-minority" census tract is defined to mean a census tract whose population is more than 50% black. The majority-African-American census tracts are listed on Appendix A, based on the 2000 Census.

assignees and successors in interest, and all those in active concert or participation with any of them, is hereby enjoined from engaging in any act or practice which discriminates on the basis of race or color in any aspect of a residential real estate-related transaction in violation of the Fair Housing Act, 42 U.S.C. §§ 3604 and 3605, or in any aspect of a credit transaction in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

3. FUSB shall ensure that the Bank offers and provides all persons with an equal opportunity to apply for and obtain credit, regardless of the predominant race or color of the population of the area in which a person lives, or the area in which the property securing the loan or the small business is located.

B. Pricing Policy and Procedures

4. In early 2007, FUSB developed and implemented a pricing matrix for residential real estate-related loans based on credit scoring and other objective criteria. Under this pricing matrix, any variance from the published rate must be approved in writing in advance by both a regional manager and the Senior Lender, Chief Credit Officer or Chief Executive Officer of the Bank. The Bank shall continue utilizing this pricing matrix policy for residential real estate loans, and shall modify the policy to include: (i) limits on the amount by which the interest rate may deviate, either upward or downward, from the interest rate as determined by the matrix; (ii) the factors that a Bank official may consider in the exercise of that discretion; (iii) a requirement to include in each loan file written documentation of the factors set forth in the pricing matrix and, where the final interest rate varies from the published rate, the factors relied on in connection with an individual loan application and how those factors affected the pricing decision; and (iv) a requirement that loan officers inform applicants in writing before an interest

rate is fixed, that the interest rate is determined by taking into account a variety of factors and that the interest rate may be negotiable within the limits set by the loan policy. In addition, the policy shall require the Bank to post and prominently display in each branch or office a notice of non-discrimination.

5. The Bank shall provide a copy of its revised loan pricing policy to counsel for the United States within thirty (30) days of the effective date of this Agreement.² The United States shall have thirty (30) days from receipt of the loan pricing policy to raise any objections to it, and if it raises any, the parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution. Until the Court resolves such a dispute, the revised loan pricing policy will not go into effect.

6. The Bank shall modify its loan review system for residential real-estate related loans in a manner designed to ensure compliance with the nondiscrimination requirements of the FHA, ECOA, and this Agreement. That system shall require a quarterly review by a committee comprised of the Bank's chief executive officer, senior lending officer, and chief credit officer of all residential real-estate related loans originated during the preceding quarter. Each such quarterly review shall be memorialized in writing, signed and dated by a designated member of the committee referenced above, and shall be provided to the Bank's senior executive officers and Board not later than thirty (30) days after the end of each quarter. Each review shall include, but not be limited to, a comparison and analysis of the terms and conditions, including the pricing, of all HMDA loans by the race of the borrowers. In the event that any such review

² All material required by this Agreement to be sent to counsel for the United States shall be sent by commercial overnight delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006, Attn: DJ 188-3-2, or by facsimile to 202-514-1116.

discloses disparities in the pricing of covered loans between African-American and white borrowers, the Bank shall promptly determine the reason(s) for those pricing disparities and shall promptly take any corrective action, if necessary, documenting both its determination and any remedial action. The Bank shall provide these quarterly reviews and all documentation relating thereto, including documentation of its reasons for taking or not taking corrective action, to the United States on a quarterly basis.

7. During the term of this Agreement, the Bank may change its loan pricing policy for residential real-estate loans upon written advance notice to the United States, which shall have thirty (30) days from receipt of such notice to raise any objection to the proposed change. If it raises any objection, the parties shall confer to resolve their differences. If they are unable to do so, either party may bring the dispute to this Court for resolution. The Bank shall not implement the change during such a dispute.

C. The Bank's Service Area

8. The Bank shall take all reasonable, practicable steps consistent with safety and soundness and this Agreement, to ensure that residential and CRA small business loan products are made available and marketed in majority African-American census tracts in the following Alabama counties: Bibb, Chilton, Choctaw, Clarke, Hale, Jefferson, Marengo, Monroe, Perry, Shelby, Sumter, Tuscaloosa, Washington, Wilcox counties (hereinafter "the majority African-American census tracts") on no less favorable a basis than in predominantly white areas. If the Bank chooses to take any actions in addition to those specified below to achieve the goals of this Agreement, it shall provide written notice to the United States thirty (30) days prior to implementation of any such additional actions during the term of this Agreement.

Community Reinvestment Act Assessment Areas

9. In September 2008, the Bank revised its CRA assessment areas. In the Tuscaloosa MSA assessment area, the Bank added all of the majority-African-American tracts of Tuscaloosa County south of the Black Warrior River.³ The Bank will revise its South Alabama assessment area to include at least five (5) additional majority African-American census tracts. The Bank shall maintain the revised CRA assessment areas throughout the term of this Agreement. Nothing in this Agreement precludes the Bank from expanding its CRA assessment areas in the future in a manner consistent with the provisions of the CRA and its implementing regulations.

10. The Bank shall provide a copy of the new proposed South Alabama assessment area to counsel for the United States within ninety (90) days of the effective date of this Agreement. The United States shall have thirty (30) days from receipt of the proposed assessment area to raise any objections to it, and if it raises any, the parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution. Until the Court resolves such a dispute, the proposed assessment area will not go into effect.

Additional Branch Location and Services

11. FUSB's residential and CRA small business lending has been generated primarily by the activities of loan officers based in branch offices. The Bank shall evaluate future opportunities for expansion, whether by acquisition or opening new offices, in a manner consistent with achieving the remedial goals of this Agreement.

³ The new proposed assessment areas are still subject to review and approval by the FDIC, as the Bank's regulator.

12. The Bank shall make all reasonable efforts, subject to any and all required government and regulatory approvals, to acquire or open one (1) additional branch office located in one of the majority African-American census tracts within thirty-six (36) months of the date of entry of this Agreement. The new branch will provide the complete range of services typically offered at the Bank's branches within its existing assessment areas. These services encompass, but are not limited to: (a) the full range of residential lending services, including a full-time on-site residential lending officer, and (b) both comparable information about business lending options and comparable access to a business lending specialist.

13. Nothing in this Agreement precludes the Bank from opening or acquiring additional branch offices in the majority African-American census tracts or elsewhere. Nor does any provision of this Agreement require the Bank to consult with the United States regarding its opening or acquisition of any other branches or offices except as required by law.

14. As soon as practicable in light of the current economic and bank regulatory environment, the Bank shall present a proposal for the new branch to the United States for its review and approval, which shall not be unreasonably withheld, no later than eighteen (18) months after the date of entry of this Agreement. Once approved by the United States, where necessary, the Bank shall act as quickly as possible to obtain any required local or state governmental permits and approvals and to seek the approval of its federal regulator, currently the Federal Deposit Insurance Corporation.

Advertising and Outreach

15. The Bank shall spend a minimum of one hundred and ten thousand dollars (\$110,000) on the targeted advertising and marketing campaign described in paragraphs (a)-(d)

below over the term of this Agreement. This program shall be specifically targeted to generate applications for all types of its credit products from qualified residents and small businesses in the majority African-American census tracts. This program shall include, at a minimum, the following components:

(a) Print Media. During each year of this Agreement, in addition to any other print advertising, the Bank shall advertise in at least one print medium specifically directed to African-American readers.⁴ These advertisements, viewed in their entirety over the course of a year, shall include the Bank's full range of principal credit products, including any special products or services made available as part of this Agreement. The Bank retains the discretion to determine the size, content, and frequency of such advertising, subject to the standards set forth above.

(b) Radio. During each year of this Agreement, the Bank shall place radio advertisements on at least one (1) radio station whose programming is oriented toward African-American listeners. The radio advertising, viewed in its entirety over the course of a year, shall include the Bank's full range of principal loan products, including any special products or services made available under this Agreement. The Bank retains the discretion to determine the content and frequency of such radio spots subject to the standards set forth above and to place such advertising on additional minority-oriented stations.

(c) Promotional Materials. The Bank shall create point-of-distribution materials, such as posters and brochures, targeted toward the majority African-American census tracts to advertise products and services it offers, including any special loan products or services made available pursuant to this Agreement. The Bank shall place or display these promotional

⁴ The *Birmingham Times* and the *Birmingham Weekly* are two such outlets.

materials in its branch offices and additional, appropriate distribution locations throughout the majority African-American census tracts, including but not limited to, community centers and supermarkets and other commercial establishments.

(d) Direct Mailings. The Bank also shall utilize direct mailing to advertise the loan program required by this Agreement to residents and small businesses throughout the majority African-American census tracts. These direct mailings shall not be targeted exclusively or primarily at existing customers.

(e) All of the Bank's print advertising and promotional materials shall contain an equal housing opportunity logotype, slogan, or statement. All of the Bank's radio and television advertisements shall include the audible statement "Equal Opportunity Lender."

Credit Needs Assessment

16. Within three (3) months of the entry of this Agreement, the Bank shall begin an assessment of the residential real estate-related and small business credit needs of the majority African-American census tracts. This assessment shall include, but not be limited to: (a) analysis of the most recent available demographic and socioeconomic data about those census tracts; (b) evaluation of the residential and small business credit needs of and corresponding lending opportunities in the majority African-American census tracts; (c) consideration of how the Bank's residential and small business lending operations can serve the goals of this Agreement; and (d) thorough review of the availability of relevant federal, state, and local governmental programs and evaluation of how participation in each of them would assist in achieving the goals of this Agreement. The assessment shall focus particularly on identifying effective ways to provide lending services in the majority African-American census tracts where FUSB does not

have a branch office. The Bank may retain outside parties to provide expert analysis and assistance in performing this assessment.

17. In accomplishing this assessment, Bank representatives shall also meet with representatives of at least three (3) area community organizations located throughout southwest and west central Alabama significantly involved in promoting fair lending, home ownership, or residential or small business development in the majority African-American census tracts. The Bank may also meet with representatives of any other appropriate entities in conducting this needs assessment.

18. The Bank shall present to counsel for the United States a written report of this special credit needs assessment, together with recommendations, if any, for actions beyond those specified in this Agreement to be taken to meet those needs, not later than six (6) months after the entry of this Agreement.

19. For the term of this Agreement, the Bank shall meet annually with community organizations servicing the majority African-American census tracts as part of an ongoing credit needs assessment and evaluation of its business plan, in order to better meet the residential and small business credit needs of the residents and small businesses in the majority African-American census tracts.

Consumer Education

20. The parties acknowledge that financially educated consumers are essential to increasing the Bank's residential and small business lending in majority African-American census tracts. To help identify and develop qualified loan applicants from the majority African-American census tracts, the Bank shall host, co-host or sponsor at least four (4) sessions

per every twelve (12) months during the term of this Agreement to provide credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses in these areas. The Bank will consult with community organizations and fair housing groups to determine the most effective way of providing consumer education. The Bank shall invest sufficient funds to effectively support the activities described in this paragraph 20.

D. Staff

21. For the duration of this Agreement, FUSB shall employ or designate a Director of Community Lending (or similar title), whose primary responsibilities will include ensuring the Bank's compliance with the FHA, ECOA and the provisions of this Agreement. If the Bank designates a Director from within the Bank, the DOJ shall be notified and provided an opportunity to review the qualifications of this individual in advance. The Director will supervise the activities of loan officers regarding the solicitation and origination of loans in majority African-American census tracts, including the special loan programs identified in this Agreement; coordinate the Bank's involvement in community lending initiatives and outreach programs; serve as a resource to lending staff to encourage and develop lending in majority African-American census tracts; ensure the training of the staff at all branch offices (both existing and new) in all aspects of the Bank's lending processes; and report directly to the Bank's Board of Directors on the progress of these initiatives at least quarterly, including recommending changes in these programs to increase their effectiveness.

22. Within sixty (60) days after the Bank's revised loan pricing policy is approved by the United States or the Court, pursuant to paragraphs 4-5, FUSB shall provide equal credit

opportunity training to its management officials, loan officers, and any other employees, or agents who: (a) participate in the pricing of residential real-estate loans, or (b) have significant involvement in any aspect of residential or CRA small business lending ("covered employees"). During this training, the Bank shall provide to each participant: (i) a copy of this Agreement and the Bank's revised loan pricing policy; and (ii) training on the terms of this Agreement, the new loan pricing policy, the requirements of the FHA, ECOA and the Community Reinvestment Act, and his or her responsibilities under each. The training required by this paragraph shall be conducted by an independent qualified third party (at the Bank's expense) approved in advance by the United States. The Bank shall notify the United States in writing at least forty five (45) days in advance of the proposed training of the identity of the person or organization who will conduct the training. The United States shall have thirty (30) days from receipt of such notification to raise any objections. If the United States timely objects, the parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution.

23. The Bank shall secure from each covered employee a signed statement acknowledging that he or she has received a copy of this Agreement and the loan pricing policy and has completed the initial equal credit opportunity training. These statements shall be substantially in the form of Appendix B (Acknowledgment) and Appendix C (Equal Credit Opportunity Training). During the term of the Agreement, each new covered employee shall be provided a copy of this Agreement and given an opportunity to have any questions answered, and shall sign the acknowledgment form statement (Appendix B) within ten (10) days of beginning his or her employment in that position.

24. During the term of this Agreement, FUSB shall continue its practice of providing annual equal credit opportunity training to covered employees with respect to their responsibilities and obligations under the FHA and the ECOA.

E. Monetary Provisions

25. FUSB shall deposit in an interest-bearing escrow account the total sum of fifty thousand dollars (\$50,000) for the purpose of paying damages to any “aggrieved person,” defined herein as an African-American borrower of a conventional, first-lien refinance loan for an owner-occupied, one-to-four family property who, between January 1, 2004 and December 31, 2004, may have been charged a higher interest rate by the Bank than a comparable white borrower (the “Settlement Fund”). The Bank shall provide written verification of the deposit to the United States within five (5) days of the effective date of this Agreement. Any interest that accrues shall become part of the Settlement Fund and be utilized as set forth herein.

26. The United States has identified the aggrieved persons who are eligible for compensation under this Agreement. The United States shall, upon reasonable notice, be allowed access to the Bank’s records and files to verify the accuracy of the data in the possession of the United States and to otherwise identify aggrieved persons entitled to the payments from the Settlement Fund.

27. Within forty five (45) days of the effective date of this Agreement, the United States shall provide to the Bank a list of the aggrieved persons and an amount it believes each individual shall receive from the Settlement Fund determined by a methodology agreed to by the parties, subject to the conditions set forth in paragraph 29 below (the “Payment List”). The Bank shall have thirty (30) days to review the Payment List and provide comments thereon to the

United States. The United States shall consider in good faith any such comments within thirty (30) days of receipt and shall confer with the Bank within such timeframe to resolve any differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution. No payment from the Settlement Fund may occur until the process described above in this paragraph has been completed and the Payment List has been finalized either by agreement of the parties or by this Court.

28. Within thirty (30) days of the date on which the Payment List is finalized in accordance with the process provided for in paragraph 27 above, the United States shall notify the aggrieved persons. Thereafter, the United States shall provide counsel for FUSB with all executed releases that it receives. Within ten (10) days of the receipt of the Releases, the Bank shall issue checks, drawn on the Settlement Fund, and mail the checks to those aggrieved persons who have executed and returned the Releases within ninety (90) days of receipt of the notification from the United States. The Bank shall provide a copy of each check to the United States. In the event that less than the total amount in the Settlement Fund, including accrued interest, is distributed to aggrieved persons, the remainder shall be returned to the Bank and shall no longer be subject to claims by any aggrieved persons.

29. Payments from the Settlement Fund to aggrieved persons shall be subject to the following conditions:

(a) No aggrieved person shall be paid any amount from the Settlement Fund until after the execution of a written release of all claims, legal or equitable, which he or she might have against the Bank regarding the claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Agreement. The form of the release is set forth

in Appendix D; and

(b) The total amount to be paid by the Bank to the aggrieved persons shall not exceed fifty thousand dollars (\$50,000), plus the interest that has accrued on the Settlement Fund.

30. In addition to the monetary commitments detailed above, FUSB will invest a minimum of five hundred thousand dollars (\$500,000) over the duration of this Agreement in a special financing program for residential and CRA small business and community development loans⁵, which is described below.⁶ Through this special financing program, the Bank will offer every qualified customer, whether an individual or business (for CRA small business and community development loans), in the majority African-American census tracts, loan products at interest rates and/or on terms that are more advantageous to the applicant than it would normally provide. Specifically, the Bank may provide one or more of the following forms of financial assistance to any qualified applicant, to be provided directly by FUSB under paragraphs (a), (b) and (f), and either directly by FUSB and/or through a grant made to a qualifying community organization⁷ under paragraphs (c), (d), (e) and (g):

(a) a HMDA-reportable loan (including without limitation a loan for home purchase, refinancing, or home improvement), a CRA small business loan and/or a community

⁵ In this Agreement, community development loans are defined as those which meet the definition set forth in Federal Reserve Board Regulation BB, 12 CFR 228.12(h).

⁶ With respect to the Bank's home mortgage subsidy program, no loan originated under this program shall exceed the then-conforming loan limit applicable to Fannie Mae and Freddie Mac, as determined by the Federal Housing Finance Board.

⁷ A qualifying community organization is defined as a non-profit organization that has among its goals the furtherance in majority-black census tracts of affordable and/or fair housing or CRA small business or community development loans. Such organizations will be selected by FUSB and approved by the United States, FUSB shall include in the annual report it submits to the United States under paragraph 37 of this Agreement a detailed description of how each organization that received a subsidy or grant under paragraph 30 of this Agreement used such funds each year, including the total funds received from each subsidy or grant, each amount used, the date the funds were used, and for what purpose.

development loan at an interest rate a minimum rate of $\frac{1}{2}$ of a percentage point (50 basis points) below the otherwise prevailing rate, provided that if the prevailing rate for any such loan exceeds 10% at any time during the term of this Agreement the interest rate subsidy shall be a minimum of 1%, and if the prevailing rate exceeds 12% at any time during the term of this Agreement, the subsidy shall be a minimum of 1.5%;⁸

(b) a loan at a lower interest rate to a borrower who would ordinarily not qualify for such rate for reasons including, for example, the lack of required credit quality, income, or down payment;⁹

(c) a direct grant of a minimum of 2% of the loan amount, up to a maximum of 3%, for the purpose of down payment assistance;

(d) closing cost assistance in the form of (i) a direct grant of a minimum of \$500 and a maximum of \$1,000 or (ii) a waiver of costs in an amount between 2 and 3% of the loan amount, except for loans under the USDA Guaranteed Loan Program, as to which a 1% fee waiver satisfies this provision;

(e) providing the amount required to fund a qualified applicant's escrow account at closing, up to \$3,500, in the form of a grant;

⁸ For purposes of this Agreement, the loan subsidy amount calculation will be (a) the reduction in the monthly payment from the standard fully-amortized monthly payment based on the borrower's qualifications which results from the interest rate reduction the borrower receives times (b) the number of monthly payments for the time periods as set forth below for various loan types:

- (i) HMDA loans at 39.3 months;
- (ii) Small business loans at 15 months; and
- (iii) Community development loans at the term of the note.

If during the term of this Agreement, the Bank materially modifies the term of its HMDA or CRA small business loan products, then the parties will work together in good faith to equitably modify the time periods in (i) or (ii) above, as the case may be. If they are unable to reach agreement, either party may bring the dispute to this Court for resolution. The Bank shall not implement the change during such a dispute.

⁹ Footnote no. 8 above is incorporated by reference.

(f) purchasing interest free mortgage loans originated by a qualifying community organization that builds affordable housing for families in majority-black census tracts who are in need of shelter, or originating mortgage loans to borrowers under a special purpose credit program to purchase homes built by such a qualifying community organization; or

(g) providing grant funds to qualifying community organizations for the establishment of "cash reserve repair fund" accounts. These pre-paid savings accounts will be opened at FUSB by the qualifying community organization for the benefit of the homeowner and, subject to approval by the qualifying community organization administering the account, may be used for home repair and maintenance expenses or if a qualifying life emergency¹⁰ prevents the homeowner from making his or her mortgage payments. The homeowner will receive up to \$3,500 in the pre-paid savings account and the qualifying community organization will receive a \$500 administrative fee from the grant funds provided by FUSB, for a total grant of up to \$4,000 per homeowner. The term of these accounts is three years, after which time any remaining money will be transferred to the homeowner. In addition, either FUSB or the qualifying community organization will provide the homeowner with information describing checking and savings accounts at FUSB. If the homeowner so chooses, the homeowner may open a type of account offered at FUSB in the homeowner's name.

31. The Bank retains the discretion to offer more than one, or all, of the foregoing forms of financial assistance to qualified applicants on an individual basis as it deems appropriate under the unique factual circumstances of a particular application. The Bank will

¹⁰ A qualifying life emergency includes, but is not limited to, unexpected health expenses, automobile repairs, home repairs, temporary unemployment or other expenses or emergencies approved by the non-profit organization or qualifying community organization that temporarily impairs a homeowner's ability to make mortgage payments.

exercise this discretion in a manner which maximizes the likelihood that it will originate a loan to a qualified applicant, consistent with applicable underwriting guidelines, loan policies, rules and regulations, and safety and soundness standards.

32. The Bank shall have discretion to apportion, as it sees fit, the special financing program's loan subsidy among its residential and CRA small business and community development loan products. However, the Bank shall use commercially reasonable efforts to implement the program such that, of the total dollar volume of loans subsidized each year, at least 50% are CRA small business and/or community development loans.

33. The Bank shall make reasonable efforts to promote an equitable distribution of these investment funds widely among the majority African-American census tracts.

34. No provision of this Agreement, including this special financing program commitment, requires the Bank to make any unsafe or unsound loan. During the term of this Agreement, the Bank shall assess the effectiveness of this special financing program in achieving the Agreement's goals and shall recommend to the United States any changes it reasonably believes are necessary and appropriate to increase the program's effectiveness.

III. EVALUATING AND MONITORING COMPLIANCE

35. For the duration of this Agreement, FUSB shall retain all records relating to its obligations hereunder, including its residential and small business lending activities, as well as its advertising, outreach, special programs, and other compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request.

36. Each year for the duration of this Agreement, the Bank shall provide to counsel for the United States the data it submits to the Federal Financial Institutions Examination

Council (FFIEC) pursuant to the Home Mortgage Disclosure Act and the Community Reinvestment Act. Such data, including the record layout, will be provided in the same format in which it is presented to the FFIEC within thirty (30) days of its submission to the FFIEC.

37. Each year for the duration of this Agreement, in addition to the submission of any other plans or reports specified in this Agreement, FUSB shall make an annual report to the United States on its progress in fulfilling the goals of this Agreement. Each such report shall provide a complete account of the Bank's actions to comply with each requirement of this Agreement during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting its goal for that year, and any recommendations for additional actions to achieve the goals of this Agreement. The Bank shall submit this report each year for the term of this Agreement within forty-five (45) days of the anniversary of the date of the entry of this Agreement. In addition, the Bank shall attach to the annual reports representative copies of training material and advertising and marketing materials disseminated pursuant to this Agreement.

38. This Agreement shall be binding on the Bank, including all its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event the Bank seeks to transfer or assign all or part of its operations, and the successor or assign intends on carrying on the same or similar use, as a condition of sale, the Bank shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

IV. ADMINISTRATION

39. The Agreement shall terminate (a) three (3) months after the submission of the Bank's fourth annual report to the United States (the "Termination Date"); (b) if the Court grants a joint motion by the parties to terminate the Agreement prior to that date, which motion may be proposed by the Bank at any time after the Agreement has been in effect for three (3) years, if the Bank has fully complied with all its terms;¹¹ or (c) if the Bank has not invested \$500,000 in its special financing program in four (4) years from the date of entry of this Agreement, three months after the submission of the Bank's final annual report to the United States, which shall be submitted after completing the investment required by the special financing program. It shall only be extended upon written agreement of the parties or, upon motion of the United States to the Court, for good cause shown.

40. Any time limits for performance fixed by this Agreement may be extended by mutual written agreement of the parties. Other modifications to this Agreement may be made only upon approval of the Court, by motion of either party. The parties recognize that there may be changes in relevant and material factual, economic and/or financial circumstances during the term of this Agreement which may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Agreement resulting from any such change in circumstances.

41. In the event that any disputes arise about the interpretation of or compliance with the terms of this Agreement, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that

¹¹ The United States shall not refuse to join the Bank's motion if it concludes that the Bank has fully complied with all the provisions of this Agreement.

if it reasonably believes that the Bank has violated any provision of this Agreement, it will provide the Bank written notice thereof and give it thirty (30) days to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by the Bank to perform in a timely manner any act required by this Agreement or an act by the Bank in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

42. FUSB's compliance with the terms of this Agreement shall fully and finally resolve all claims of the United States arising prior to the effective date of this Agreement and relating to the Bank's alleged violation of the fair lending laws by means of discriminating on the basis of race or color, including without limitation all claims for equitable relief and monetary damages and penalties. Each party to this Agreement shall bear its own costs and attorney's fees associated with this litigation.

43. The Court shall retain jurisdiction for the duration of this Agreement to enforce the terms of the Agreement, after which time the case shall be dismissed with prejudice.

SO ORDERED, this ____ day of _____, 2014.

UNITED STATES DISTRICT COURT JUDGE

The undersigned hereby apply for and consent to the entry of this Agreement:

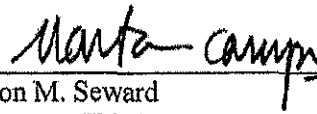
For First United Security Bank



David M. Smith (ASB-0455-S83D)
John P. Dulin, Jr.
Maynard, Cooper and Gale, P.C.
1901 6th Ave N # 2400
2400 Regions/Harbert Plaza
Birmingham, AL 35203
(205) 254-1000
(205) 254-1999 (fax)
dsmith@maynardcooper.com

For the United States

Steven H. Rosenbaum
Chief
Housing and Civil Enforcement Section



Jon M. Seward
Deputy Chief
Marta Campos
Attorney
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
marta.campos@usdoj.gov
(202) 514-4733
(202) 514-1116 (fax)

Kenyen R. Brown
United States Attorney



Holly L. Wiseman (WISEH7352)
Special Assistant United States Attorney
63 South Royal Street, Suite 600
Mobile, Alabama 36602
holly.wiseman@usdoj.gov
(251) 415-7104
(251) 441-5051 (fax)

APPENDIX A

Majority Black Census Tracts

Source: 2000 Census

1	Tract 9567 Choctaw	40	Tract 45 Jefferson	79	Tract 9912 Sumter
2	Tract 9580 Clarke	41	Tract 51.01 Jefferson	80	Tract 9913 Sumter
3	Tract 401 Hale	42	Tract 51.02 Jefferson	81	Tract 9915 Sumter
4	Tract 403 Hale	43	Tract 52 Jefferson	82	Tract 9916 Sumter
5	Tract 404 Hale	44	Tract 55 Jefferson	83	Tract 104.04 Tuscaloosa
6	Tract 405 Hale	45	Tract 57.01 Jefferson	84	Tract 105 Tuscaloosa
7	Tract 1 Jefferson	46	Tract 57.02 Jefferson	85	Tract 116 Tuscaloosa
8	Tract 3 Jefferson	47	Tract 58 Jefferson	86	Tract 117.01 Tuscaloosa
9	Tract 4 Jefferson	48	Tract 59.06 Jefferson	87	Tract 117.03 Tuscaloosa
10	Tract 5 Jefferson	49	Tract 101 Jefferson	88	Tract 118 Tuscaloosa
11	Tract 7 Jefferson	50	Tract 102 Jefferson	89	Tract 119 Tuscaloosa
12	Tract 8 Jefferson	51	Tract 103.01 Jefferson	90	Tract 123.04 Tuscaloosa
13	Tract 11 Jefferson	52	Tract 103.02 Jefferson	91	Tract 124.04 Tuscaloosa
14	Tract 12 Jefferson	53	Tract 104.01 Jefferson	92	Tract 124.05 Tuscaloosa
15	Tract 14 Jefferson	54	Tract 105 Jefferson	93	Tract 125.01 Tuscaloosa
16	Tract 15 Jefferson	55	Tract 106.02 Jefferson	94	Tract 128 Tuscaloosa
17	Tract 16 Jefferson	56	Tract 106.03 Jefferson	95	Tract 9947 Wilcox
18	Tract 19.02 Jefferson	57	Tract 119.02 Jefferson	96	Tract 9948 Wilcox
19	Tract 20 Jefferson	58	Tract 119.03 Jefferson	97	Tract 9949 Wilcox
20	Tract 21 Jefferson	59	Tract 124.01 Jefferson	98	Tract 9950 Wilcox
21	Tract 22 Jefferson	60	Tract 130.02 Jefferson	99	Tract 9951 Wilcox
22	Tract 23.03 Jefferson	61	Tract 131 Jefferson	100	Tract 9570 Choctaw
23	Tract 24 Jefferson	62	Tract 132 Jefferson	101	Tract 9860 Monroe
24	Tract 27 Jefferson	63	Tract 133 Jefferson		
25	Tract 29 Jefferson	64	Tract 134 Jefferson		
26	Tract 30.01 Jefferson	65	Tract 136.01 Jefferson		
27	Tract 30.02 Jefferson	66	Tract 138.01 Jefferson		
28	Tract 31 Jefferson	67	Tract 139.01 Jefferson		
29	Tract 32 Jefferson	68	Tract 141.05 Jefferson		
30	Tract 33 Jefferson	69	Tract 9829 Marengo		
31	Tract 34 Jefferson	70	Tract 9831 Marengo		
32	Tract 35 Jefferson	71	Tract 9832 Marengo		
33	Tract 36 Jefferson	72	Tract 9856 Monroe		
34	Tract 37 Jefferson	73	Tract 9857 Monroe		
35	Tract 38.02 Jefferson	74	Tract 9858 Monroe		
36	Tract 38.03 Jefferson	75	Tract 9870 Perry		
37	Tract 39 Jefferson	76	Tract 9871 Perry		
38	Tract 40 Jefferson	77	Tract 9872 Perry		
39	Tract 42 Jefferson	78	Tract 9911 Sumter		

APPENDIX B

Employee Acknowledgment

I acknowledge that on _____, 2009, I was provided copies of the Agreed Order for Resolution entered by the Court in United States v. First United Security Bank, (S.D. Ala.), and the loan pricing policy developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX C

Employee Training Certification

I certify that on _____, 2009, I received training with respect to my responsibilities under the Agreed Order for Resolution entered by the Court in United States v. First United Security Bank, (S.D. Ala.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act and the Fair Housing Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX D

Release

In consideration for the parties' agreement to the terms of the Agreed Order for Resolution entered in United States v. First United Security Bank, (S.D. Ala.), and the Bank's payment to me of \$ _____, pursuant to the Agreed Order for Resolution, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from the housing and credit discrimination alleged in that litigation up to and including the date of execution of this release, that I may have against the Defendant, First United Security Bank, all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders and employees and their heirs, executors, administrators, successors or assigns.

Executed this ____ day of _____, 2009.

Signature

Print Name

Address

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	1:09-cv-00644-WS-M
v.	)	
	)	
FIRST UNITED SECURITY BANK,	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF
JOINT MOTION TO AMEND AGREED ORDER FOR RESOLUTION**

Plaintiff United States and Defendant First United Security Bank ("FUSB" or "the Bank") (collectively, the "Parties") respectfully submit the following memorandum in support of their Joint Motion to Amend the Agreed Order entered by this Court on November 18, 2009.

BACKGROUND

On September 30, 2009, the United States filed a complaint alleging that First United Security Bank engaged in a pattern or practice of racial discrimination in the setting of interest rates for first-lien refinance loans originated in 2004 for owner-occupied one-to-four family houses and by failing to serve the lending needs of majority African-American census tracts in west central Alabama on an equal basis with majority-white tracts. (Dkt. No. 1.) On that same day, the Parties filed a proposed Agreed Order for Resolution settling all the claims brought in the case. (Dkt. No. 2.) On November 18, 2009, this Court entered the Agreed Order. (Dkt. No. 5.)

Among other things, the Agreed Order requires FUSB to invest a minimum of five hundred thousand (\$500,000) in a special financing program for the Bank to use to offer specified forms of financial assistance for residential and CRA small business and community

development loans to applicants located in previously-underserved majority-minority census tracts. (*Id.* ¶¶ 30-34.) While FUSB has worked diligently to achieve the goals of the special financing program, it has been unable to offer the specified forms of financial assistance at a volume that exhausted the requisite subsidy for the special financing program during the four-year term initially prescribed in the Agreed Order for Resolution. Accordingly, after extensive discussions, the Parties agreed to amendments to the Agreed Order that will permit the Bank to offer additional forms of financial assistance and thereby expend the funds through the special financing program to more effectively serve the applicants in previously-underserved majority-minority census tracts. The Parties now move the Court to approve the agreed amendments to paragraph 30 of the Agreed Order,¹ discussed more thoroughly below, and enter the Amended Agreed Order attached as Exhibit A to the Motion to Amend the Agreed Order.

ARGUMENT

I. This Court Has Jurisdiction To Enter the Amended Agreed Order

The Agreed Order provides that the Order “shall terminate ... three (3) months after the submission of the Bank’s fourth annual report to the United States” and that the “Court shall retain jurisdiction for the duration of this Agreement to enforce the terms of the Agreement” (Dkt. No. 5, ¶¶ 39, 43.) The Agreed Order further provides that, other than to extend time limits, modifications “may be made only upon approval of the Court, by motion of either party” (*Id.* ¶ 40.) Accordingly, this Court has jurisdiction to grant the Parties’ Joint Motion to Amend the Agreed Order.

¹ All other changes in the Amended Agreed Order are technical changes, such as adding the date that the Agreed Order was originally entered by this Court, and changing the signature blocks, as necessary.

II. The Parties Have Agreed to the Proposed Amendments to the Agreed Order

Paragraph 40 of the Agreed Order states that the “parties recognize that there may be changes in relevant and material factual, economic and/or financial circumstances during the term of this Agreement which may impact the accomplishment of its goals” and that the Parties “agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Agreement resulting from any such change in circumstances.” (*Id.* ¶ 40.) Prior to the entry of the Agreed Order, the Parties anticipated that FUSB would be able to exhaust the funds in the special financing program subsidy during the four-year term of the Agreed Order using the forms of financial assistance permitted in the Agreed Order. However, due to changed circumstances, including changes in Bank’s relevant housing and mortgage market, FUSB has been unable to fully exhaust the funds. The Parties agree that it may be difficult for the Bank to fully exhaust the special financing program subsidy absent some changes.

Therefore, in accordance with paragraph 40 of the Agreed Order, the Parties have worked cooperatively to address these new circumstances and, as a result, have agreed to amend paragraph 30 of the Agreed Order to provide FUSB with additional opportunities to effectively utilize the balance of the special financing program, roughly 20% of the original amount designated for this use. Specifically, paragraph 30 of the Amended Agreed Order would allow FUSB to use the special financing program to provide the amount required to fund a qualified applicant’s escrow account at closing up to a certain amount in the form of a grant; to purchase interest free mortgage loans originated by a qualifying community organization that builds affordable housing for families in majority-black census tracts; to provide grant funds to qualifying community organizations for the establishment of “cash reserve repair fund” accounts; and to provide grants to qualifying community organizations for down payment assistance,

closing cost assistance, and escrow accounts for qualified applicants. These additional forms of financial assistance may be offered to qualified applicants residing in the majority-black census tracts in the bank's lending area as defined in footnote 1 and Appendix A of the Amended Agreed Order.

III. The Proposed Amendments Benefit Borrowers in Majority-Black Census Tracts

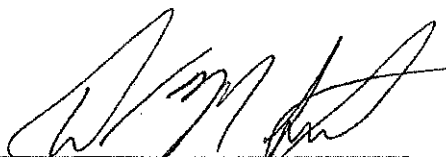
The additional forms of financial assistance permitted by the Amended Agreed Order are aimed at increasing housing-related, CRA small business and community development lending in the majority-black census tracts in the bank's lending area, while also enhancing FUSB's presence there by facilitating the establishment of traditional banking relationships and relationships with qualified community organizations in these areas. The new forms of financial assistance are based on FUSB officials' knowledge and familiarity with the bank's lending area. The Parties believe that in partnering with qualified community organizations, the Bank can better reach the individuals who are qualified for and would benefit most from the forms of financial assistance provided for in the Amended Agreed Order.

CONCLUSION

For these reasons, the United States and First United Security Bank respectfully request that this Court grant the Parties' Joint Motion to Amend the Agreed Order and enter the proposed Amended Agreed Order for Resolution attached as Exhibit A to the Joint Motion to Amend the Agreed Order.

Respectfully submitted on May 6, 2014.

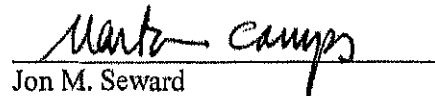
For First United Security Bank



David M. Smith (ASB-0455-S83D)
John P. Dulin, Jr.
Maynard, Cooper and Gale, P.C.
1901 6th Ave N # 2400
2400 Regions/Harbert Plaza
Birmingham, AL 35203
(205) 254-1000
(205) 254-1999 (fax)
dsmith@maynardcooper.com

For the United States

Steven H. Rosenbaum
Chief
Housing and Civil Enforcement Section



Jon M. Seward
Deputy Chief
Marta Campos
Attorney
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
marta.campos@usdoj.gov
(202) 514-4733
(202) 514-1116 (fax)

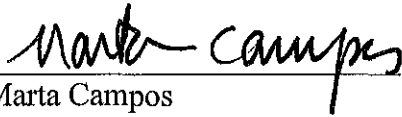
Kenyen R. Brown
United States Attorney



Holly L. Wiseman (WISLH7352)
Special Assistant United States Attorney
63 South Royal Street, Suite 600
Mobile, Alabama 36602
holly.wiseman@usdoj.gov
(251) 415-7104
(251) 441-5051 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May 2014, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.


Marta Campos
Attorney
U.S. Department of Justice