

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**TITLE VIII**

**CONCILIATION AGREEMENT**

**between**

Assistant Secretary for Fair Housing and Equal Opportunity

(Complainant)

**And**

First-Citizens Bank & Trust Company,

as successor in interest (Successor) to First Citizens Bank and Trust Company, Inc.

(Respondent)

**COMPLAINT NUMBER: 00-12-0002-8**

## **A. PARTIES**

1. **Complainant** -- Assistant Secretary for Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development (“Department”, “HUD”, or “Complainant”)

2. **Respondent and Successor** -- First Citizens Bank and Trust Company, Inc. (“Respondent”). On January 1, 2015, Respondent merged into First-Citizens Bank & Trust Company (“Successor”). Successor has negotiated this Conciliation Agreement with Complainant and is bound by its terms.

## **B. BACKGROUND**

1. On December 23, 2011, the Department filed the complaint, No. 00-12- 0002-8, alleging that Respondent discriminated on the basis of race and national origin by disproportionately denying the loan applications of African-American and Hispanic applicants for certain residential loan products. The Department conducted an analysis of Respondent’s mortgage loans originated through the retail channel via manual override of the automated underwriting system (“AUS”) decision to decline. The Department maintains that its analysis demonstrated that preferential treatment of white applicants was not sufficiently justified by the identified factors. The Department’s analysis covered applications acted upon for these products between 2010 and 2011. Section 804(b) of the Federal Fair Housing Act, as amended (the “Act”), makes it unlawful to discriminate in the terms, conditions, or privileges of sale of a dwelling because of race or national origin. Section 805 of the Act makes it unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race or national origin. 42 U.S.C. §§

3604(b) and 3605.

2. The Respondent denied and Successor denies any allegation that it engaged in discriminatory lending on a prohibited basis in connection with loans originated through its retail channel. Respondent and Successor further maintain that the alleged statistical disparities were sufficiently explained and justified.

**C. TERM OF AGREEMENT**

1. This Conciliation Agreement, concerning Complaint No. 00-12-0002-8 (the "Agreement"), shall govern the conduct of HUD, the Complainant and Successor ("Parties") for a period not to exceed 3 years from the Agreement's effective date ("Term of this Agreement").

2. If the Parties mutually agree that Successor has fulfilled all obligations and commitments set forth in Paragraphs G.2 through G.6 below prior to 3 years from the Agreement's effective date, the Agreement shall terminate on the date of said mutual agreement.

**D. EFFECTIVE DATE**

1. The Parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the FHEO Assistant Secretary or his designee. This Agreement shall become effective on the date on which it is approved.

**E. GENERAL PROVISIONS**

1. The Parties acknowledge that this Agreement is a voluntary and full settlement of the disputed Complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

2. Successor acknowledges that it has an affirmative duty not to discriminate under

the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Successor further acknowledges that any retaliation or discrimination after the Effective Date may constitute both a material breach of this Agreement and a statutory violation of the Act.

3. It is understood that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Assistant Secretary, or his designee, it is a public document.

4. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondent or Successor made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction.

5. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Assistant Secretary or his designee.

6. The Parties agree that the execution of this Agreement may be accomplished by separate signing of this Agreement, and that the original executed signature pages to be attached to the body of the Agreement constitute one document.

7. Successor hereby forever waives, releases, and covenants not to sue the Department or Complainant, their agents, employees, attorneys, officers, assignees, and successors in interest with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, whether such person was named or not named, arising out of the allegations presented in HUD Complaint Number 00-12- 0002-8.

8. In exchange for Successor's performance of the provisions of the Agreement, Complainant hereby forever waives, releases, and covenants not to sue Respondent, Successor

or their agents, employees, attorneys, officers, assignees, parents and successors in interest with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, whether such person was named or not named, arising out of the allegations presented in HUD Complaint No. 00-12-0002-8.

9. It is understood that the Agreement does not constitute an admission by Respondent or Successor of any violation of the Act or any other federal or state statute or regulation, nor does the Agreement constitute evidence of a determination by the Department of any violation of the Act or other statute or regulation.

#### **F. GENERAL NON-DISCRIMINATION REQUIREMENTS**

1. Successor, including all of its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with them, shall not engage in any act or practice which discriminates on the basis of race or national origin in any aspect of a residential real-estate-related transaction in violation of the Act. This prohibition applies, but is not limited, to: solicitation of applications for credit extension, requests for and consideration of qualifying applicant information, manual underwriting of credit, and the provision of credit for residential loan products. Those actions include, but are not limited to, the actions specified in this Agreement.

2. This prohibition applies, but is not limited, to: the selection of sites for and the provision of services at branch offices; marketing; the definition of Community Reinvestment Act ("CRA") assessment areas; and the determination of the geographic areas in which loan applications are solicited or funded, except as needed to remedy the violations alleged in the Complaint. Nothing in this Agreement shall require Successor to make any loan that is inconsistent with Successor's underwriting standards. All provisions of this Agreement shall be implemented in a manner consistent with safe and sound lending practices and the safety

and soundness standards promulgated in Part 364 of the FDIC's Regulations, and in compliance with all other applicable laws, rules, and regulations.

#### **G. RELIEF IN THE PUBLIC INTEREST**

1. **Training** -- Within three months of the effective date of this Agreement, and annually thereafter for the Term of this Agreement, Successor shall require all of its employees and agents having substantial involvement in manual underwriting of mortgages originated by the retail channel to attend four (4) hours of Fair Lending Training to ensure that their activities are conducted in a non-discriminatory manner consistent with the Act, all other fair lending laws, and this Agreement. This training shall encompass the fair lending obligations of residential mortgage lending personnel under the Act and the Equal Credit Opportunity Act, their obligations under the CRA, and their responsibilities under this Agreement. The training required by this paragraph shall be conducted by an independent, qualified third party approved in advance by the Department, and may be conducted by webinar. Successor must seek and obtain such written approval from the Department at least thirty (30) days prior to the commencement of the training. The Department shall use its best efforts to respond to any request for approval in writing within seven (7) days following receipt. If the Department does not approve a proposed trainer, Successor will propose an alternate. Successor shall bear all costs associated with the training. Within fifteen (15) days of the effective date of this Agreement, Successor shall inform all of its agents and employees responsible for compliance with this Agreement, including any senior executive officers and board members, of the terms of this Agreement and shall provide each person with a copy of this Agreement.

2. **Outreach and Assistance** -- On or before September 30, 2016, Successor will hire three Mortgage Banker Market Specialists, with a focus on diverse lending, to deliver the designated Special Purpose Credit product, as defined in the product guidelines sheet provided

to the Department by Successor on May 9, 2016, in key South Carolina metropolitan areas. Specifically, the Mortgage Banker Market Specialists will focus on diverse lending in Charleston-North Charleston-Summerville, Columbia, and Greenville-Anderson-Mauldin MSAs, including any or all of the following counties therein: Charleston, Dorchester and Berkeley counties; Lexington, Fairfield, Kershaw, Richland and Saluda counties; and Greenville, Anderson, Pickens and Laurens counties. Successor commits to making no less than 50 Special Purpose Credit loans *or* obtaining no less than 125 completed Special Purpose Credit applications in the identified counties. The Special Purpose Credit loans will be designed to meet the needs of diverse borrowers across the income spectrum through application of the underwriting requirements set forth in the guidelines sheet.

3. **Outreach and Assistance** -- Successor shall make no less than \$140,000 available over the Term of this Agreement to 501(c)(3) nonprofit organizations that provide services such as credit and housing counseling (including assistance in obtaining loan modifications and preventing foreclosure), financial literacy, and other related programs targeting first-time homebuyers in South Carolina. Successor's election of organizations that receive funding must be approved in advance by the Department.

4. **Outreach and Assistance** -- Successor agrees to spend an aggregate of \$20,000 during the Term of this Agreement for affirmative marketing, advertising, and outreach to the residents in majority-minority census tracts in South Carolina.

5. **Outreach and Assistance** -- Successor agrees to continue to conduct financial education programs in the South Carolina market. As part of this commitment, Successor agrees to partner with a non-profit organization or community groups involved in financial education, to conduct a minimum of 24 programs over the Term of this Agreement for individuals and small business owners.

6. **Underwriting** -- Successor agrees to develop and document a more standardized, specific, and objective set of guidelines for the secondary review process of retail channel residential loan applications initially denied by the AUS to minimize reliance on discretion and ensure that manual underwriting activities are conducted in a non-discriminatory manner consistent with the Act. These guidelines should require that qualifying information be requested from all applicants equally, that robust, standardized, and equivalent documentation be compiled for all secondary review credit decisions, and that Successor designate an individual or group of individuals to be responsible for tracking and monitoring all exceptions or overrides of AUS denied applications.

#### **H. MONITORING**

1. During the Term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may examine witnesses and obtain copies of pertinent records of Successor. Upon reasonable notice to Successor, Successor agrees to provide full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

2. For the Term of this Agreement, Successor shall retain all records relating to the obligations under this Agreement, including all relevant residential lending activities (including applications for residential loans and files on mortgages), advertising, outreach, branching, any special programs, and other compliance activities as set forth herein. The Department shall have the right to review and obtain copies of all such records upon request.

#### **I. REPORTING AND RECORDKEEPING**

1. No later than 410 days after the effective date of this Agreement, and continuing for the Term of this Agreement, Successor shall make an annual report to the Department on its progress in fulfilling the goals of this Agreement and a final report at the



conclusion of this Agreement. The final report shall be provided to the Department no later than 30 days prior to the Term of the Agreement is to expire. Each report shall provide a general account of the Successor's actions to comply with each requirement of this Agreement during the previous year, an objective assessment of the extent to which each obligation was met, an explanation of why Successor fell short of meeting any of its obligations during that year, and an explanation of how they will correct the non-compliance. In addition, Successor shall attach to the reports copies of the following: training materials; advertising and marketing materials produced and disseminated pursuant to this Agreement; evidence of all loans made pursuant to or in fulfillment of this Agreement; and evidence of all financial expenditures made pursuant to or in fulfillment of this Agreement. Reports shall be addressed to the Director of FHEO's Office of Systemic Investigations.

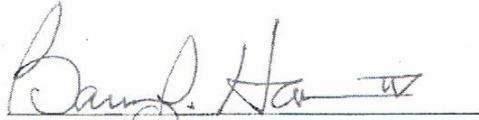
2. Successor's compliance with the terms of this Agreement shall fully and finally resolve all claims alleged in the above-referenced complaint, including those claims for equitable relief and monetary damages and penalties.

#### **J. BREACH OF THE AGREEMENT**

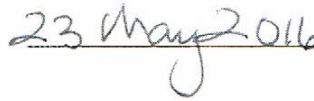
1. Whenever the Department has reasonable cause to believe that Successor has breached this Agreement, the Department shall first notify Successor and provide Successor with a detailed description of the alleged breach(es) and provide Successor with a reasonable time to correct such alleged breach(es) and demonstrated said corrections.

2. In the event Successor has not corrected such breach(es) within the designated reasonable time, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to subsections 810(c) and 814(b)(2) of the Act.

**SIGNATURES**




Barry P. Harris IV  
Executive Vice President  
and Chief Legal Officer  
First-Citizens Bank & Trust Company,  
as successor-in-interest to First  
Citizens Bank and Trust Company,  
Inc.



Date

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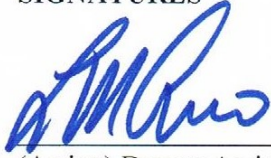
**SIGNATURES**

  
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Complainant, Assistant Secretary for Fair Housing and  
Equal Opportunity

6/1/16  
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Date

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SIGNATURES



\_\_\_\_\_  
(Acting) Deputy Assistant Secretary for Enforcement and Programs

6/2/16

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Date

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