

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

|   |   |               |
|---|---|---------------|
| In the Matter of                                      | ) |               |
|   | ) |               |
| Brian J. Berhorst, an institution-affiliated party of | ) | ORDER TO PAY  |
|   | ) |               |
| Mid America Bank                                      | ) | FDIC-20-0147k |
| Jefferson City, MO                                    | ) |               |
|   | ) |               |
| (Insured State Nonmember Bank)                        | ) |               |
|   | ) |               |
| Respondent's NMLS UI# N/A                             | ) |               |
|   | ) |               |
|   | ) |               |

Brian J. Berhorst (Respondent) was advised of the right to receive a Notice of Assessment (Notice) detailing Respondent's breaches of fiduciary duty for which an Order to Pay a civil money penalty (Order to Pay) may be issued under 12 U.S.C. § 1818(i).

Respondent was further advised of the right to a hearing on the Notice under § 1818(i), and 12 C.F.R. Part 308, subparts A & B. Respondent waived certain rights under those provisions on June 15, 2021, and consented to the issuance of an Order to Pay by entering into a Stipulation and Consent to the Issuance of an Order to Pay (Consent Agreement) with a representative of the Federal Deposit Insurance Corporation's (FDIC) Legal Division.

The FDIC determined and Respondent neither admits nor denies the following:

1. Respondent from October 2014 to December 2017, while Chief Executive Officer of the Bank, failed to inform the Bank of his pre-existing personal lending relationship with at least nine applicants for Bank loans or to recuse himself from approving Bank loans to these borrowers. He also failed to disclose the borrowers' existing liabilities owed to

Respondent during the loan approval process and, in at least one case, directed that a substantial portion of a borrower's Bank loan payment be applied instead to his personal loan to the borrower.

2. Respondent breached his fiduciary duties owed to the Bank.
3. Respondent's breaches were part of a pattern of misconduct.

After considering the civil money penalty (CMP) mitigating factors under 12 U.S.C. § 1818(i)(2)(G), the FDIC accepts the Consent Agreement and issues the following:

**ORDER TO PAY**

4. By reason of Respondent's actions listed in paragraph 1, a \$20,000 CMP is assessed against Brian J. Berhorst under 12 U.S.C. § 1818(i)(2) and is effective upon issuance. Respondent must immediately pay the CMP to the Treasury of the United States.

5. Respondent may not seek or accept indemnification from any insured depository institution for the CMP assessed in this matter.

6. The Order to Pay is enforceable under 12 U.S.C. § 1818(i), and the FDIC will take action to collect the amount due if Respondent fails to make payment.

7. The Order to Pay does not waive any right, power, or authority of the United States; federal, state, or local agencies; or the FDIC as Receiver.

Issued under delegated authority.

Dated: July 15, 2021.

\_\_\_\_\_/s/\_\_\_\_\_  
Patricia A. Colohan  
Associate Director  
Division of Risk Management Supervision