BankUnited
14817 Oak Lane
Miami Lakes, FL 33016

**Notice of 2013 Annual Meeting of Stockholders, Proxy Statement, and Annual Report on Form 10-K for the Fiscal Year Ended December 31, 2012.**

**Meeting Date:**
**May 23, 2013**

BankUnited

**14817 Oak Lane**
**Miami Lakes, FL 33016**

April 25, 2013

Dear Stockholder:

We cordially invite you to attend BankUnited, Inc.'s Annual Meeting of Stockholders. The meeting will be held on May 23, 2013, at 12:00 p.m., Eastern Time, at the Heritage Center, 345 Park Avenue, New York, NY 10154.

Details regarding admission to the Annual Meeting and the business to be conducted at the Annual Meeting are described in the accompanying Notice of Annual Meeting of Stockholders and Proxy Statement.

Your vote is important. At the meeting, stockholders will vote on a number of important matters. Please take the time to carefully read each of the proposals described in the attached Proxy Statement.

Thank you for your support of BankUnited, Inc.

Sincerely,

John A. Kanas
*Chairman, President and Chief Executive Officer*

BankUnited

14817 Oak Lane
Miami Lakes, FL 33016

# NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

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| **Time and Date** | 12:00 p.m., Eastern Time, on May 23, 2013 |
| **Place** | The Heritage Center<br>345 Park Avenue<br>New York, NY 10154 |
| **Items of Business** | ***Proposal No. 1:*** To elect ten directors identified on the attached Proxy Statement to the Board of Directors to serve until the next annual meeting of stockholders or until that person's successor is duly elected and qualified.<br><br>***Proposal No. 2:*** To ratify the appointment of KPMG LLP as our independent registered public accounting firm for 2013.<br><br>***Proposal No. 3:*** To approve the BankUnited, Inc. Annual Incentive Plan, including for purposes of satisfying the stockholder approval requirement of Section 162(m) of the Internal Revenue Code of 1986, as amended.<br><br>To transact any other business as may properly come before the Annual Meeting and any adjournments or postponements thereof. |
| **Record Date** | You are entitled to vote at the Annual Meeting and at any adjournments or postponements thereof if you were a stockholder of record at the close of business on April 18, 2013. |
| **Voting** | Your vote is very important. Whether or not you plan to attend the Annual Meeting, we encourage you to read the attached Proxy Statement and submit your proxy or voting instructions as soon as possible. You may vote by either marking, signing and returning the enclosed proxy card or using telephone or internet voting, if available. For specific instructions on voting, please refer to the instructions on your enclosed proxy card. |
| **Internet Availability of Proxy Materials** | **Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting to be held on May 23, 2013. BankUnited, Inc.'s Proxy Statement and 2012 Annual Report to Stockholders are available at: http://ir.bankunited.com.** |

By Order of the Board of Directors,

April 25, 2013
Miami, Florida

Rajinder P. Singh
*Chief Operating Officer and Corporate Secretary*

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**14817 Oak Lane**
**Miami Lakes, FL 33016**

# PROXY STATEMENT

The Board of Directors (the “Board of Directors” or “Board”) of BankUnited, Inc. (the “Company,” “we,” “us” or “our”) is soliciting your proxy to vote at the 2013 Annual Meeting of Stockholders to be held on Thursday, May 23, 2013, at 12:00 p.m., Eastern Time, and at any adjournment or postponement of that meeting (the “Annual Meeting”). The Annual Meeting will be held at The Heritage Center, 345 Park Avenue, New York, NY 10154. This Proxy Statement and the accompanying proxy card, Notice of Annual Meeting of Stockholders and the 2012 Annual Report to Stockholders (the “Annual Report”) were first mailed on or about April 25, 2013, to stockholders of record as of April 18, 2013 (the “Record Date”).

## QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND THE ANNUAL MEETING

***Q: Why am I receiving these materials?***

*A:* We are providing these proxy materials to you in connection with the solicitation, by the Board of Directors of BankUnited, Inc., of proxies to be voted at the Company’s Annual Meeting. You are receiving this Proxy Statement because you were a BankUnited, Inc. stockholder as of the close of business on the Record Date. This Proxy Statement provides notice of the Annual Meeting, describes the three proposals presented for stockholder action and includes information required to be disclosed to stockholders.

***Q: How do I get electronic access to the proxy materials?***

This Proxy Statement and the Company’s Annual Report to Stockholders are available on our website at http://ir.bankunited.com. If you are a stockholder of record, you may elect to receive future annual reports or proxy statements electronically by registering your email address at www.proxyvote.com. If you hold your shares in street name, you should contact your broker, bank or other nominee for information regarding electronic delivery of proxy materials.

An election to receive proxy materials electronically will remain in effect for all future annual meetings unless revoked. Stockholders requesting electronic delivery may incur costs, such as telephone and internet access charges, that must be borne by the stockholder.

***Q: What proposals will be voted on at the Annual Meeting?***

*A:* There are three proposals scheduled to be voted on at the Annual Meeting:

- To elect ten directors identified in this Proxy Statement to the Board of Directors to serve until the next annual meeting of stockholders or until that person’s successor is duly elected and qualified;
- To ratify the appointment of KPMG LLP as our independent registered public accounting firm for 2013; and
- To approve the BankUnited, Inc. Annual Incentive Plan, including for purposes of satisfying the stockholder approval requirement of Section 162(m) of the Internal Revenue Code of 1986, as amended.

***Q:*** ***What is the Board of Directors' voting recommendation?***

***A:*** The Company's Board of Directors recommends that you vote your shares:

- **"FOR"** each of the nominees to the Board of Directors;
- **"FOR"** the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2013; and
- **"FOR"** the approval of the BankUnited, Inc. Annual Incentive Plan, including for purposes of satisfying the stockholder approval requirement of Section 162(m) of the Internal Revenue Code of 1986, as amended.

***Q:*** ***Who is entitled to vote?***

***A:*** All shares owned by you as of the Record Date, which is the close of business on April 18, 2013, may be voted by you. You may cast one vote per share of common stock that you held on the Record Date. These shares include shares that are:

- held directly in your name as the stockholder of record; and
- held for you as the beneficial owner through a broker, bank or other nominee.

On the Record Date, BankUnited, Inc. had approximately 100,452,185 shares of common stock issued and outstanding.

***Q:*** ***What is the difference between holding shares as a stockholder of record and as a beneficial owner?***

***A:*** Many of our stockholders hold their shares through a broker, bank or other nominee rather than directly in their own name. As summarized below, there are some differences between shares held of record and those owned beneficially.

***Stockholder of Record***. If your shares are registered directly in your name with the Company's transfer agent, Registrar and Transfer Company, you are considered, with respect to those shares, the stockholder of record, and these proxy materials are being sent directly to you by the Company. As the stockholder of record, you have the right to grant your voting proxy directly to certain officers of BankUnited, Inc. or to vote in person at the Annual Meeting. The Company has enclosed or sent a proxy card for you to use. You may also vote on the internet or by telephone, as described below under the heading "How can I vote my shares without attending the Annual Meeting?"

***Beneficial Owner***. If your shares are held in an account by a broker, bank or other nominee, like many of our stockholders, you are considered the beneficial owner of shares held in street name, and these proxy materials were forwarded to you by that organization. As the beneficial owner, you have the right to direct your broker, bank or other nominee how to vote your shares, and you are also invited to attend the Annual Meeting.

Since a beneficial owner is not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you obtain a "legal proxy" from the broker, bank or other nominee that is the stockholder of record of your shares giving you the right to vote the shares at the Annual Meeting. If you do not wish to vote in person or you will not be attending the Annual Meeting, you may vote by proxy. You may vote by proxy over the internet or by telephone, as described below under the heading "How can I vote my shares without attending the Annual Meeting?"

***Q: How can I vote my shares in person at the Annual Meeting?***

*A:* ***Stockholder of Record.*** Shares held directly in your name as the stockholder of record may be voted in person at the Annual Meeting. If you choose to vote your shares in person at the Annual Meeting, please bring proof of identification. Even if you plan to attend the Annual Meeting, the Company recommends that you vote your shares in advance as described below so that your vote will be counted if you later decide not to attend the Annual Meeting.

***Beneficial Owner***. Shares held in street name may be voted in person by you only if you obtain a signed proxy from the stockholder of record giving you the right to vote the shares.

***Q: What must I do if I want to attend the Annual Meeting in person?***

*A:* Attendance at the Annual Meeting is limited to individuals who were stockholders as of the Record Date, and admission will be on a first-come, first-served basis. Registration and seating will begin at 11:30 a.m., Eastern Time. Each stockholder will be asked to present proof of identification, such as a driver's license or passport, prior to admission to the Annual Meeting. Beneficial owners of shares held in street name will need to bring proof of share ownership as of the record date, such as a bank or brokerage firm account statement or a letter from the intermediary holding your shares. Cameras, recording devices and other electronic devices will not be permitted at the Annual Meeting.

***Q: How can I vote my shares without attending the Annual Meeting?***

*A:* Whether you hold your shares directly as the stockholder of record or beneficially own your shares in street name, you may direct your vote without attending the Annual Meeting by voting in one of the following manners:

- ***Internet.*** Go to the website listed on your proxy card or voting instruction card and follow the instructions there. You will need the control number included on your proxy card or voting instruction form;
- ***Telephone.*** Dial the number listed on your proxy card or your voting instruction form. You will need the control number included on your proxy card or voting instruction form; or
- ***Mail.*** Complete and sign your proxy card or voting instruction card and mail it using the enclosed, prepaid envelope.

**If you vote on the internet or by telephone, you do not need to return your proxy card or voting instruction card. Internet and telephone voting for stockholders will be available 24 hours a day and will close at 11:59 p.m., Eastern Time, on May 22, 2013.**

***Q: What is the quorum requirement for the Annual Meeting?***

*A:* A quorum is necessary to hold a valid Annual Meeting. A quorum exists if the holders of a majority of the Company's capital stock issued and outstanding and entitled to vote thereat are present in person or represented by proxy. Abstentions and broker non-votes are counted as present for determining whether a quorum exists. A broker non-vote occurs when an intermediary holding shares for a beneficial owner does not vote on a particular proposal because the intermediary does not have discretionary voting power for that particular proposal and has not received instructions from the beneficial owner.

***Q: What happens if I do not give specific voting instructions?***

*A:* ***Stockholder of Record.*** If you are a stockholder of record and you submit a signed proxy card or submit your proxy by telephone or the internet, but do not specify how you want to vote your shares on a particular proposal, then the proxy holders will vote your shares in accordance with the recommendations of the Board of Directors on all matters presented in this Proxy Statement. With respect to any other matters properly presented for a vote at the Annual Meeting, the proxy holders will vote your shares in accordance with their best judgment.

***Beneficial Owners***. If you are a beneficial owner of shares held in street name and do not provide the broker, bank or other nominee that holds your shares with specific voting instructions, under the rules of the New York Stock Exchange (the "NYSE"), the broker, bank or other nominee that holds your shares may generally vote on routine matters but cannot vote on non-routine matters such as the election of directors. If the broker, bank or other nominee that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, the broker, bank or other nominee that holds your shares will inform the inspector of election that it does not have the authority to vote on this matter with respect to your shares. This is generally referred to as a "broker non-vote." Therefore, we urge you to give voting instructions to your broker. Shares represented by such broker non-votes will be counted in determining whether there is a quorum. Because broker non-votes are not considered entitled to vote, they will have no effect on the outcome other than reducing the number of shares present in person or by proxy and entitled to vote from which a majority is calculated.

***Q: Which proposals are considered "routine" or "non-routine"?***

***A:*** The ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2013 (Proposal No. 2) is a matter considered routine under applicable rules. A broker or other nominee may generally vote on routine matters, and therefore no broker non-votes are expected to exist in connection with Proposal No. 2.

The election of directors (Proposal No. 1) and the vote to approve the BankUnited, Inc. Annual Incentive Plan (Proposal No. 3) are matters considered non-routine under applicable rules. A broker, bank or other nominee cannot vote without instructions on non-routine matters, and therefore there may be broker non-votes on Proposal Nos. 1 and 3.

***Q: What is the voting requirement to approve each of the proposals?***

***A:*** Ten directors have been nominated for election at the Annual Meeting. Each director will be elected by a plurality of the votes cast in the election of directors at the Annual Meeting, either in person or represented by properly authorized proxy. This means that the ten nominees who receive the largest number of "FOR" votes cast will be elected as directors. Stockholders cannot cumulate votes in the election of directors. Abstentions and broker non-votes will have no effect on this proposal.

The ratification of the appointment of our independent registered public accounting firm requires the affirmative vote of a majority of the votes represented at the meeting and entitled to vote on the proposal. In accordance with Delaware law, only votes cast "for" a matter constitute affirmative votes. A properly executed proxy marked "abstain" with respect to the ratification of the appointment of our independent registered public accounting firm will not be voted, although it will be counted for purposes of determining whether there is a quorum. Since abstentions will not be votes cast "for" the ratification of the appointment of our independent registered public accounting firm, they will have the same effect as negative votes or votes against that matter.

The approval of the BankUnited, Inc. Annual Incentive Plan requires the affirmative vote of a majority of the votes represented at the meeting and entitled to vote on the proposal. In accordance with Delaware law, only votes cast "for" a matter constitute affirmative votes. A properly executed proxy marked "abstain" with respect to the approval of the BankUnited, Inc. Annual Incentive Plan will not be voted, although it will be counted for purposes of determining whether there is a quorum. Since abstentions will not be votes cast "for" the approval of the BankUnited, Inc. Annual Incentive Plan, they will have the same effect as negative votes or votes against that matter. Broker non-votes will have no effect on this proposal.

***Q: What does it mean if I receive more than one proxy or voting instruction card?***

*A:* It means your shares are registered differently or are in more than one account. Please provide voting instructions for all proxy and voting instruction cards you receive.

***Q: Who will count the vote?***

*A:* A representative of Broadridge Financial Solutions, Inc. ("Broadridge") will tabulate the votes and act as the inspector of election.

***Q: Can I revoke my proxy or change my vote?***

*A:* Yes. You may revoke your proxy or change your voting instructions at any time prior to the vote at the Annual Meeting by:

- providing written notice to the corporate secretary of the Company;
- delivering a valid, later-dated proxy or a later-dated vote on the internet or by telephone; or
- attending the Annual Meeting and voting in person.

Please note that your attendance at the Annual Meeting in person will not cause your previously granted proxy to be revoked unless you specifically so request. Shares held in street name may be voted in person by you at the Annual Meeting only if you obtain a signed proxy from the stockholder of record giving you the right to vote the shares.

***Q: Who will bear the cost of soliciting votes for the Annual Meeting?***

*A:* BankUnited, Inc. will pay the entire cost of preparing, assembling, printing, mailing and distributing these proxy materials. In addition to the mailing of these proxy materials, the solicitation of proxies or votes may be made in person, by telephone or by electronic and facsimile transmission by our directors, officers and employees, who will not receive any additional compensation for such solicitation activities. In addition, the Company may reimburse its transfer agent, brokerage firms and other persons representing beneficial owners of shares of BankUnited, Inc.'s common stock for their expenses in forwarding solicitation material to such beneficial owners. We have also retained Innisfree M&A Incorporated to assist in the solicitation of proxies at an anticipated approximate cost of $10,000 plus reasonable out-of-pocket expenses.

***Q: I share an address with another stockholder, and we received only one paper copy of the proxy materials. How may I obtain an additional copy of the proxy materials?***

*A:* The Company has adopted a procedure called "householding," which the Securities and Exchange Commission (the "SEC") has approved. Under this procedure, we deliver a single copy of this Proxy Statement and the Annual Report to multiple stockholders who share the same address unless we received contrary instructions from one or more of the stockholders. This procedure reduces the Company's printing costs, mailing costs and fees. Stockholders who participate in householding will continue to be able to access and receive separate proxy cards. Upon written or oral request, a separate copy of this Proxy Statement and the Annual Report will be promptly delivered to any stockholder at a shared address to which the Company delivered a single copy of any of these documents. To receive a separate copy of this Proxy Statement or the Annual Report, or to receive a separate copy of our proxy materials in the future, stockholders may write or call the Company at the following address and telephone number:

BankUnited, Inc.
Attn: Investor Relations
14817 Oak Lane
Miami Lakes, FL 33016
(305) 231-6400

Stockholders who hold shares in street name (as described above) may contact their broker, bank or other nominee to request information about householding. Stockholders sharing an address can request delivery of a single copy of our proxy materials if they are currently receiving multiple copies by following the same procedures outlined above.

***Q: Is my vote confidential?***

*A:* Yes. The Company encourages stockholder participation in corporate governance by ensuring the confidentiality of stockholder votes. The Company has designated Broadridge to receive and tabulate stockholder votes. Your vote on any particular proposal will be kept confidential and will not be disclosed to the Company or any of its officers or employees except (i) where disclosure is required by applicable law, (ii) where disclosure of your vote is expressly requested by you or (iii) where the Company concludes in good faith that a bona fide dispute exists as to the authenticity of one or more proxies, ballots or votes, or as to the accuracy of any tabulation of such proxies, ballots or votes. However, aggregate vote totals will be disclosed to the Company from time to time and publicly announced at the Annual Meeting.

***Q: How can I obtain a copy of BankUnited, Inc.'s Annual Report on Form 10-K?***

*A:* **Copies of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the SEC, are available to stockholders free of charge on BankUnited, Inc.'s website at http://ir.bankunited.com or by writing to BankUnited, Inc., Investor Relations, 14817 Oak Lane, Miami Lakes, FL 33016.** The Company's 2012 Annual Report to Stockholders, which includes such Form 10-K, accompanies this Proxy Statement.

***Q: Where can I find the voting results of the Annual Meeting?***

*A:* BankUnited, Inc. will announce preliminary voting results at the Annual Meeting and publish preliminary, or final results if available, in a Current Report on Form 8-K within four business days of the Annual Meeting.

## PROPOSALS TO BE VOTED ON BY BANKUNITED, INC. STOCKHOLDERS

## PROPOSAL NO. 1

## ELECTION OF DIRECTORS

### Directors Elected Annually

Our Board of Directors is currently comprised of ten members. The size of the Board of Directors may be fixed from time to time exclusively by our Board of Directors as provided in our Certificate of Incorporation. BankUnited, Inc.'s directors are elected each year by the stockholders at the Company's annual meeting. We do not have a staggered or classified board. Ten directors will be elected at this year's Annual Meeting. Except for Michael J. Dowling, who is a new director nominee recommended by a non-management director, all of the nominees were elected to the Board of Directors at the last annual meeting. Richard LeFrak is not standing for reelection. Each director's term will last until the 2014 annual meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal.

### Board Nominations

Six of our directors are nominated pursuant to a director nomination agreement, as amended and restated on February 29, 2012 (the "Director Nomination Agreement"), by and among the Company, John A. Kanas and certain funds affiliated with The Blackstone Group ("Blackstone"), The Carlyle Group ("Carlyle"), Centerbridge Partners, L.P. ("Centerbridge") and WL Ross & Co. LLC ("WL Ross"), whom we refer to as our Sponsors. The Director Nomination Agreement provides for the rights of our Sponsors and Mr. Kanas to nominate individuals to our Board of Directors. Pursuant to the agreement, the Sponsors and Mr. Kanas have the right to nominate individuals to our Board of Directors at each meeting of stockholders where directors are to be elected, and subject to limited exceptions, we will include in the slate of nominees recommended to our stockholders for election as directors the number of individuals designated by the Sponsors and Mr. Kanas as follows:

- so long as Blackstone owns more than 40% of the common stock owned by Blackstone immediately prior to the consummation of our initial public offering in January 2011 (the "IPO"), one individual nominated by Blackstone;
- so long as Carlyle owns more than 40% of the common stock owned by Carlyle immediately prior to the consummation of the IPO, one individual nominated by Carlyle;
- so long as WL Ross owns more than 40% of the common stock owned by WL Ross immediately prior to the consummation of the IPO, one individual nominated by WL Ross;
- so long as Centerbridge owns more than 40% of the common stock owned by Centerbridge immediately prior to the consummation of the IPO, one individual nominated by Centerbridge; and
- so long as Mr. Kanas is our Chief Executive Officer ("CEO"), two individuals (one of which will be Mr. Kanas) nominated by Mr. Kanas.

In addition, each of Blackstone, Carlyle, WL Ross and Centerbridge has the right to appoint one non-voting observer to attend all meetings of our Board of Directors until such time as such Sponsor ceases to own 5% of our outstanding common stock.

Blackstone's nominee to our Board of Directors is Chinh E. Chu; Carlyle's nominee is P. Olivier Sarkozy; WL Ross' nominee is Wilbur L. Ross, Jr.; and Centerbridge's nominee is Lance N. West. Mr. Kanas has nominated himself and John Bohlsen.

Board candidates are also selected based upon various criteria including their character and reputation, relevant business experience and acumen and relevant educational background. The Nominating and Corporate Governance Committee and Board of Directors review these factors, including diversity, in considering candidates for Board membership. Board members are expected to prepare for, attend and participate in all Board of Directors and applicable committee meetings, and the Company's annual meetings of stockholders.

**Information Regarding the Nominees for Election to the Board of Directors**

***Qualifications***

In considering candidates for the Board of Directors, the Nominating and Corporate Governance Committee takes into consideration the Company's Corporate Governance Guidelines and all other factors deemed appropriate by the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee's determination is made based primarily on the following criteria: (i) a candidate's special skills, expertise and background that would enhance or complement the mix of the existing directors, (ii) a candidate's reputation and prominence in his or her business, professional activities or community, including a well-known reputation for addressing important issues that the Company may face, (iii) a candidate's commitment to high ethical business standards and integrity and (iv) a candidate's time commitment and willingness to fully participate in the Board's affairs and perform his or her duties to the highest standards. For more information about the nominating process, see "Board of Directors, Executive Officers and Corporate Governance—Director Nominating Process and Diversity."

Set forth below is biographical information concerning each nominee who is standing for election at the Annual Meeting. Following the biographical information for each nominee is a description of such nominee's specific experience, qualifications, attributes and skills that the Nominating and Corporate Governance Committee and the Board of Directors considered in determining whether to recommend the nominee for election to the Board of Directors. In addition to the information presented below, the Company believes that a board comprised of its nominees constitutes a board with a reputation for integrity, strong business acumen and the exercise of sound judgment; a board that is strong in its collective knowledge and leadership abilities; and a board that has a diversity of viewpoints and backgrounds. The ages of the nominees are as of the date of the Annual Meeting, May 23, 2013.

*John A. Kanas*, 66, has served on our Board since its inception in May 2009. He has also served as our Chairman, President and CEO since May 2009. Mr. Kanas served as the Chairman of our Executive Committee up until the time the Committee was eliminated in February 2012 as part of the Company's conversion to a bank holding company. Prior to joining BankUnited, Inc., Mr. Kanas was President and CEO of North Fork Bancorporation, Inc. from 1977 until its acquisition by Capital One Financial Corporation in December 2006, at which time North Fork was one of the top 25 bank holding companies in the United States. He also served as Chairman of North Fork from 1986 to 2006. In December 2006, he became President of Capital One's banking segment, which included North Fork, the former Hibernia Bank in Louisiana and Texas and Capital One Direct Bank in Richmond, Virginia. Mr. Kanas retired from that position in August 2007. Between August 2007 and May 2009, Mr. Kanas was an independent consultant. Mr. Kanas holds a B.A. degree from Long Island University. He is a past president of the New York State Bankers Association. Mr. Kanas was also a member of the NYSE Listed Company Advisory Committee and is currently a member of the board of trustees of Long Island University and Weill Cornell Medical College. In 2005, Mr. Kanas was recognized by "Institutional Investor" as the best regional bank CEO in America. In May 2007, Mr. Kanas received the Woodrow Wilson Award for Corporate Citizenship and was also conferred an Honorary Doctorate of Humane Letters from Dowling College. Mr. Kanas' qualifications to serve on our Board include his 29-year career at North Fork, his extensive experience in the banking industry and his long-standing relationships within the business, political and charitable communities.

*John Bohlsen*, 70, has served on our Board since its inception in May 2009. He is also our Vice Chairman and has served as Chief Lending Officer since May 2009. From December 2006 until August 2007, Mr. Bohlsen led the Commercial Banking division for Capital One's banking segment, which included North Fork, the former Hibernia Bank in Louisiana and Texas and Capital One Direct Bank in Richmond, Virginia. Mr. Bohlsen was a part of North Fork's management team when they were acquired by Capital One in December 2006. During his tenure at North Fork from January 1986 to December 2006, he served on the board of directors and became Vice Chairman in 1989. Mr. Bohlsen also served as Chairman of several bank management committees during that time. Between August 2007 and May 2009, Mr. Bohlsen was active in other business activities involving restaurants and other real estate endeavors. He is active in various outside businesses involving real estate and construction, and is president of a restaurant operating company doing business in the New York metropolitan area. Mr. Bohlsen has a B.S. and a M.B.A. from Michigan State University. In addition, he is a veteran of the U.S. Navy, having served as an officer during the Vietnam War. Mr. Bohlsen has served on many professional, academic and community boards and organizations, and he and his family are well known for their philanthropic endeavors. Mr. Bohlsen's qualifications to serve on our Board include his extensive experience in the banking industry and his previous experience serving as a director on the board of a public company.

*P. Olivier Sarkozy*, 43, has served on our Board since its inception in May 2009. Since March 2008, Mr. Sarkozy has served as Managing Director of the Carlyle Group, or Carlyle, one of our principal investors, and head of the Carlyle Global Financial Services Partners fund, one of the Carlyle affiliated funds that has invested in us. From January 2003 until March 2008, Mr. Sarkozy was Global Co-Head of the Financial Institutions Group at UBS Investment Bank. Prior to joining UBS, Mr. Sarkozy worked for 11 years at Credit Suisse First Boston, where he was the Managing Director in charge of the Depository Institutions Group. Mr. Sarkozy received his Masters in Medieval History (with Honors) from St. Andrews University in Scotland. Mr. Sarkozy's qualifications to serve on our Board include his extensive experience working with depository institutions and his expertise in structuring bank mergers and acquisitions.

*Wilbur L. Ross, Jr.*, 75, has served on our Board since its inception in May 2009. Mr. Ross is the Chairman and Chief Executive Officer of WL Ross & Co. LLC, a private equity firm. Mr. Ross is currently a member of the board of directors of ArcelorMittal, a steel and mining company; Air Lease Corporation, an aircraft leasing company; Assured Guaranty Ltd., a holding company that provides credit protection products to the United States and international public finance, infrastructure and structured finance markets; The Governor and Company of the Bank of Ireland, a commercial bank operation in Ireland; Exco Resources Inc., a natural oil and gas company; International Textile Group, Inc., a global, diversified textile provider; Navigator Holdings Ltd., a provider of international seaborne transportation services; Ocwen Financial Corp, a mortgage servicing company; Talmer Bancorp, a bank holding company; and Plascar Participacoes SA, a manufacturer of automotive interiors. Mr. Ross formerly served as a member of the board of directors of International Coal Group from April 2005 to June 2011; Montpelier Re Holdings Ltd., a reinsurance company, from 2006 to March 2010; The Greenbrier Companies, a supplier of transportation equipment and services to the railroad industry, from June 2009 until January 2013; and Syms Corp., a retail store operator, from 2000 through 2007. Mr. Ross was Executive Managing Director of Rothschild Inc. for 24 years before acquiring that firm's private equity partnerships in 2000. Mr. Ross holds an A.B. from Yale University and an M.B.A., with distinction, from Harvard University. Through the course of Mr. Ross' career, he has served as a principal financial adviser to, investor in and director of various companies across the globe operating in diverse industries, and he has assisted in restructuring more than $300 billion of corporate liabilities. Mr. Ross' qualifications to serve on our Board include his keen business acumen as well as his significant experience in finance and knowledge of the capital markets that provides the Board of Directors with invaluable transactional and financial assistance and insight.

*Chinh E. Chu*, 46, has served on our Board since its inception in May 2009. He is a Senior Managing Director in the Blackstone Private Equity Group, or Blackstone, one of our principal investors. Since joining Blackstone in 1990, Mr. Chu has led Blackstone's investments in Alliant, Biomet, Catalent Pharma Solutions, Celanese, Nalco, Nycomed and LIFFE, ReAble Therapeutics as well as ReAble Therapeutics' acquisition of DJ Orthopedics, Stiefel Laboratories and SunGard Data Systems. Mr. Chu is currently a director of Alliant, Catalent Pharma Solutions and Freescale Semiconductor, Inc. and previously served on the boards of directors of Celanese Corporation, Graham Packaging Company Inc. and LIFFE. Before joining Blackstone, Mr. Chu worked at Salomon Brothers in the Mergers and Acquisitions Department. Mr. Chu received a B.S. in Finance from the University of Buffalo. Mr. Chu's qualifications to serve on our Board include his significant experience overseeing the business of Blackstone's numerous portfolio companies, including significant public company experience, and his significant financial, investment and strategic business planning experience.

*Lance N. West*, 52, has served on our Board since its inception in May 2009. Since May 2006, Mr. West has been a Partner and Senior Managing Director of Centerbridge Partners LP, or Centerbridge, a multi-strategy, private investment management company and one of our principal investors. From January 1999 until May 2006, Mr. West was a Partner and Managing Director at Goldman, Sachs & Co., where he was head of the firm's Principal Finance Group, a proprietary investment platform focusing on a variety of private and public equity and debt investments in the Americas, with a particular emphasis on real estate and financial institutions. Mr. West was a member of Goldman's Asian Special Situations Group and was a member of the Investment Committees for Goldman's American Special Situations and Specialty Lending Groups. From January 1992 until January 1999, Mr. West served as Chairman and CEO of Greenthal Realty Partners LP and GRP Financial in New York, which Mr. West founded as a Resolution Trust Company Standard Asset Management and Disposition Asset Manager providing real estate asset management, special servicing and distressed debt investment management. Prior to founding GRP, Mr. West was an executive vice president with The Charles H. Greenthal Group, Inc., a real estate asset management and investment company, and a member of the technical staff at AT&T Bell Laboratories from 1982 to 1984. Mr. West earned his M.S. in Electrical Engineering from the California Institute of Technology in 1983 and graduated magna cum laude with a B.S. in Electrical Engineering from Tufts University in 1982. Mr. West is a member of the board of overseers of Tufts University, a member of the Chair's Council for the Humanities and Social Sciences division at the California Institute of Technology, a member of the board of directors of the Metropolitan Council on Jewish Poverty and a member of the Economic Studies Council of the Brookings Institution. Mr. West serves on the boards of directors of Aktua Soluciones Financieras, S.L., GTH, LLC, Intrepid Aviation Holdings, LLC and Resort Finance America, LLC. Mr. West's qualifications to serve on our Board include his extensive financial and investment experience as well as his real estate experience.

*Sue M. Cobb*, *Ambassador of the United States, ret.*, 75, has served on our Board since January 2010. Since February 2007, Ambassador Cobb has been engaged in private sector business activities with Cobb Partners, Inc., a privately held Florida-based investment firm. From September 2001 to February 2005, she served as the United States Ambassador to Jamaica. Ambassador Cobb was Secretary of State of Florida from December 2005 to January 2007. From 2002 to 2008, Ambassador Cobb was engaged at the U.S. Department of State's Leadership and Management School as co-chair of periodic mandatory seminars for newly designated U.S. ambassadors. Ambassador Cobb served seven years as chair of the board of the Federal Reserve Bank, Miami Branch. She was the founding partner of the Public Finance Department of the Greenberg Traurig law firm where she practiced as a public finance attorney. She currently sits on the board of directors of the Durango Mountain Resort and Kirkwood Associates Inc., both private resort development companies. Ambassador Cobb is President of the American Friends of Jamaica, a New York-based charitable institution, and President of Miami-based Cobb Family Foundation. She is Trustee of the Center for Strategic and International Studies, an active member of The Council of American Ambassadors and an active member of the Council on

Foreign Relations. Ambassador Cobb has also been an officer and director of many civic and charitable organizations and has received numerous awards including national honors from the nations of Jamaica and Iceland. Previously, she has been the University of Miami Alumnus of the year, the Red Cross Humanitarian of the Year and the Silver Medallion Awardee from the National Conference of Christians and Jews for contributions to civic causes and humanity. Ambassador Cobb received a B.A. from Stanford University and a J.D. from the University of Miami School of Law. Ambassador Cobb's qualifications to serve on our Board include her broad and diverse background in leadership and management, including experience with public companies as the Audit Committee Chair (1999 - 2000) of the LNR Property Corporation, a public real estate investment, finance and management company.

*Eugene F. DeMark*, 65, has served on our Board since September 2010. From June 1969 until his retirement in October 2009, Mr. DeMark worked for KPMG LLP, a global professional services firm. Mr. DeMark served as the Advisory Northeast Area Managing Partner at KPMG LLP from October 2005 until his retirement. Since his retirement, Mr. DeMark has been an independent consultant. Starting in January 2010, Mr. DeMark has advised our Audit and Compensation Committees. In January 2012, Mr. DeMark joined the board of directors and audit committee of 1-800-FLOWERS.COM, Inc. Between 1988 and 2001, Mr. DeMark had been the Northeast Area Managing Partner of the Information, Communications and Entertainment Practice and the KPMG's Long Island Office Managing Partner. During his career at KPMG, Mr. DeMark had responsibilities to lead a number of specialized practices in Banking, High Technology, Media and Entertainment and Aerospace and Defense. He joined KPMG in 1969 and was elected to its partnership in 1979. On special assignments, he worked on the research staff of the Commission on Auditor's Responsibilities, the predecessor to the Treadway Commission, formed to assess increases in fraudulent financial reporting. Mr. DeMark also developed the firm's first study guide on SEC reporting. Mr. DeMark holds a B.B.A. degree from Hofstra University, is a Certified Public Accountant and is a member of the American Institute of Certified Public Accountants (AICPA) and the New York State Society of Certified Public Accountants. Mr. DeMark has served as Chairman of the Long Island Chapter of the National Multiple Sclerosis Society, President of the Nassau County council of the Boy Scouts of America and Northeast Regional board member of the of the National organization, President of the Nassau Chapter of the National Association of Accountants, Treasurer of the New Long Island Partnership and Chairman of the Economic Development Task Force—Project Long Island. Mr. DeMark also was active in the United Way on Long Island and in New York, served on its board of directors and chaired the nominating committee. Mr. DeMark's qualifications to serve on our Board include his 40 years of financial experience at KPMG LLP, including 35 years in various positions in the firm's audit practice.

*Thomas M. O'Brien*, 62, has served on our Board since May 2012. Mr. O'Brien is a 34-year banking veteran and most recently served as President and CEO of State Bank of Long Island/State Bancorp, Inc. from November 2006 to January 2012. From 2000 to 2006 Mr. O'Brien was President and CEO of Atlantic Bank of NY and, following the acquisition of Atlantic Bank of NY by New York Commercial Bank, served as President and CEO during post-closing transition. From 1996 to 2000, Mr. O'Brien was Vice Chairman and a board member of North Fork Bank and North Fork Bancorporation, Inc. From 1977 to 1996, Mr. O'Brien was Chairman, President and CEO of North Side Savings Bank. Mr. O'Brien served as a director of the Federal Home Loan Bank of New York from 2008 to 2012 and served as Chairman of NY Bankers Association. Mr. O'Brien is currently Trustee and Chairman of the Audit Committee of Prudential Insurance Company of America Mutual Fund Complex, Vice-Chairman of the board and Chairman of the Finance Committee of Catholic Healthcare System and Catholic Healthcare Foundation and advisor and board member of Flax Trust, Belfast, Northern Ireland. Mr. O'Brien is the immediate Past-President of the Society of the Friendly Sons of Saint Patrick in the City of New York, and is founder and sole benefactor of Galway Bay Foundation, Inc. Mr. O'Brien received a B.A. in Political Science from Niagara University in 1972 and an M.B.A from Iona College in 1982. Mr. O'Brien's qualifications to serve on our Board include his

34 years of banking experience and his deep understanding of financial statements, regulation, compliance and corporate governance.

*Michael J. Dowling*, 64, is the President and Chief Executive Officer of the North Shore-LIJ Health System, the largest integrated healthcare system in New York State and the nation's third-largest, non-profit secular health system with more than 6,000 beds and a total workforce of more than 46,000 employees. Prior to becoming President and CEO in 2002, Mr. Dowling was the health system's Executive Vice President and Chief Operating Officer. Before joining North Shore-LIJ in 1995, he was a senior vice president at Empire Blue Cross/Blue Shield. Mr. Dowling served in New York State government for 12 years, including seven years as State Director of Health, Education and Human Services and Deputy Secretary to the Governor. He was also Commissioner of the New York State Department of Social Services. Before his public service career, Mr. Dowling was a professor of Social Policy and Assistant Dean at the Fordham University Graduate School of Social Services and Director of the Fordham Campus in Westchester County. Mr. Dowling is a member of the Institute of Medicine of the National Academies and Chairman of the North American Board of the Smurfit School of Business at University College, Dublin, Ireland. He also serves as a board member of the Institute for Healthcare Improvement (IHI) and board member and Fellow of the New York Academy of Medicine. He is also past Chairman and current board member of the National Center for Healthcare Leadership (NCHL), the Greater New York Hospital Association (GNYHA), the Healthcare Association of New York State (HANYS) and the League of Voluntary Hospitals of New York. Mr. Dowling grew up in Limerick, Ireland and earned his undergraduate degree from University College Cork (UCC). He has a Master's Degree from Fordham University and honorary doctorates from Hofstra University and Dowling College. Mr. Dowling's qualifications to serve on our Board include his extensive background in leadership and management as well as his relationships within the business, political and charitable communities.

***THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" THE ELECTION OF THE FOREGOING TEN NOMINEES TO THE BOARD OF DIRECTORS.***

## BOARD OF DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

### Role of Board of Directors

The Company's business and affairs are managed under the direction of the Board of Directors, which is the Company's ultimate decision-making body, except with respect to those matters reserved to the Company's stockholders. The Board of Directors' mission is to maximize long-term stockholder value. The Board of Directors establishes the Company's overall corporate policies, evaluates the Company's CEO and the senior leadership team and acts as an advisor and counselor to senior management. The Board of Directors also oversees the Company's business strategy and planning, as well as the performance of management in executing the Company's business strategy, assessing and managing risks and managing the Company's day-to-day operations.

### Director Independence

Under the NYSE listing standards, in order to consider a director independent, the Board of Directors must affirmatively determine that he or she has no material relationship with BankUnited, Inc. The standards specify the criteria for determining whether directors are independent and contain guidelines for directors and their immediate family members with respect to employment or affiliation with BankUnited, Inc. or its independent registered public accounting firm. In addition to the NYSE's standards for independence, the Board of Directors has adopted additional independence standards to assist it in making independence determinations. The Company's Director Independence Standards contain the formal director qualification and independence standards adopted by the Board of Directors, and are available as part of the Company's Corporate Governance Guidelines on the Company's Web site at http://ir.bankunited.com.

The Board undertook its annual review of director independence in April 2013. As a result of this review, the Board affirmatively determined that all of the directors are independent of the Company and its management under the corporate governance standards of the NYSE, with the exception of John A. Kanas and John Bohlsen. Each is considered not independent because of his employment as a senior executive of the Company.

In April 2013, the Board affirmatively determined that Mr. Dowling is independent of the Company and its management under the corporate governance standards of the NYSE.

### Board of Directors Meetings and Attendance

The Board of Directors held 11 meetings during 2012 and acted by written consent five times. All of the directors attended at least 75% of the total of all the meetings of the Board of Directors and Board committees on which they served during 2012.

### Board Leadership Structure

The Board of Directors believes that having a combined Chairman/CEO, a Lead Independent Director, a majority of independent directors and independent key board committees provides an effective and appropriate leadership structure for the Company.

The Company's Corporate Governance Guidelines provide that the Board of Directors will select its Chairman and the Company's CEO in the manner it considers in the best interests of the Company at any given point in time. At this time, the Board of Directors combines the role of Chairman of the Board of Directors and the Company's CEO. The Board of Directors believes that combining the roles of Chairman and CEO fosters unified leadership and direction for the Board of Directors and executive management and allows for alignment and clear accountability in the development and execution of the Company's strategic initiatives and business plans. Mr. Kanas is the director most familiar with the Company's business and industry, and by serving in these dual capacities, he is best situated to effectively identify strategic priorities and lead discussions on key business issues that impact all of the Company's stakeholders. The Board of Directors also considered Mr. Kanas' prior history and performance in serving in these dual capacities and believes that Mr. Kanas has provided effective leadership and guidance in the pursuit of the Company's strategic objectives during his tenure as the Company's Chairman and CEO.

The Company's Lead Independent Director is appointed by the Board of Directors. The current Lead Independent Director is Mr. DeMark, and he has served in this position since November 2012. The Lead Independent Director's role and duties include, but are not limited to: presiding over regularly scheduled executive sessions of the non-management directors, serving as a liaison between the non-management directors and executive management and assisting the Board of Directors and executive management to ensure compliance with the Company's Corporate Governance Guidelines.

Further enhancing the overall independent functioning of the Board of Directors is the fact that the Board of Directors is comprised of over a two-thirds majority of independent directors. The independent directors also review Mr. Kanas' performance in his dual capacities of Chairman and CEO. In addition, the Company's governance structure is strengthened by virtue of each of its Nominating and Corporate Governance, Compensation and Audit and Risk committees consisting entirely of independent directors. These committees provide additional independent oversight of management.

Through the Company's overall governance structure, the Board of Directors believes it has effectively balanced the need for strategic leadership by the Company's Chairman and CEO with the oversight and objectivity of the independent directors, and has created an effective and appropriate leadership structure that is conducive to the risk oversight process. The Board of Directors recognizes that, depending on the circumstances, other leadership structures might be appropriate and in the best interests of the Company. Accordingly, the Board of Directors has the discretion to modify its leadership structure in the future if it deems it in the best interests of the Company to do so.

**Committees of the Board of Directors**

The Board of Directors maintains three standing committees: the Audit and Risk Committee, the Compensation Committee and the Nominating and Corporate Governance Committee. A description of each Board committee is set forth below.

***Audit and Risk Committee***

The Audit and Risk Committee was formerly referred to as the "Audit Committee" until its name was changed and its risk oversight functions were expanded in February 2013. The former Audit Committee held 10 meetings in 2012.

The Audit and Risk Committee is a separately-designated standing Audit and Risk Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Our Audit and Risk Committee assists our Board of Directors in its oversight of (i) the integrity of our financial statements and the financial reporting process, including the system of disclosure controls; (ii) our compliance with legal and regulatory requirements; (iii) the performance of our internal audit function and our independent registered public accounting firm, including its appointment, qualifications, compensation and independence; (iv) the effectiveness of our systems of internal controls and policies and procedures for risk assessment and risk management; and (v) the effectiveness our procedures for risk assessment and risk management of material credit, interest rate, liquidity, operational, legal and compliance, and other material risks, and the adequacy of capital available to absorb such risks.

In carrying out its oversight role, the Audit and Risk Committee, among other things: (i) reviews the audit plans and findings of our independent registered public accounting firm and our internal audit team, as well as the results of regulatory examinations, and tracks management's corrective action plans where necessary; (ii) reviews our financial statements, including any significant financial items and changes in accounting policies, with our senior management and independent registered public accounting firm; (iii) reviews our financial risk and control procedures, compliance programs and significant tax, legal and regulatory matters; and (iv) reviews our policies and practices with respect to the assessment and management of material categories of risk. In addition, the Audit and Risk Committee has the sole discretion to appoint annually our independent registered public accounting firm, evaluate its independence and performance and set clear hiring policies for employees or former employees of the independent registered public accounting firm.

The current members of the Audit and Risk Committee are Messrs. DeMark (Chairman) and O'Brien and Ambassador Cobb, each of whom the Board of Directors has determined qualifies as an "independent" director as defined under the applicable rules and regulations of the SEC and the NYSE. Mr. LeFrak resigned from the committee on May 9, 2012 and Mr. O'Brien joined the committee as of the same date. All of the members of the Audit and Risk Committee are financially literate and have accounting or related financial management expertise within the meaning of the NYSE rules. The Board also has determined that Mr. DeMark qualifies as an "audit committee financial expert" as defined by SEC rules. Mr. DeMark's relevant experience includes 40 years with KPMG LLP, including 30 years as a partner. Mr. Demark holds a B.B.A. degree from Hofstra University, is a Certified Public Accountant and is a member of the American Institute of Certified Public Accountants (AICPA) and the New York State Society of Certified Public Accountants.

***Compensation Committee***

Since our inception, in accordance with the terms of its charter, our Compensation Committee has been responsible for such matters as the determination of discretionary bonus amounts, if any, to be paid to our named executive officers and the implementation of the BankUnited, Inc. 2009 Stock Option Plan and the 2010 Omnibus Equity Incentive Plan, including the determination of grant amounts, vesting terms and exercise prices, as well as approval of the Employment Agreements (as defined in "Compensation Discussion and Analysis") and the BankUnited, Inc. Annual Incentive Plan (the "Annual Incentive Plan"). In addition, our Compensation Committee was responsible for vetting and approving our 401(k) plan and Nonqualified Deferred Compensation Plan. The Compensation Committee reviews and approves corporate goals and objectives relevant to compensation of our CEO and other executive officers, evaluates the performance of these officers in light of those goals and objectives and recommends the compensation of these officers based on such evaluations. The Compensation Committee also administers the issuance of stock options and other awards under our stock plans.

In July 2012, our Compensation Committee engaged Pearl Meyer & Partners ("Pearl Meyer"), to serve as its independent compensation consultant. More information on the engagement and independence of Pearl Meyer appears in "Compensation Discussion and Analysis."

The Compensation Committee held seven meetings and acted by written consent once during 2012. The Compensation Committee is currently comprised of Messrs. LeFrak (Chairman), DeMark and O'Brien and Ambassador Cobb, each of whom qualifies as an "independent" director as defined under the applicable rules and regulations of the SEC and the NYSE.

Given Mr. LeFrak's decision to not stand for reelection, the Board of Directors expects to appoint Mr. Dowling as Chairman of the Compensation Committee upon his election to the Board of Directors. The Board of Directors has determined that Mr. Dowling will, when elected, qualify as an independent director as defined under the applicable rules and regulations of the SEC and the NYSE.

***Nominating and Corporate Governance Committee***

Our Nominating and Corporate Governance Committee is responsible for making recommendations to our Board of Directors regarding candidates for directorships and the size and composition of our Board of Directors. In addition, the Nominating and Corporate Governance Committee is responsible for overseeing our corporate governance guidelines and reporting and making recommendations to our Board of Directors concerning governance matters.

The Nominating and Corporate Governance Committee, in consultation with our CEO, also reviews the Company's management succession plans to ensure that an effective succession process is in place and to discuss potential internal successors for both emergency and long-term executive succession. The succession planning activities of the Nominating and Corporate Governance Committee and the Compensation Committee are discussed with the full Board of Directors.

The Nominating and Corporate Governance Committee held two meetings during 2012. The Nominating and Corporate Governance Committee is currently comprised of Ambassador Cobb (Chairman) and Messrs. DeMark and LeFrak, each of whom qualifies as an "independent" director as defined under the applicable rules and regulations of the SEC and the NYSE.

Given Mr. LeFrak's decision to not stand for reelection, the Board of Directors expects to appoint Mr. Dowling as a member of the Nominating and Corporate Governance Committee upon his election to the Board of Directors. The Board of Directors has determined that Mr. Dowling will, when elected, qualify as an independent director as defined under the applicable rules and regulations of the SEC and the NYSE.

Copies of the charters of the Audit and Risk Committee, Compensation Committee and Nominating and Corporate Governance Committee are available on our website at http://ir.bankunited.com and may also be obtained upon request without charge by writing to the Corporate Secretary, BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016.

**Risk Management and Oversight**

Our Board of Directors oversees our risk management process, including the company-wide approach to risk management, carried out by our management. Our full Board of Directors determines the appropriate levels of risk for the Company generally, assesses the specific risks faced by us and reviews the steps taken by management to manage those risks. While our full Board of Directors maintains the ultimate oversight responsibility for the risk management process, its committees oversee risk in certain specified areas.

In particular, the Audit and Risk Committee plays a key role in the Board of Directors' exercise of its risk oversight function. The Audit and Risk Committee is primarily responsible for overseeing matters involving the Company's financial and operational risks, and the guidelines, policies and processes for managing such risks, including internal controls. The Audit and Risk Committee conducts its risk oversight in a variety of ways, including reviewing management's assessment of the Company's internal control over financial reporting, reviewing the results of regulatory examinations and receiving quarterly reports on legal and regulatory matters. Additionally, the Company's independent registered public accounting firm regularly discusses risks and related mitigation measures that may arise during its regular reviews of the Company's financial statements with the Audit and Risk Committee. To ensure candid and complete reporting, the Audit and Risk Committee regularly meets in separate executive sessions with management, the head of the Company's internal audit department and the Company's independent registered public accounting firm.

Additionally, our Compensation Committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements, as well as the incentives created by the compensation awards it administers, and our Nominating and Corporate Governance Committee is responsible for overseeing the management of risks associated with the independence of our Board. Pursuant to our Board's instruction, management regularly reports on applicable risks to the relevant committee or the full Board, as appropriate, with additional review or reporting on risks conducted as needed or as requested by our Board and its committees.

### Corporate Governance Guidelines, Code of Conduct and Code of Ethics

Our Board has adopted Corporate Governance Guidelines, which set forth a flexible framework within which our Board, assisted by Board committees, directs the affairs of the Company. The Corporate Governance Guidelines address, among other things, the composition and functions of the Board, director independence, compensation of directors, management succession and review, Board committees and selection of new directors.

We also have a Code of Conduct, which is applicable to all directors, officers, employees, agents (including consultants and contractors) and temporary personnel of the Company. We have a separate Code of Ethics for Principal Executive and Senior Financial Officers, which contains provisions specifically applicable to our principal executive officer, principal financial officer, principal accounting officer and controller (or persons performing similar functions).

The Corporate Governance Guidelines, the Code of Conduct and the Code of Ethics for Principal Executive and Senior Financial Officers are available on our website at http://ir.bankunited.com. We expect that any amendments to these codes, or any waivers of their requirements, will be disclosed on our website.

### Director Compensation

We use a combination of cash and stock-based incentive compensation to attract and retain independent, qualified candidates to serve on the Board of Directors. In setting director compensation, we consider the significant amount of time that directors expend in fulfilling their duties, as well as the skill level we require of members of our Board of Directors.

The following table shows compensation paid, earned or awarded to each of the non-employee members of our Board for 2012.

**Director Compensation for 2012**

| Name | Fees Earned or Paid in Cash ($)(1) | Stock Awards ($)(3) | Total ($) |
|---|---|---|---|
| Chinh E. Chu | — | 2,308 | 2,308 |
| Richard S. LeFrak | 100,000 | 23,230 | 123,230 |
| Wilbur L. Ross, Jr. | — | 2,308 | 2,308 |
| P. Olivier Sarkozy | — | 2,308 | 2,308 |
| Lance N. West | — | 2,308 | 2,308 |
| Eugene F. DeMark | 175,000 | 23,230 | 198,230 |
| Ambassador Sue M. Cobb | 100,000 | 23,230 | 123,230 |
| Thomas M. O'Brien | 64,247(2) | 24,240 | 88,487 |

(1) In general, the members of our Board are either investors or agents of investors in our Company and, other than Ambassador Cobb and Messrs. DeMark, LeFrak and O'Brien, they do not receive any compensation from us for service on our Board. Mr. Kanas and

Mr. Bohlsen, who are executive officers of the Company, are also members of our Board but do not receive any additional compensation for their services on our Board.

(2) Mr. O'Brien was elected to our Board on May 9, 2012. Represents the pro rata portion of the annual retainer fee (of $100,000) for the period of time Mr. O'Brien served on our Board in 2012.

(3) Includes the value of restricted common stock awards granted to Messrs. LeFrak, DeMark and O'Brien and Ambassador Cobb and shares of common stock issued to each of the other directors, as described under "Stock-Based Compensation" below and determined in accordance with FASB ASC Topic 718. For complete valuation assumptions of the awards, see "Note 17, Equity Based Compensation and Other Benefit Plans" to our consolidated financial statements in our 2012 Annual Report on Form 10-K filed with the SEC on February 25, 2013. As of December 31, 2012, each of Messrs. LeFrak, DeMark and O'Brien and Ambassador Cobb held 1,000 shares subject to outstanding restricted common stock.

The following table sets forth the compensation for future services expected to be paid annually to our non-employee directors for their service on our Board. The amounts set forth below are annual amounts based on current agreements but are paid on a monthly basis.

| Name | Retainer Fees |
|---|---|
| Chinh E. Chu | — |
| Ambassador Sue M. Cobb | $100,000 |
| Eugene F. DeMark | $175,000 |
| Thomas M. O'Brien | $100,000 |
| Wilbur L. Ross, Jr. | — |
| Pierre Olivier Sarkozy | — |
| Lance N. West | — |

Each non-employee director receives an annual retainer fee of $100,000 for his or her service on our Board and any committee thereof, except that Mr. DeMark receives an additional $75,000 for his role as Chairman of the Audit and Risk Committee. Directors who are also our employees have not received and will not receive any compensation from us for service on our Board or Board committees.

***Stock-Based Compensation***

On February 15, 2012, Messrs. LeFrak and DeMark and Ambassador Cobb each received a grant of 1,000 shares of restricted common stock. This restricted common stock vests in three substantially equal annual installments commencing February 15, 2013, except for accelerated vesting in the event of a director's death or disability and in certain circumstances relating to a change in control of the Company.

On May 9, 2012, Mr. O'Brien received a grant of 1,000 shares of restricted common stock. This restricted common stock vests in three substantially equal annual installments commencing May 9, 2013, except for accelerated vesting in the event of a director's death or disability and in certain circumstances relating to the a change in control of the Company,

On February 24, 2012, Messrs. Chu, Ross, Sarkozy and West each received a grant of 100 shares of common stock.

On April 19, 2013, our Board of Directors approved a grant of 1,000 shares of restricted common stock for each of Messrs. DeMark and O'Brien and Ambassador Cobb, as well as an additional grant of 2,000 shares of restricted common stock for Mr. DeMark as the Lead Independent Director.

### *Director Expenses*

The Company also reimburses expenses incurred by directors to attend Board and committee meetings, educational seminars and other expenses directly related to the Company's business.

## Director Nominating Process and Diversity

The Board of Directors is responsible for nominating members for election to the Board of Directors and for filling vacancies on the Board of Directors that may occur between annual meetings of stockholders. The Nominating and Corporate Governance Committee is responsible for identifying, screening and recommending candidates to the Board of Directors for Board membership. When formulating its Board of Directors membership recommendations, the Nominating and Corporate Governance Committee may also consider advice and recommendations from others, including stockholders, as it deems appropriate.

The Nominating and Corporate Governance Committee and the Board of Directors believe that diversity along multiple dimensions, including opinions, skills, perspectives, personal and professional experiences and other differentiating characteristics, is an important element of nomination for Board membership. The Nominating and Corporate Governance Committee has not identified any specific minimum qualifications which must be met for a person to be considered as a candidate for director. However, Board candidates are selected based upon various criteria including experience, skills, expertise, diversity, personal and professional integrity, character, business judgment, time availability in light of other commitments, dedication, conflicts of interest and such other relevant factors that the Nominating and Corporate Governance Committee considers appropriate in the context of the needs of the Board of Directors. Although the Board of Directors does not have a formal diversity policy, the Nominating and Corporate Governance Committee and Board of Directors review these factors, including diversity, in considering candidates for board membership. Board members are expected to prepare for, attend and participate in all Board of Directors and applicable committee meetings, and the Company's annual meetings of stockholders.

### *Candidates Nominated by Stockholders*

The Nominating and Corporate Governance Committee will also consider nominees recommended by stockholders. Our Corporate Governance Guidelines provide that nominees recommended by stockholders should be given appropriate consideration in the same manner as other nominees. Pursuant to the Company's Amended and Restated By-Laws, stockholders who wish to nominate a candidate for consideration by the Nominating and Corporate Governance Committee for election at the 2014 annual meeting may do so by delivering written notice, no earlier than January 23, 2014 and no later than February 22, 2014, of such nominees' names to BankUnited, Inc., 14817 Oak Lane Miami Lakes, FL 33016, Attention: Corporate Secretary. Any stockholder of record or beneficial owner of common stock on whose behalf a nomination is being proposed must (i) be a stockholder of record or beneficial owner on the date of the giving of such notice, on the record date for the determination of stockholders entitled to notice of and to vote at the 2014 annual meeting of stockholders and at the time of the 2014 annual meeting of stockholders and (ii) comply with the applicable notice procedures set forth in the Company's Amended and Restated By-Laws.

The Company's Amended and Restated By-Laws require that certain information must be included in the notice provided to the Company's Corporate Secretary regarding the nomination and the stockholder giving the notice, the beneficial owner on whose behalf the notice is made, if any, and any affiliate or associate of the stockholder or the beneficial owner (collectively, the "Nominating Person"). The information required to be set forth in such notice includes (i) the name and address of the Nominating Person, (ii) information regarding the common stock owned, directly or indirectly, beneficially or of record by the Nominating Person, (iii) whether and the extent to which any derivative or other instrument, transaction, agreement or arrangement has been entered into by or on behalf of the Nominating Person with respect to the common stock and certain additional information relating to any such instrument, transaction, agreement or arrangement as described in the Company's Amended and Restated By-Laws, (iv) any other information relating to the Nominating Person that would be required to be disclosed in a proxy statement or other filings made with the SEC in connection with the solicitation of proxies with respect to such business and (v) a description of all arrangements or understandings (including any anticipated benefits to the Nominating Person as a result of the nomination) between or among the Nominating Person and the candidate and any other person in connection with the proposed nomination. The notice must also include a representation that the stockholder giving the notice intends to appear in person or by proxy at the 2014 annual meeting to nominate the person named in the notice.

The Company's Amended and Restated By-Laws also require that the notice provide certain information regarding the candidate whom the Nominating Person proposes to nominate as a director, including (i) certain biographical information, such as name, age, business and residential address and principal occupation, (ii) the information that would be required to be provided if the candidate were a Nominating Person, (iii) a resume or other written statement of the qualifications of the candidate and (iv) all other information regarding the candidate, including the written consent of the candidate indicating that the candidate is willing to be named in the proxy statement as a nominee and serve as a director if elected, that would be required to be disclosed in a proxy statement or other filings made with the SEC in connection with the solicitation of proxies for director elections.

For a complete description of the procedures and disclosure requirements to be complied with by stockholders in connection with submitting director nominations, stockholders should refer to the Company's Amended and Restated By-Laws.

No candidates for director nominations were submitted by any stockholder in connection with the Annual Meeting.

**Communications with the Board of Directors**

Any interested parties desiring to communicate with the Board of Directors or any of the independent directors regarding the Company may directly contact such directors by delivering such correspondence to such directors (or the entire Board) in care of the Company's Corporate Secretary at BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016.

The Audit and Risk Committee of the Board of Directors has established procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls and auditing matters and the confidential, anonymous submission by our employees of concerns regarding questionable accounting or auditing matters. Persons wishing to communicate with the Audit and Risk Committee may do so by writing in care of the Chairman, Audit and Risk Committee, BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016.

**Executive Sessions**

The rules of the NYSE require the non-management directors of the Company to regularly meet in executive session without management. In 2012, non-management directors of the Company met in executive session two times. The Company's Corporate Governance Guidelines state that a non-management independent director shall be chosen to preside at each executive session. Mr. DeMark currently serves as the Presiding Director. For information regarding how to communicate with non-management directors as a group and one or more individual members of the Board, including the Presiding Director, see "Communications with the Board of Directors" above.

**Outside Advisors**

Our Board of Directors and each of its committees may retain outside advisors and consultants of their choosing at our expense. The Board of Directors need not obtain management's consent to retain outside advisors.

**Attendance at Annual Meeting**

As stated in our Corporate Governance Guidelines, each director is expected to attend all annual meetings of stockholders. All of the current directors, except Mr. Ross, attended the 2012 annual meeting of stockholders.

**Compensation Committee Interlocks and Insider Participation**

During 2012, our Compensation Committee consisted of Messrs. LeFrak and DeMark and Ambassador Cobb. Mr. O'Brien was nominated and appointed to the Committee in May 2012. None of them had at any time in the last fiscal year been one of our officers or employees, and none has had any relationships with our company of the type that is required to be disclosed under Item 404 of Regulation S-K.

None of our executive officers serves or has served as a member of the Board of Directors, Compensation Committee or other board committee performing equivalent functions of any entity that has one or more executive officers serving as one of our directors or on our Compensation Committee.

**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires BankUnited, Inc.'s directors and executive officers and persons who own more than 10% of the issued and outstanding shares of the Company's common stock to file reports of initial ownership of common stock and other equity securities and subsequent changes in that ownership with the SEC and the NYSE. Based solely on a review of such reports and written representations from the directors and executive officers, the Company believes that all such filing requirements were met during 2012.

**Executive Officers**

Set forth below is information, as of the date of the Annual Meeting, May 23, 2013, concerning the Company's executive officers and Mr. Melby, an executive officer of BankUnited, National Association (the "Bank").

| Name | Age | Position |
|---|---|---|
| John A. Kanas | 66 | Chairman, President and CEO |
| John Bohlsen | 70 | Vice Chairman and Chief Lending Officer |
| Leslie Lunak | 54 | Chief Financial Officer |
| Rajinder P. Singh | 42 | Chief Operating Officer |
| Randy R. Melby | 56 | Senior Executive Vice President, Chief Risk Officer of the Bank |

*John A. Kanas.* For biographical information regarding Mr. Kanas, see page 8.

*John Bohlsen.* For biographical information regarding Mr. Bohlsen, see page 9.

*Leslie Lunak* has been our Chief Financial Officer since March 1, 2013 and previously served as the Bank's Executive Vice President and Chief Accounting Officer since October 2010. From August 2004 through October 2010, Ms. Lunak was an Audit Director at the public accounting firm McGladrey & Pullen, LLP. Her responsibilities included overseeing audit engagements and the performance of financial and accounting consulting services for clients primarily engaged in the financial services industry, serving as a designated national financial services industry specialist and serving as a subject matter expert in a variety of technical accounting areas, including derivatives, equity instruments, fair value accounting and acquisition accounting. She was also responsible for the development and presentation of a wide variety of continuing education courses for both internal and external audiences. From 2001 through August 2004, Ms. Lunak was a senior audit manager with the certified public accounting firm Adair, Fuller, Witcher and Malcom, with oversight responsibility for all of the firm's audit engagements. From June 1985 through 2001, Ms. Lunak was an independent consultant, providing finance and accounting related services to clients consisting primarily of community banks and thrifts and the U.S. Drug Enforcement Administration. From 1979 through June 1985, Ms. Lunak was with the public accounting firm Deloitte, where she was an audit manager serving primarily clients in the banking industry and was designated a national banking industry specialist. Ms. Lunak is a Florida CPA and received a B.S. in Accounting from Oklahoma State University.

*Rajinder P. Singh* is our Chief Operating Officer and has been with us since our inception in May 2009. Prior to joining us, Mr. Singh led the financial services practice of WL Ross & Co., a private equity firm and investor in the Company, from April 2008 to May 2009. From December 2006 through April 2008, Mr. Singh served as Executive Vice President for Capital One's banking segment, which includes retail, small business and commercial banking businesses in New York, New Jersey, Connecticut, Louisiana and Texas and a national direct deposit gathering franchise. Mr. Singh was a member of Capital One's Bank Leadership Team and chaired the Deposit Pricing Committee. He also served on Capital One's ALCO and brand board. Previously, Mr. Singh served as Head of Corporate Development and Strategy for North Fork from February 2005 to December 2006. During his tenure, North Fork was acquired by Capital One for $13.2 billion. Prior to joining North Fork in February 2005, Mr. Singh spent nine years at FleetBoston Financial Corporation and last served as Managing Director of Corporate Development and Strategy. Mr. Singh earned his M.B.A. from Carnegie Mellon University in Pittsburgh and his B.S. in chemical engineering from the Indian Institute of Technology in New Delhi.

*Randy R. Melby* joined the Bank in September 2009 as Executive Vice President, Chief Risk Officer and was promoted to Senior Executive Vice President, Chief Risk Officer in February 2011. Mr. Melby is responsible for enterprise risk oversight, which includes loan review, internal audit, compliance, including BSA and AML, and overall operations and credit risk management. Prior to joining the Bank, Mr. Melby served as Senior Vice President and General Auditor for Washington Mutual/JP Morgan Chase in Seattle from December 2004 to January 2009. Before this, he spent 24 years with Norwest Corporation/Wells Fargo. He held a variety of leadership positions in the internal audit and commercial loan operations areas. Mr. Melby received a B.S. in accounting and management from the University of North Dakota. Mr. Melby is a member of the Institute of Internal Auditors, graduated with honors from the Pacific Coast School of Banking and is also a graduate of the BAI Graduate School of Bank Operations & Technology.

## PROPOSAL NO. 2

## RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

### Proposal

The Audit and Risk Committee has appointed KPMG LLP to serve as BankUnited, Inc.'s independent registered public accounting firm for its fiscal year ending December 31, 2013. The Audit and Risk Committee and the Board of Directors seek to have the stockholders ratify the Audit and Risk Committee's appointment of KPMG LLP, which has served as BankUnited, Inc.'s independent registered public accounting firm or independent auditor since 2009. Although BankUnited, Inc. is not required to seek stockholder approval of this appointment, the Board of Directors believes it to be sound corporate governance to do so. If the appointment of KPMG LLP is not ratified by the stockholders, the Audit and Risk Committee may appoint another independent registered public accounting firm or may decide to maintain its appointment of KPMG LLP.

Representatives of KPMG LLP will be present at the Annual Meeting and will have the opportunity to make a statement, if they desire to do so, and to respond to appropriate questions.

***THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" THE RATIFICATION OF THE APPOINTMENT OF KPMG LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR 2013.***

### Report of the Audit and Risk Committee

The Audit and Risk Committee reviews the Company's financial reporting process on behalf of the Board of Directors. The Audit and Risk Committee consists of directors who have been determined by the Board of Directors to be independent of the Company as prescribed by the NYSE and the SEC. The Company's management has the primary responsibility for the financial statements and for the reporting process, including the establishment and maintenance of the system of internal control over financial reporting. The Company's independent registered public accounting firm is responsible for auditing the financial statements prepared by management, expressing an opinion on the conformity of those audited financial statements with U.S. generally accepted accounting principles and auditing the Company's internal control over financial reporting and expressing an opinion on the effectiveness thereof. In this context, the Audit and Risk Committee has met and held discussions with management and KPMG LLP, the Company's independent registered public accounting firm, regarding the fair and complete presentation of the Company's financial statements and the assessment of the Company's internal control over financial reporting.

The Audit and Risk Committee has discussed with KPMG LLP matters required to be discussed by Statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1, AU section 380), as adopted by the Public Company Accounting Oversight Board (the "PCAOB") in Rule 3200T and has reviewed and discussed KPMG LLP's independence from the Company and its management. As part of that review, the Audit and Risk Committee has received the written disclosures and the letter required by applicable requirements of the PCAOB regarding KPMG LLP's communications with the Audit and Risk Committee concerning independence. The Audit and Risk Committee also has considered whether KPMG LLP's provision of non-audit services to the Company is compatible with the auditor's independence. The Audit and Risk Committee has concluded that KPMG LLP is independent from the Company and its management.

The Audit and Risk Committee meets with the Chief Financial Officer and representatives of KPMG LLP, in regular and executive sessions, to discuss the results of their examinations, the evaluations of the Company's internal controls and the overall quality of the Company's financial reporting and compliance programs.

In reliance on the reviews and discussions referred to above, the Audit and Risk Committee has recommended to the Board of Directors, and the Board has approved, that the audited financial statements be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2012, for filing with the SEC.

***The Audit and Risk Committee***

Eugene DeMark (Chairman)
Thomas M. O'Brien
Ambassador Sue M. Cobb

**Fees Paid to KPMG LLP**

The following table presents fees for professional services provided by KPMG LLP in each of the last two fiscal years in each of the following categories, including related expenses:

| | 2012 | 2011 |
|---|---|---|
| Audit Fees | $1,965,000 | $1,767,500 |
| Audit-Related Fees | $ 270,000 | $ 267,500 |
| Tax Fees | — | — |
| All Other Fees | — | — |
| Total Fees | $2,235,000 | $2,035,000 |

***Audit Fees:*** Includes the aggregate fees billed by KPMG LLP for professional services and expenses rendered for the audit of the Company's consolidated financial statements, reviews of consolidated financial statements included in the Company's Forms 10-Q and the audit of the Company's internal control over financial reporting. Also includes the aggregate fees billed for professional services performed in connection with the Company's filing of certain registration statements and the related issuance of consents and comfort letters.

***Audit-Related Fees:*** Includes the aggregate fees billed by KPMG LLP for assurance and related services that are reasonably related to the performance of the audit of the Company's consolidated financial statements and are not reported under "Audit Fees." These services primarily relate to attestation services performed to report on the Company's compliance with certain contractual provisions of the Purchase and Assumption Agreement between the Company and the FDIC, compliance with certain requirements applicable to the U.S. Department of Housing and Urban Development and the audit of the BankUnited 401(k) Plan.

**Policy on Audit and Risk Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors**

The Audit and Risk Committee has adopted a policy that requires advance approval of all audit, audit related tax services and other services performed by the independent auditor. The policy provides for pre-approval by the Audit and Risk Committee of specifically defined audit and non-audit services. Unless the specific service has been previously pre-approved with respect to that year, the Audit and Risk Committee must approve the permitted service before the independent auditor is engaged. The Audit and Risk Committee pre-approved all of the audit and non-audit services provided to the Company by KPMG LLP in fiscal year 2012.

## COMPENSATION DISCUSSION AND ANALYSIS

### Executive Compensation

The following Compensation Discussion and Analysis provides information regarding the objectives and elements of our compensation philosophy, policies and practices with respect to the compensation of the executive officers who appear in the "Summary Compensation Table for 2012" below (referred to collectively throughout this section as our "named executive officers" and with respect to our named executive officers other than Messrs. Pauls and Melby, the "Management Members"). Our named executive officers for the fiscal year ended December 31, 2012 were:

- John A. Kanas, Chairman, President and Chief Executive Officer
- Douglas J. Pauls, Chief Financial Officer
- John Bohlsen, Vice Chairman and Chief Lending Officer
- Rajinder P. Singh, Chief Operating Officer
- Randy R. Melby, Senior Executive Vice President, Chief Risk Officer of the Bank

### Objectives of Our Executive Compensation Program

Our executive compensation philosophy is primarily based on pay-for-performance. Accordingly, our executive compensation programs are designed to achieve the following objectives:

- *Align the interests of our executives with those of our stockholders.* We link a meaningful portion of compensation to the achievement of our long-term goals by rewarding executive officers if and when stockholder value increases. To that end, a significant portion of the compensation awarded to our executives is in the form of equity-based compensation.
- *Retain management.* Compensation for executives is designed such that we retain them by having meaningful vesting long-term equity compensation.
- *Motivate through ownership.* We believe that the best way to inspire leadership and performance is by distributing ownership in the form of equity-based compensation throughout our ranks and requiring executive management to retain meaningful exposure to our Company's stock.

### Setting Executive Compensation

Prior to August 29, 2012, our executive compensation program was largely based on arrangements that were negotiated at the time that our Company was founded. BankUnited, Inc. was organized by a management team led by the Management Members and our former Chief Financial Officer, John DiGiacomo, on April 28, 2009. At that time, the founding members of the management team directly negotiated the terms of their compensation with the investors.

On August 29, 2012, the Compensation Committee approved the amended and restated employment agreements (the "Employment Agreements") by and between each of the Management Members and the Company and by and between each of the Management Members and the Bank.

Mr. Pauls replaced our former Chief Financial Officer in 2009, and as a result, Mr. Pauls' compensation components were similar to those provided to that former Chief Financial Officer prior to his departure. The level of Mr. Pauls' compensation was negotiated by him and the Company and was ultimately subject to approval by our Board. On August 30, 2012, the Company announced the retirement of Mr. Pauls as Chief Financial Officer of the Company and the Bank, effective February 28, 2013. His retirement was not due to any disagreement with the Company on any matter related to the Company's operations, policies or practices. Following February 28, 2013, Mr. Pauls agreed to remain with the Company in a non-executive consulting capacity to assist with all matters necessary through December 31, 2013. The Company also announced the promotion of Leslie Lunak, as of March 1, 2013, to Chief Financial Officer of the Company and the Bank.

Mr. Melby, who is not a founding member of our management team, commenced employment with the Bank on September 28, 2009 and the terms of his compensation were the product of negotiation between Mr. Melby and the Bank and subject to final approval by the Bank's Board of Directors.

**Role of Compensation Committee**

Since our inception, our Compensation Committee has been responsible for such matters as the determination of discretionary bonus amounts, if any, to be paid to our named executive officers, the implementation of the BankUnited, Inc. 2009 Stock Option Plan and 2010 Omnibus Equity Incentive Plan, including the determination of grant amounts, vesting terms and exercise prices of awards under such plans, as well as the approval of the Employment Agreements and the Annual Incentive Plan. In addition, our Compensation Committee was responsible for vetting and approving our 401(k) plan and Nonqualified Deferred Compensation Plan.

**Role of Compensation Consultant**

In July 2012, the Compensation Committee engaged Pearl Meyer, a compensation consulting firm, to provide advice with respect to executive compensation matters, including with respect to the terms and conditions of the Employment Agreements. In this regard, as directed by the Compensation Committee, the compensation consultant, among other things, assisted the Compensation Committee in reviewing the compensation program for management, provided data relating to our industry and for a representative peer group for comparison (but not specifically benchmarking) purposes and advised the Compensation Committee on best practices for executive compensation, including advising on the Employment Agreements entered into with the Management Members. The Compensation Committee believes that Pearl Meyer is able to provide independent, objective compensation advice to the Compensation Committee. Other than providing the advice and services described above, Pearl Meyer provided no other services to either the Company or the Compensation Committee during the 2012 fiscal year, and the Compensation Committee is not aware of any conflict of interest that exists that would prevent Pearl Meyer from being so independently engaged. Based on the above, the Compensation Committee assessed the independence of Pearl Meyer and concluded that no conflict of interest exists that would prevent Pearl Meyer from independently representing the Compensation Committee.

**Risk Oversight**

The Audit and Risk Committee of our Board, which is comprised of non-employee directors, is currently responsible for risk oversight within our Company, including with respect to compensation practices. Mr. Melby is responsible for developing an Enterprise Risk Management framework to identify, manage and mitigate risks across our Company. This framework, which involves ongoing participation and oversight by our Board, captures compensation-related risk amongst various other dimensions of risk. In addition, our Company is a bank holding company subject to ongoing supervision, examination and regulation by the Federal Reserve, including its guidance on compensation practices. We do not believe that our overall compensation policies and practices create risks that are reasonably likely to have a material adverse effect on our Company.

## Executive Officer Compensation

### Principal Components of Compensation of Our Named Executive Officers

The compensation package offered to our executive officers, including our named executive officers, consists of:

- *Base salary.* Base salaries for our executive officers are designed to compensate the executive for the experience, education, personal qualities and other qualifications of that individual that are essential for the specific role the executive serves within our Company, while remaining competitive with the market.
- *Performance-based annual bonuses.* Commencing in 2013 and pursuant to the terms of the Employment Agreements, each of the Management Members may be eligible to receive an annual incentive award with respect to a 12-month performance period, with the actual amount of each bonus to be based upon the achievement of performance criteria established by the Compensation Committee. Additional information regarding these annual incentive awards are described under "Employment Agreements" below. Annual incentive awards may also be paid to other named executive officers under the terms of the Annual Incentive Plan with respect to 2013 and future years.
- *Retention bonuses; discretionary cash bonuses.* As of 2012, Management Members are eligible to receive retention bonuses, subject to remaining employed through specified dates, as further described under "Employment Agreements" below. Our other named executive officers are eligible to receive discretionary cash bonuses as determined by our Board. The determination of the amounts of such discretionary bonuses has been and will continue to be determined in accordance with the Company's Policy on Incentive Compensation Arrangements, which provides that bonus amounts are to be based upon the past, present, and expected future contributions of an employee or group of employees to the overall success, safety, and soundness of the organization. Factors considered in evaluating those contributions will include, among other things: overall individual performance, organizational performance, individual contribution to organizational performance, business segment performance, and level of individual responsibilities. The Company's Policy on Incentive Compensation Arrangements is designed to balance risk and financial results in a manner that does not encourage employees to expose the Company to imprudent risks.
- *Long-term equity-based compensation.* In general, we provide a significant portion of the compensation due to our named executive officers in the form of long-term equity-based compensation. We believe that providing compensation that is contingent on our long-term performance and that is at-risk serves to align the long-term interests of our named executive officers with the long-term interests of our stockholders. To date, long-term equity-based compensation has generally been granted to our executives upon commencement of employment and/or on an annual basis thereafter. Additionally, in connection with their respective Employment Agreements, the Management Members entered into long-term equity-based compensation arrangements for retention purposes and also have an opportunity to receive performance-based long-term equity-based compensation awards.
- *Limited perquisites and other benefits.* Our executive officers, including our named executive officers, are eligible to participate in our 401(k) retirement plan and the Management Members and Mr. Pauls are also eligible to participate in our Nonqualified Deferred Compensation Plan. Messrs. Kanas, Pauls, Bohlsen, Singh and Melby receive a car allowance and, in addition, Messrs. Kanas and Bohlsen are provided with a company-paid driver.

**Compensation Mix**

Our current compensation package is designed to provide a strong link between the compensation of our executives and the success of our Company and our stockholders generally. The cash components—base salary and cash bonus compensation—collectively represent what we believe is appropriate pay for expected performance during the year. The equity-based compensation component is designed to encourage high performance by closely aligning an executive's pay with the interests of our stockholders. The allocation between different elements of compensation with respect to our named executive officers has been a product of individual negotiations to date. Furthermore, as discussed below, with respect to the Management Members, base salaries were reduced in 2012 and long-term cash and equity-based compensation arrangements were increased in order to promote the retention of each Management Member, as well as to tie total compensation to the long-term success of Company and align with the interests of stockholders, as opposed to guaranteeing compensation in the form of higher base salaries.

**Employment Agreements**

We entered into the Employment Agreements with each of the Management Members. The term of employment under each of the agreements is for three years from July 1, 2012, in the case of Messrs. Kanas and Singh, and one year from July 1, 2012, in the case of Mr. Bohlsen. Mr. Pauls' employment agreements expired on September 1, 2012, and were not renewed. Mr. Melby is not party to an employment agreement and instead his employment is subject to the terms of an offer letter and a change in control agreement, each with the Bank. The Employment Agreements and offer letter set forth the compensatory terms of each of our named executive officers' employment. For additional information regarding certain provisions of each named executive officer's employment agreement or offer letter, see "Potential Payments Upon Termination or Change-in-Control."

***Base Salary***

We provide each of our executive officers and other employees with a base salary to compensate them for services rendered during the year. We believe that, with respect to our named executive officers, base salary should compensate the executives for their service and performance but that superior contributions and performance should be rewarded by other forms of compensation, including long-term equity-based compensation. The base salary for each of our named executive officers was set in his employment agreement or offer letter. Under each of the Employment Agreements, the base salary of each of the Management Members was reduced effective as of September 1, 2012 as follows: Mr. Kanas—from $2,250,000 to $0; Mr. Bohlsen—from $1,250,000 to $500,000; and Mr. Singh—from $1,000,000 to $500,000. The base salaries of each of Mr. Pauls and Mr. Melby in 2012 did not change from their respective 2011 base salaries.

***Performance-Based Annual Bonuses***

Commencing in 2013 and pursuant to the terms of their respective Employment Agreements, each of the Management Members will be eligible to receive a performance-based annual bonus award for the current performance period that began on July 1, 2012 and ends on June 30, 2013. The target bonus opportunities set forth in the Employment Agreements are as follows: $1,530,000 for Mr. Kanas and 75% of annual base salary (i.e., $375,000) for each of Messrs. Bohlen and Singh. Actual bonus amounts will be determined by the Compensation Committee following the conclusion of the performance period, based upon the achievement of the applicable performance criteria established by the Compensation Committee. The applicable performance criteria for each Management Member include, for example, net interest margin goals as compared to industry peers, goals related to minimizing non-performing assets ratios, increasing total deposits and reducing costs of deposits, and successfully launching into specified geographical markets.

***Retention and Other Cash Bonuses***

Pursuant to the terms of their respective Employment Agreements, each of the Management Members earned the following cash retention awards on December 31, 2012 by remaining employed through such date: $1,500,000 for Mr. Kanas and $750,000 for each of Messrs. Bohlsen and Singh. The purpose of the retention bonuses is to incentivize Management Members to continue their employment with us and the Bank, and in that regard, the size of the respective bonuses were determined to provide retentive value. Messrs. Kanas and Singh are eligible to earn the same respective retention bonus amounts on each of December 31, 2013 and December 31, 2014, subject to their continued employment through such dates.

***Discretionary Bonuses***

On December 10, 2012, we awarded Mr. Pauls $200,000 and Mr. Melby $325,000 for their respective performances in the 2012 fiscal year and overall contribution to the Company. Pursuant to his offer letter, Mr. Melby is eligible to receive an annual bonus with a target bonus opportunity equal to $300,000, due to his role as the Chief Risk Officer of the Bank and our belief that a lesser portion of his overall compensation should be in the form of equity-based compensation and, accordingly, at-risk. Consistent with the Company's Policy on Incentive Compensation Arrangements, the bonus amounts ultimately determined for Mr. Pauls and Mr. Melby were based on a subjective evaluation of such factors as their overall individual performance, organization performance, individual contribution to organizational performance, business segment performance, and/or level of individual responsibilities, and not based on the achievement of any performance goals established by the Compensation Committee in advance.

***Equity-Based Compensation***

Background/LLC Liquidation

The Management Members and Mr. Pauls previously held equity-based compensation in the form of profits interest units, or PIUs, in BU Financial Holdings LLC (the "LLC"), our parent company prior to the reorganizations consummated in connection with our IPO. The PIUs represented the right of the holder to share in distributions from the LLC after investors had received certain returns on their investment. In connection with the IPO, the LLC was liquidated and the Management Members received a combination of common stock (both shares not subject to vesting schedules and restricted shares that were subject to vesting schedules) and options to purchase common stock (both vested and unvested) as well as certain dividend equivalent rights, in each case, in respect of the vested and unvested PIUs that were then held by the Management Members and Mr. Pauls in the LLC. The shares issuable upon exercise of options are newly issued shares that are issued under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan. Mr. Melby did not previously hold PIUs and had instead been awarded stock options to purchase shares of our common stock under the BankUnited, Inc. 2009 Stock Option Plan.

The PIUs were divided into two equal types of profits interests. Half of the PIUs, referred to as time-based PIUs, vested with the passage of time following the grant date. The remaining half of the PIUs, referred to as IRR-based PIUs, vested immediately prior to the consummation of the IPO.

In conjunction with the IPO, the PIUs were exchanged for a combination of vested and unvested common shares and vested and unvested stock options. The equity instruments issued in exchange for PIUs included:

- 3,863,491 vested common shares
- 1,931,745 unvested common shares

• 3,023,314 vested stock options

• 1,511,656 unvested stock options

The unvested instruments corresponded to the unvested time-based PIUs and continued to vest according to the original vesting schedule of such time-based PIUs. The remainder of these instruments vested in 2012.

Dividend Equivalent Rights

In respect of the vested PIUs held by each of the Management Members and Mr. Pauls, such individual received, among other forms of equity, a dividend equivalent right entitling the holder to receive the economic benefit, for a period of ten years following the date of grant, of any dividends paid with respect to our common stock after the IPO as though such holder owned the number of shares of our common stock that would be issuable upon exercise of the vested options received by such holder.

In respect of the unvested PIUs held by each of the Management Members, such individual received, among other forms of equity, a dividend equivalent right entitling the holder to an aggregate payment from us, at the time the unvested options received by such holder vest in accordance with their terms, in an amount equal to the amount of all dividends that would have been paid in respect of such unvested options after the date of the IPO and prior to such vesting date as though such holder owned the number of shares of our common stock that would be issuable upon the vesting and exercise of such options. The last vesting of these PIUs occurred in 2012, and as such, the Management Members and Mr. Pauls have no continuing dividend equivalent rights with respect to these PIUs.

Stock Options

Although the Compensation Committee has awarded stock options to executive officers in prior years, in 2012, the Compensation Committee did not award stock options to any named executive officer as part of his long-term equity-based compensation. Should stock options be granted to named executive officers in the future, these awards will be determined following the key principles under the Company's Policy on Incentive Compensation Arrangements, including their valuable contribution to the organization, disciplined balance of risk and financial results, exceptional focus on risk management and internal controls and strong corporate governance.

Restricted Shares

On August 29, 2012, pursuant to their respective employment agreements, Mr. Kanas was granted 178,643 restricted shares, Mr. Bohlsen was granted 29,774 restricted shares, and Mr. Singh was granted 89,322 restricted shares, in each case as a retention-based equity incentive award. In the case of Messrs. Kanas and Singh, each restricted stock award vested as to one-third on December 31, 2012 by remaining employed through such date, and the remaining two-thirds of the shares subject to the awards will vest in equal portions on each of December 31, 2013 and December 31, 2014, subject to their continued employment through such dates. Additionally, each such one-third installment of restricted shares is subject to a one-year transfer restriction following vesting. In the case of Mr. Bohlsen, the restricted stock award will fully vest on June 30, 2013, subject to his continued employment through such date, and his employment term will expire on July 1, 2013.

Pursuant to his offer letter, Mr. Melby is eligible to receive grants of equity-based compensation. After a review of subjective criteria relative to Mr. Melby's performance and to provide Mr. Melby with continued long-term incentive opportunities, the Compensation Committee granted him 15,000 restricted shares on December 10, 2012 in respect of his performance in the 2012 fiscal year. The restricted shares vest in substantially equal installments on each of the first three anniversaries of the grant date, subject to Mr. Melby's continued employment with the Company through such dates. The named executive officers are entitled to receive dividend payments in respect of their restricted shares.

Performance-Based Share Awards

Commencing in 2013 and pursuant to the terms of their respective Employment Agreements, each of the Management Members will be eligible to receive an award of performance-based shares based on performance during the current performance period that began on July 1, 2012 and ends on June 30, 2013. The target award opportunities are as set forth under the Employment Agreements as follows: $680,000 for Mr. Kanas and $375,000 for each of Messrs. Bohlen and Singh. Actual awards have not yet been granted (under FASB ASC Topic 718 or otherwise) and will only be granted as determined by the Compensation Committee following the conclusion of the performance period, based upon the achievement of the applicable performance criteria established by the Compensation Committee, including net interest margin goals as compared to industry peers, goals related to minimizing non-performing assets ratios, increasing total deposits and reducing costs of deposits, and successfully launching into specified geographical markets. In the case of Messrs. Kanas and Singh, any awards that are granted will be vested as to one-third as of the end of the performance period (e.g., June 30, 2013) and the unvested portion of the awards will vest on each June 30 of each of the two subsequent years, subject to their continued employment through such dates. In the case of Mr. Bohlsen, his award will fully vest on June 30, 2013, subject to his continued employment through such date, and his employment term will expire on July 1, 2013.

**Equity Ownership Requirements**

In connection with the formation of our Company, our Management Members and Mr. Pauls were required to invest a portion of their personal assets in our Company. Mr. Kanas invested $23,500,000, Mr. Bohlsen invested $10,000,000 and Mr. Singh invested $1,000,000. Mr. Pauls invested $1,000,000 in our Company in connection with the commencement of his employment. The amounts that the Management Members and Mr. Pauls were initially required to invest varied and each executive's investment amount was in relation to his net worth. Mr. Melby joined the Bank subsequent to our formation and was not required to invest any of his personal assets in our Company.

In connection with the IPO and in exchange for the PIUs vesting described above, we adopted a policy to which the Management Members agreed relating to the minimum amount of equity securities that such Management Members must retain for so long as they are employed by us. This policy, which may be waived from time to time by the Compensation Committee, provides that so long as Mr. Kanas is CEO, he will not sell equity if, after giving effect to such sale, his retained equity (including vested and unvested equity, including options) has a value that is less than twelve times his base salary. Although Mr. Kanas' base salary was eliminated in September 2012, as of April 18, 2013, he held equity securities (including vested and unvested equity, including options) having a value greater than 27 times his base salary that was in effect immediately prior to its being eliminated. Additionally, for Messrs. Bohlsen and Singh, so long as they are employed and are named executive officers of the Company, they will not sell equity if, after giving effect to such sale, their respective retained equity (including vested and unvested equity, including options) has a value that is less than five times their respective base salaries. We believe that requiring members of our senior management to invest and maintain ownership in our Company serves to align their interests with the interests of our stockholders generally. Each of the Management Members' equity holdings far exceed our equity ownership policy guidelines.

**Say on Pay**

We value the opinions of our stockholders. At the 2012 annual meeting of stockholders, approximately 99% of the votes cast on the stockholder advisory vote proposal on the compensation of our named executive officers ("Say on Pay") were cast in favor of our executive compensation program. In addition, over a majority of the votes cast on the Say on Pay frequency vote proposal were in favor of holding a Say on Pay vote every three years such that there will not be a Say on Pay vote until the

2015 annual meeting of stockholders. The Compensation Committee reviewed the results of the Say on Pay vote in 2012 and did not make changes to our executive compensation program based on the outcome of the vote and decided to retain the same general approach to our program. However, as described in greater detail above, certain changes to our executive compensation program were made in 2012 in an effort to improve our compensation practices generally and to further align compensation with the interests of our stockholders and otherwise in the interests of retaining key executives, such as entering into the Employment Agreements with the Management Members, which include expiring provisions on gross-up payments for golden parachute excise taxes, eliminating possible discretionary cash bonuses in favor of performance-based cash incentives for the Management Members, and eliminating certain time-based equity incentive awards in favor of performance-based equity incentives for the Management Members.

**Tax and Accounting Implications**

Transition provisions under Section 162(m) of the Internal Revenue Code of 1986, as amended, may apply for a period of three years following the consummation of the IPO to certain compensation arrangements that were entered into by a corporation before it was publicly held.

## COMPENSATION COMMITTEE REPORT

*The information contained in this report shall not be deemed to be "soliciting material" or "filed" with the SEC or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that the Company specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.*

The Compensation Committee of the Company has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K with management and, based on such review and discussions, the Compensation Committee recommended to the Board that the Compensation Discussion and Analysis be included in this Proxy Statement.

***The Compensation Committee***

Richard S. LeFrak, Chair
Eugene F. DeMark
Ambassador Sue M. Cobb
Thomas M. O'Brien

## Summary Compensation Table

The following summary compensation table sets forth the total compensation paid or accrued for the year ended December 31, 2012 to our named executive officers.

### Summary Compensation Table for 2012

| Name and Principal Position | Year | Salary ($) | Bonus ($)(1) | Stock Awards ($) | Option Awards ($)(4) | Change in Pension Value and Nonqualified Deferred Compensation Earnings $(5) | All Other Compensation ($) | Total ($) |
|---|---|---|---|---|---|---|---|---|
| **John A. Kanas** | 2012 | 1,500,000 | 1,500,000 | 3,980,250(2) | — | 14,019 | 510,873(6) | 7,505,142 |
| Chairman, | 2011 | 2,250,000 | — | — | — | 5,319 | 183,462 | 2,438,781 |
| President and CEO | 2010 | 2,250,000 | — | 131,276(3) | — | 7,139 | 107,283 | 2,495,698 |
| **Douglas J. Pauls** | 2012 | 650,000 | 200,000 | — | — | 4,781 | 66,452(7) | 921,233 |
| Chief Financial | 2011 | 650,000 | — | — | 719,000 | 1,599 | 44,250 | 1,414,849 |
| Officer | 2010 | 650,000 | — | 10,592(3) | — | 2,044 | 44,250 | 706,886 |
| **John Bohlsen** | 2012 | 1,000,000 | 750,000 | 750,000(2) | — | 6,046 | 321,801(8) | 2,827,847 |
| Vice Chairman and | 2011 | 1,250,000 | — | — | 719,000 | 2,288 | 148,058 | 2,119,346 |
| Chief Lending Officer | 2010 | 1,250,000 | — | 67,338(3) | — | 3,071 | 62,283 | 1,382,692 |
| **Rajinder P. Singh** | 2012 | 833,334 | 750,000 | 1,990,125(2) | — | 6,079 | 218,467(9) | 3,798,005 |
| Chief Operating | 2011 | 1,000,000 | | — | 719,000 | 2,288 | 60,520 | 1,781,808 |
| Officer | 2010 | 1,000,000 | — | 58,448(3) | — | 3,071 | 55,218 | 1,116,737 |
| **Randy R. Melby** | 2012 | 325,000 | 325,000 | 347,700(2) | — | — | 43,540(10) | 1,041,240 |
| Senior Executive Vice | 2011 | 325,000 | 300,000 | 576,270(2) | — | — | 23,025 | 1,224,295 |
| President, Chief Risk Officer of the Bank | 2010 | 325,000 | 300,000 | — | — | — | 37,172 | 662,172 |

(1) For each of Messrs. Kanas, Bohlsen and Singh, represents a retention bonus earned on December 31, 2012. For each of Messrs. Pauls and Melby, represents a discretionary bonus earned in each of the reflected years.

(2) Represents the aggregate grant date fair value of restricted shares granted to the named executive in accordance with FASB ASC Topic 718. The assumptions used in the calculation of the value of each award are included in "Note 17, Equity Based Compensation and Other Benefit Plans" to our consolidated financial statements in our 2012 Annual Report on Form 10-K filed with the SEC on February 25, 2013.

(3) Represents the aggregate value of the PIUs granted to the Management Members in accordance with FASB ASC Topic 718. The assumptions used in the calculation of the value of each award are included in "Note 16, Equity Based Compensation and Other Benefit Plans" to our consolidated financial statements in our 2011 Annual Report on Form 10-K filed with the SEC on February 28, 2012.

(4) Represents the aggregate grant date fair value of the stock options granted to the named executive officers in accordance with FASB ASC Topic 718. The assumptions used in the calculation of the value of each award are included in "Note 17, Equity Based Compensation and Other Benefit Plans" to our consolidated financial statements in our 2012 Annual Report on Form 10-K filed with the SEC on February 25, 2013.

(5) Represents the value of above-market earnings on nonqualified deferred compensation amounts credited with respect to each applicable named executive officer. Pursuant to our Nonqualified Deferred Compensation Plan, amounts deferred thereunder are credited with interest at a rate of 6% per annum. According to IRS guidelines, as of December 2012, interest above 3.37% is considered above market.

(6) All other compensation for Mr. Kanas includes contributions of $11,250 and $112,500 made by us on Mr. Kanas' behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $21,675 for an automobile allowance, $71,958 for a driver allowance and $293,490 in dividend payments.

(7) All other compensation for Mr. Pauls includes contributions of $11,250 and $12,992 made by us on Mr. Pauls' behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $15,000 for an automobile allowance and $27,210 in dividend payments.

(8) All other compensation for Mr. Bohlsen includes contributions of $11,250 and $56,250 made by us on Mr. Bohlsen's behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $24,875 for an automobile allowance, $79,672 for a driver allowance and $149,754 in dividend payments.

(9) All other compensation for Mr. Singh includes contributions of $11,250 and $60,000 made by us on Mr. Singh's behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $15,520 for an automobile allowance and $131,697 in dividend payments.

(10) Represents a contribution of $11,250 made by us on Mr. Melby's behalf to our 401(k) plan, $12,000 for an automobile allowance and $20,290 in dividend payments.

**Grants of Plan-Based Awards**

The following table sets forth certain information with respect to the plan-based awards granted to each of our named executive officers during 2012.

**2012 Grants of Plan-Based Awards**

| Name | Grant Date | Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1) Threshold ($) | Target ($) | Maximum ($) | All Other Stock Awards: Number of Shares of Stock (#) | Closing Market Price on Date of Grant ($/Sh) | Grant Date Fair Value of Stock Awards ($) |
|---|---|---|---|---|---|---|---|
| Mr. Kanas | 8/29/2012 | 1,190,000 | 1,530,000 | 1,870,000 | 178,643(2) | 25.19 | 3,980,250(5) |
| Mr. Pauls | N/A | — | — | — | — | — | — |
| Mr. Bohlsen | 8/29/2012 | 250,000 | 375,000 | 500,000 | 29,774(3) | 25.19 | 750,000 |
| Mr. Singh | 8/29/2012 | 250,000 | 375,000 | 500,000 | 89,322(2) | 25.19 | 1,990,125(5) |
| Mr. Melby | 12/10/2012 | — | — | — | 15,000(4) | 23.18 | 347,700 |

(1) Represents performance-based annual incentive awards pursuant to Employment Agreements for the performance period that began on July 1, 2012 and ends on June 30, 2013.

(2) Represents grants of restricted shares granted to each named executive under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan. These shares vested as to one-third of the shares subject to the award on December 31, 2012 and will vest as to an additional one-third on each December 31 of 2013 and 2014, subject to the named executive officer's continued employment with the Company through each applicable vesting date. These shares embody post-vesting transfer restrictions through the first anniversary of each vesting date.

(3) Represents grants of restricted shares granted to Mr. Bohlsen under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan. These shares will vest on June 30, 2013, subject to Mr. Bohlsen's continued employment with the Company through the vesting date.

(4) Represents grants of restricted shares granted to Mr. Melby under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan. These shares will vest as to one-third of the shares subject to the award on each of the first three anniversaries of the grant date, subject to Mr. Melby's continued employment with the Company through each applicable vesting date.

(5) Represents value of restricted shares based on the closing price of the Company's common stock at the date of grant, less a discount for lack of marketability related to post-vesting transfer restrictions through the first anniversary of each vesting date, pursuant to FASB ASC Topic 718.

## Outstanding Equity Awards at Fiscal Year-End

The following table shows grants of equity awards outstanding on December 31, 2012 for each of our named executive officers:

**Outstanding Equity Awards at 2012 Fiscal Year-End**

| | Option Awards | | | | Stock Awards | |
|---|---|---|---|---|---|---|
| | Number of Securities Underlying Unexercised Options Exercisable | Number of Securities Underlying Unexercised Options Unexercisable | Option Exercise Price ($) | Option Expiration Date | Number of Shares that Have Not Vested | Market Value of Shares That Have Not Vested(1) |
| Mr. Kanas | 2,226,258 | — | 27.00 | 2/2/2021 | | |
| | | | | | 119,095(2) | 2,910,682 |
| Mr. Pauls | 181,399 | — | 27.00 | 2/2/2021 | | |
| | 33,334 | 66,666(3) | 22.31 | 12/16/2021 | | |
| Mr. Bohlsen | 1,137,865 | — | 27.00 | 2/2/2021 | | |
| | 33,334 | 66,666(3) | 22.31 | 12/16/2021 | | |
| | | | | | 29,774(2) | 727,677 |
| Mr. Singh | 989,448 | — | 27.00 | 2/2/2021 | | |
| | 33,334 | 66,666(3) | 22.31 | 12/16/2021 | | |
| | | | | | 59,548(2) | 1,455,353 |
| Mr. Melby | 9,733 | 4,867(4) | 17.86 | 3/29/2020 | | |
| | | | | | 30,333(5) | 741,339 |

(1) Based on the $24.44 closing price of our common stock on December 31, 2012.

(2) As to Messrs. Kanas and Singh, fifty percent scheduled to vest on December 31, 2013, and the remaining fifty percent scheduled to vest on December 31, 2014. As to Mr. Bohlsen, one hundred percent scheduled to vest on June 30, 2013.

(3) Fifty percent scheduled to vest on December 16, 2013, and the remaining fifty percent scheduled to vest on December 16, 2014.

(4) Scheduled to vest on March 29, 2013.

(5) For 7,333 shares, fifty percent scheduled to vest on March 11, 2013, and the remaining fifty percent scheduled to vest on March 11, 2014. For 8,000 shares, fifty percent scheduled to vest on December 16, 2013, and the remaining fifty percent scheduled to vest on December 16, 2014. For 15,000 shares, one-third will vest on each of the first, second and third anniversaries of December 10, 2012.

**Option Exercises and Stock Vested**

The following table contains information regarding equity held by our named executive officers, which vested during fiscal year 2012.

**2012 Option Exercises and Stock Vested**

| | Option Awards | | Stock Awards | |
|---|---|---|---|---|
| | Number of Shares Acquired on Exercise (#) | Value Realized on Exercise ($) | Number of Shares Acquired on Vesting (#)(1) | Value Realized on Vesting ($)(2) |
| Mr. Kanas | — | — | 533,703 | 12,735,501 |
| Mr. Pauls | — | — | 38,635 | 975,534 |
| Mr. Bohlsen | — | — | 242,346 | 5,765,411 |
| Mr. Singh | — | — | 240,510 | 5,741,086 |
| Mr. Melby | — | — | 7,667 | 177,174 |

(1) Represents shares vested in connection with arrangements in existence at the time of our IPO, as well as pursuant to the terms of the restricted stock awards.

(2) The value is equal to the closing market price of a share of our common stock at the vesting date, multiplied by the number of shares vesting on such date.

**Nonqualified Deferred Compensation**

The Management Members and Mr. Pauls are eligible to participate in our Nonqualified Deferred Compensation Plan, which allows each executive the ability to defer compensation in excess of annual IRS limits that are applicable to our qualified 401(k) plan. Mr. Melby does not participate in our Nonqualified Deferred Compensation Plan. Each Management Member and Mr. Pauls is also eligible to receive company matching contributions under the plan. For the 2012 plan year, we contributed an amount equal to one hundred percent of the first one percent plus seventy percent of the next five percent of eligible compensation that the executive elects to defer under the plan. Amounts deferred by the executive are vested at all times and amounts that we contribute on his behalf will become vested upon the earlier to occur of a change in control (as defined in the plan), the executive's death, disability, attainment of "Normal Retirement Age" under our 401(k) plan or completion of two years of service. Amounts deferred under our Nonqualified Deferred Compensation Plan are distributed upon a date specified by the executive, which may be no earlier than January 1 of the third plan year following the plan year in which the compensation would have otherwise been paid to the executive, or upon the earliest to occur of the executive's separation from service, disability or a change in control.

## Nonqualified Deferred Compensation Table for 2012

| | Executive Contributions in Last FY ($)(1) | Registrant Contributions in Last FY ($)(2) | Aggregate Earnings in Last FY ($) | Aggregate Withdrawals / Distributions ($) | Aggregate Balance at Last FYE ($) |
|---|---|---|---|---|---|
| Mr. Kanas | 150,000 | 112,500 | 31,984 | (72,868) | 739,368 |
| Mr. Pauls | 40,000 | 12,992 | 10,908 | — | 221,296 |
| Mr. Bohlsen | 75,000 | 56,250 | 13,793 | (31,348) | 336,432 |
| Mr. Singh | 80,000 | 60,000 | 13,869 | (31,348) | 345,258 |
| Mr. Melby | — | — | — | — | — |

(1) The amount of each named executive officer's contribution, if any, to the Nonqualified Deferred Compensation Plan is otherwise reflected as compensation earned in 2012 in the "Summary Compensation Table for 2012."

(2) Amounts reflect our contributions, if any, to the Nonqualified Deferred Compensation Plan for the applicable named executive officer. These amounts are also reported in the "All Other Compensation" column of "Summary Compensation Table for 2012."

### Potential Payments Upon Termination or Change-in-Control

The Employment Agreements provide for severance payments and benefits, to the extent applicable, in the event of a termination of employment. Mr. Pauls' employment agreements expired on September 1, 2012, and therefore, he is not entitled to severance payments or benefits in the event of a termination of his employment. Mr. Melby is entitled to certain severance payments under the terms of his change in control agreement with the Bank; however, Mr. Melby is not entitled to severance payments or benefits under the terms of his offer letter with the Bank.

Each of the Employment Agreements provide that in the event of an executive's termination of employment by either the Bank or the Company without Cause (as defined in the respective agreements) or by the Executive for Good Reason (as defined in the respective agreements), such executive will be entitled to receive, subject to the executive's execution of a release of claims against the Bank or the Company, as applicable, payment of any unpaid retention awards, the accelerated vesting of equity awards (subject to certain exceptions), continued coverage under the employer's group health plans at the employer's expense for 24 months, as well as a payment equal to the following: $1,530,000 and $1,530,000 under Mr. Kanas' Employment Agreements with the Bank and the Company, respectively; $1,312,500 and $437,500 under Mr. Singh's Employment Agreements with the Bank and the Company, respectively; and $1,487,500 and $262,500 under Mr. Bohlsen's Employment Agreements with the Bank and the Company, respectively.

Each of the Employment Agreements with the Bank provide that in the event that on or prior to August 31, 2013 (prior to the expiration of the employment term, in the case of Mr. Bohlsen), it is publicly announced that a binding agreement has been entered into by the Bank and/or the Company with respect to a transaction that, if consummated, would constitute a change in control transaction giving rise to payments and benefits that trigger excise taxes under Section 4999 of the Internal Revenue Code, the Bank will reimburse executive for any such excise taxes and for the taxes imposed on such reimbursement amount, as well as for certain related costs incurred by Executive. After August 31, 2013, such excise tax reimbursement obligation will expire and have no continued effect.

Each of the Management Members are subject to confidentiality and non-disparagement obligations under the Employment Agreements, as well as non-competition and non-solicitation covenants for a period of 18 months following a termination of employment by the Company for Cause or following Management Member's voluntary resignation without Good Reason.

The Employment Agreements are subject to regulatory laws to the extent applicable.

In the event of a change in control (as defined in the Company's 2010 Omnibus Equity Incentive Plan), all outstanding awards held by the named executive officers that are then unvested would be subject to accelerated vesting, and any performance-based shares to be prospectively awarded with respect to a pending performance period would be granted and vested at target levels. Furthermore, under the terms of his change in control agreement, Mr. Melby would be entitled to a payment in the amount equal to one year of his base salary, payable on the date that is six months following completion of a change in control.

Pursuant to the Employment Agreements, in the event of death or disability, the portion of the outstanding equity award which would have vested in the 12 months immediately following the Management Member's death or disability will vest. Furthermore, each Management Member and his dependents are generally entitled to receive continued coverage under the group health plans of the Bank or the Company, as applicable, at the sole expense of the Bank or the Company, as applicable, for 24 months following his disability or death.

The following table provides information concerning the estimated payments and benefits that would be provided in the circumstances described above for each of the named executive officers, which were estimated assuming that the triggering event took place on the last business day of the fiscal year (December 31, 2012) and calculated using the closing price per share of our common stock on such date ($24.44), and also assumes a cash-out of equity awards in connection with a change in control.

| | Cash Severance ($) | Continued Benefits ($) | Value of Acceleration of Equity ($) | Excise Tax Gross-Up ($) | Total ($) |
|---|---|---|---|---|---|
| **Mr. Kanas** | | | | | |
| Death / Disability | — | 35,964 | 1,682,008 | — | 1,717,971 |
| For Cause / Without Good Reason | — | — | — | — | — |
| Without Cause / For Good Reason | 3,060,000 | 35,964 | 3,590,682 | — | 6,686,646 |
| Change in Control | — | — | 3,590,682 | — | 3,590,682 |
| **Mr. Pauls** | | | | | |
| Change in Control | — | — | 141,999 | — | 141,999 |
| **Mr. Bohlsen** | | | | | |
| Death / Disability | — | —(1) | 923,676 | — | 923,676 |
| For Cause / Without Good Reason | — | — | — | — | — |
| Without Cause / For Good Reason | 1,750,000 | —(1) | 1,244,675 | — | 2,994,675 |
| Change in Control | — | — | 1,244,675 | — | 1,244,675 |
| **Mr. Singh** | | | | | |
| Death / Disability | — | 31,514 | 923,676 | — | 955,190 |
| For Cause / Without Good Reason | — | — | — | — | — |
| Without Cause / For Good Reason | 1,750,000 | 31,514 | 1,972,352 | — | 3,753,866 |
| Change in Control | — | — | 1,972,352 | — | 1,972,352 |
| **Mr. Melby** | | | | | |
| Change in Control | 325,000 | — | 406,757 | — | 731,757 |

(1) Mr. Bohlsen presently receives non-Company/Bank health benefits. If these benefits are unavailable, the value of his continued benefits would be approximately $33,244.

## EQUITY COMPENSATION PLAN INFORMATION

The following table summarizes information, as of December 31, 2012, relating to the Company's equity compensation plans pursuant to which grants of equity incentive awards to acquire shares of our common stock may be granted from time to time.

| Plan Category | Number of securities to be issued upon exercise of outstanding options, warrants and rights | Weighted-average exercise price of outstanding options, warrants and rights | Number of securities available for issuance under equity compensation plans (excluding securities reflected in first column) |
|---|---|---|---|
| **Equity compensation plans approved by securityholders** | N/A | N/A | N/A |
| **Equity compensation plans not approved by securityholders(2)** | 6,689,745(1) | $25.66(3) | 1,172,566(4) |
| **Total** | 6,689,745 | | 1,172,566 |

(1) Includes 1,189,896 shares subject to restricted share awards and 5,499,849 shares subject to stock options under the BankUnited, Inc. 2009 Stock Option Plan (the "2009 Plan") and the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan (the "2010 Plan").

(2) Excludes 198,155 shares subject to outstanding stock options under the Heritage Bank, N.A. 2008 Stock Incentive Plan, which options have a weighted-average exercise price of $32.18. This plan was assumed in connection with the Company's acquisition of Herald National Bank. No further awards are available for issuance under this plan.

(3) Represents the weighted average exercise price on stock options only.

(4) Pursuant to the 2010 Plan. The Company does not intend to issue any new awards under the 2009 Plan.

Pursuant to the terms of the 2009 Plan, the Board may grant up to 2,312,500 non-qualified stock options to key employees of the Company and its affiliates. Stock options may be granted with an exercise price equal to or greater than the stock's fair value at the date of grant. The terms and conditions applicable to options granted under the 2009 Plan are determined by the Board or a committee thereof, provided however, that each stock option shall expire on the tenth anniversary of the date of the grant, unless it is earlier exercised or forfeited. Options granted to date under the 2009 Plan vest over a period of three years. Shares of common stock delivered under the 2009 Plan may be authorized but unsold common stock or previously issued common stock reacquired by the Company. Vesting of stock options may be accelerated in the event of a change in control, as defined. The Company does not intend to issue any new awards under the 2009 Plan.

In connection with the IPO, the Company adopted the 2010 Plan. The 2010 Plan is administered by the Board or a committee thereof and provides for the grant of non-qualified stock options, share appreciation rights, restricted shares, deferred shares, performance shares, unrestricted shares and other share-based awards to selected employees, directors or independent contractors of the Company and its affiliates. The number of shares of common stock authorized for award under the 2010 Plan is 7,500,000, of which 1,172,566 shares remain available for issuance as of December 31, 2012. Shares of common stock delivered under the 2010 Plan may consist of authorized but unissued shares or previously issued shares reacquired by the Company. The term of a share option or stock appreciation right issued under the 2010 Plan may not exceed ten years from the date of grant and the exercise price may not be less than the fair market value of the Company's common stock at the date of grant. Unvested awards generally become fully vested in the event of a change in control (as defined in the 2010 Plan).

## PROPOSAL NO. 3

## APPROVAL OF THE BANKUNITED, INC. ANNUAL INCENTIVE PLAN

In April 2013, the Board of Directors approved the BankUnited, Inc. Annual Incentive Plan (the "Incentive Plan"), subject to approval by our stockholders, pursuant to which certain annual bonus awards are intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended ("Section 162(m)").

Generally, Section 162(m) does not permit a tax deduction for compensation in excess of $1 million paid in any taxable year by a publicly-held company to its chief executive officer or any of its three other most highly compensated executive officers (other than its principal financial officer). However, compensation based solely on the attainment of performance goals is excluded from this deduction limitation if the following criteria are satisfied: (i) the performance goals are objective, pre-established and determined by a compensation committee of the board of directors, which compensation committee is comprised solely of two or more outside directors; (ii) the material terms of the performance goals under which the compensation is to be paid are disclosed to the stockholders and approved by a majority stockholder vote; and (iii) the compensation committee certifies that the performance goals and other material terms were in fact satisfied before the compensation is paid.

The Board of Directors believes that the adoption of the Incentive Plan is in the best interests of the Company and its stockholders, and, as part of our compensation program, is designed to enhance stockholder value by (i) aligning the interests of our management team with those of our stockholders, and (ii) retaining management. Each of the compensation programs, including the Incentive Plan, that the Company has developed and implemented satisfies one or more of the following specific objectives:

- motivate and focus the Company's management team through incentive compensation programs directly tied to the Company's financial results;
- enhance our ability to attract and retain skilled and experienced executive officers; and
- provide rewards commensurate with performance and with competitive market practices.

The stockholders are being asked to approve the Incentive Plan so that certain awards granted under the plan may qualify as performance-based compensation under Section 162(m). Stockholder approval of the Incentive Plan will enable the Company to be in a position to continue to grant annual cash incentive awards while preserving the tax deductibility of these awards.

### Summary of the Material Terms of the Incentive Plan

The following is a description of the material features of the Incentive Plan. It does not purport to be complete and is qualified in its entirety by the full text of the Incentive Plan, which is attached hereto as Appendix A. The Incentive Plan is not intended to be (and will not be construed and administered as) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

#### *Administration*

At the discretion of the Board of Directors, the Plan may be administered by the Board of Directors or by the Compensation Committee. However, to the extent that awards granted under the Incentive Plan under are intended to satisfy the requirements of Section 162(m), the Incentive Plan will be administered by the Compensation Committee and consist of not fewer than two members who are "outside directors" within the meaning of Section 162(m). It is currently contemplated that the Incentive Plan will be administered by the Compensation Committee.

The Compensation Committee has the authority, in its sole discretion, subject to and not inconsistent with the express provisions of the Incentive Plan, to administer the Incentive Plan and to exercise all the powers and authorities either specifically granted under the Incentive Plan or necessary or advisable in the administration of the Incentive Plan, including, without limitation, the authority to grant awards, to determine the persons to whom and the time or times at which awards will be granted, to determine the terms, conditions, restrictions and performance criteria (including applicable performance goals) relating to any award, to determine whether, to what extent and under what circumstances an award may be settled, cancelled, forfeited or surrendered, to construe and interpret the Incentive Plan and any award, to prescribe, amend and rescind rules and regulations relating to the Incentive Plan, and to make all other determinations deemed necessary or advisable for the administration of the Incentive Plan. All decisions made by the Compensation Committee will be final and binding on the Company and Incentive Plan participants.

***Eligibility***

Awards under the Incentive Plan may be granted to those employees of the Company and its subsidiaries who are selected by the Compensation Committee, taking into account such factors as the Compensation Committee deems relevant in connection with accomplishing the purposes of the Incentive Plan. Currently, only three employees are eligible for participation in the Incentive Plan.

***Performance Period***

The length of any performance period under the Incentive Plan will be no longer than 12 months, unless otherwise determined by the Compensation Committee.

***Performance Goals***

The payment of awards under the Incentive Plan that are intended to comply with Section 162(m) of the Code will be based upon the attainment of one or more of the following performance goals (collectively, the "Performance Goals"):

- return on assets, return on tangible assets, cash return on assets, cash return on tangible assets;
- return on equity, return on tangible equity, cash return on equity, cash return on tangible equity;
- levels of or changes in levels of net interest income, net interest margin, efficiency ratio, cash efficiency ratio, provision, provision rate, net charge-off, net charge-off ratio, fee income, total revenue, pre-tax income, net income;
- levels of or trends in specified financial statement line items or components thereof (may include, but is not limited to, cost of deposits, growth of deposits, cost of funds, loan growth, loan yields, interest earning asset yields);
- levels of or trends in non-performing assets;
- earnings per share (basic or diluted), core earnings per share and/or growth thereof;
- book value per share, tangible book value per share and/or growth thereof;
- absolute and/or relative metrics of stock performance, dividends, and/or total capital returned to shareholders;
- achieving or maintaining specified levels of GAAP and/or regulatory capital;
- strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, regulatory matters, information

technology, and goals relating to acquisitions, divestitures, joint ventures and/or similar transactions, and/or budget comparisons;

- personal professional objectives, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions, the development of long term business goals, formation of joint ventures, and/or the completion of other corporate transactions; and
- any combination of, or a specified increase in, any of the foregoing, and any of the foregoing goals may be measured at enterprise level or at business line or geographic level.

***Terms Related to the Performance Goals***

- Performance goals not specified in the Plan may be used to the extent that an award is not intended to comply with Section 162(m).
- Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company or affiliate thereof, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Compensation Committee.
- The Performance Goals may include a threshold level of performance below which no payment will be made (or no vesting will occur), levels of performance at which specified payments will be made (or specified vesting will occur), and a maximum level of performance above which no additional payment will be made (or at which full vesting will occur).
- Each of the Performance Goals will be determined in accordance with generally accepted accounting principles and the Compensation Committee will have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any affiliate thereof or the financial statements of the Company or any affiliate thereof, in response to changes in applicable laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles, provided that the Compensation Committee's ability to make equitable adjustments to the Performance Goals applicable to any award intended to qualify as performance-based compensation under Section 162(m) will be governed by Section 162(m) restrictions.

***Terms of Awards***

The Compensation Committee will specify the Performance Goals applicable to each award under the Incentive Plan generally no later than 90 days following the commencement of the applicable performance period. At such time, the Compensation Committee will also, if applicable, specify the threshold, target and maximum levels of performance applicable to the Performance Goals. Awards under the Incentive Plan with respect to any performance period may be expressed as a dollar amount or as a percentage of the participant's base salary as of the date on which the applicable Performance Goals are established by the Compensation Committee.

No later than 45 days following the end of a performance period, the Compensation Committee will determine and certify in writing whether, and to what extent, the applicable Performance Goals have been satisfied for an applicable performance period. The Compensation Committee may, in its sole discretion, reduce an amount of an award otherwise determined pursuant to the Incentive Plan. All bonus payments under the Incentive Plan will be made in cash no later than 60 days following the last day of the related performance period and generally no later than the 15th day of the third month following the end of the Company's fiscal year in which the relevant performance period ended. The Compensation Committee has the authority to establish a deferred compensation program for participants to defer receipt of their Awards.

No employee of the Company or any of its subsidiaries may have any claim to be granted an award under the Incentive Plan. There is no obligation for uniformity of treatment among participants under the Incentive Plan. The Incentive Plan does not constitute a contract of employment or confer upon any participant the right to continued employment by the Company. A participant's only interest under the Incentive Plan will be the right to receive a payment of cash pursuant to the terms of the applicable award and the Incentive Plan. The Incentive Plan is intended to constitute an "unfunded" plan for incentive compensation, and no participant will have any rights that are greater than those of a general creditor of the Company with respect to any payments not yet made pursuant to an award granted under the Incentive Plan.

***Covered Awards***

A "Covered Award" is an award (i) that will be paid to a "covered employee" within the meaning of Section 162(m)(3), (ii) that the Compensation Committee expressly designates as performance-based compensation and intends to be fully deductible under Section 162(m), and (iii) that will be paid following the shareholder approval required by Section 162(m)(4)(C)(ii). Notwithstanding any provision to the contrary, the following provisions will control with respect to any Covered Award:

- Pre-Established Incentive Opportunity and Performance Goals. The Performance Goals upon which a Covered Award is based or subject will be established by the Compensation Committee in writing not later than 90 days after the commencement of the performance period, provided that the outcome is substantially uncertain at the time the Compensation Committee actually establishes such factors and the objectives upon which they are based (or at such earlier time as may be required or such later time as may be permissible under Section 162(m)). The Compensation Committee will not make Covered Awards based on Performance Goals not specifically provided under the Incentive Plan if it determines that use of such Performance Goals would cause a Covered Award to not be deductible under Section 162(m).
- Certification of Performance Goals. Prior to the payment of a Covered Award, the Compensation Committee will determine and certify in writing whether and to what extent the Performance Goals referred to in the Incentive Plan have been satisfied for an applicable performance period.
- Discretionary Reduction of Covered Award. Notwithstanding anything in the Incentive Plan to the contrary, the Compensation Committee may, in its sole discretion, reduce a Covered Award otherwise determined pursuant to the Incentive Plan.
- Limited Adjustments of Selected Performance Goals. Upon the occurrence of certain specified events, the Compensation Committee may, without the consent of any affected participant, amend or modify the terms of any outstanding Covered Award that includes any Performance Goals based in whole or in part on the financial performance of the Company or such other entity so as to equitably reflect such events, such that the criteria for evaluating such financial performance of the Company or such other entity (and the achievement of the corresponding Performance Goals) will be substantially the same (as determined by the Compensation Committee or such committee of the board of directors of the surviving corporation) following such event as prior to such event. The Compensation Committee will not take any action with respect to a Covered Award that would constitute an impermissible exercise of discretion within the meaning of Section 162(m), or would otherwise cause the Covered Award to not be deductible under Section 162(m).

- Maximum Amount. The maximum amount of any Covered Award to any "covered employee" within the meaning of Section 162(m)(3) with respect to a performance period, determined as of the time the Covered Award is paid, will not exceed $5,000,000.

To the extent any provision of the Incentive Plan or an award or any action of the Compensation Committee or the Company as it relates to an award intended to qualify as performance-based compensation under Section 162(m) results in the application of Section 162(m)(1) to such award, such provision or action will be deemed null and void to the extent permitted by law and deemed advisable by the Compensation Committee.

***Change in Control***

In the event of a change in control, with respect to the performance period then in effect, each participant under the Incentive Plan will be paid, upon such change in control, an amount in cash equal to such participant's award with respect to the performance period assuming that the greater of (x) target levels of performance for the entire performance period or (y) actual levels of performance through the end of the calendar month immediately preceding the calendar month in which the change in control occurs, on an annualized basis, had been met, prorated based on the number of days elapsed in such performance period as of the date on which the change in control occurs. Additionally, any award payable in accordance with the terms of the Incentive Plan in respect of a completed performance period, but unpaid, will be paid to the participant upon such change in control.

For purposes of the Incentive Plan, a "change in control" generally means the first to occur of any of the following:

- any person is or becomes the Beneficial Owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Company (not including the securities beneficially owned by such person or any securities acquired directly from the Company or any affiliate thereof) representing 50% or more of the combined voting power of the Company's then outstanding securities;
- the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board of Directors: individuals who, on the date hereof, constitute the Board of Directors and any new director whose appointment or election by the Board of Directors or nomination for election by the Company's stockholders was approved or recommended by a vote of at least two-thirds of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended;
- there is consummated a merger, amalgamation or consolidation of the Company or any subsidiary thereof with any other corporation, other than (A) a merger, amalgamation or consolidation which results in the voting securities of the Company outstanding immediately prior to such merger, amalgamation or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, amalgamation or consolidation or (B) a merger, amalgamation or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such person any securities acquired directly from the Company or its Affiliates) representing 50% or more of the combined voting power of the Company's then outstanding securities; or

- the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than (A) a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by stockholders of the Company following the completion of such transaction in substantially the same proportions as their ownership of the Company immediately prior to such sale or (B) a sale or disposition of all or substantially all of the Company's assets immediately following which the individuals who comprise the Board of Directors immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or, if such entity is a subsidiary, the ultimate parent thereof.

***Termination of Employment***

In the event that a participant's employment terminates prior to the end of a performance period for any reason, no amount will be payable to such participant under the Incentive Plan with respect to that performance period. However, at the time of termination, the participant will be entitled to receive an award in respect of a completed performance period for which an award has been determined to be payable in accordance with the terms of the Incentive Plan (or, to the extent payment of an award has been deferred pursuant to an arrangement established for such purposes, the award will be paid in full at the earliest such time as permissible under such arrangement).

***Awards Not Transferable***

A participant's rights and interests in and to payment of any award under the Incentive Plan may not be assigned, transferred, encumbered or pledged other than by will or the laws of descent and distribution; and are not subject to attachment, garnishment, execution or other creditor's processes.

***Amendment and Termination of the Incentive Plan***

The Incentive Plan may be amended, modified or terminated at any time by the Compensation Committee. Such amendment, modification, or termination of the Incentive Plan will not require the consent, ratification, or approval of any party, including any participant. The Compensation Committee may amend the performance goals as well as any award (including increasing, decreasing or eliminating any or all awards) prior to the payment thereof to the extent it deems appropriate for any reason, including compliance with applicable securities laws. Notwithstanding the foregoing, to the extent the Compensation Committee expressly designates such award as performance-based compensation under Section 162(m), the Compensation Committee will not have any authority to amend or modify the terms of such award in any manner that would impair its deductibility under Section 162(m).

**Federal Income Tax Consequences**

Generally, a participant will recognize ordinary income equal to the amount of the award received under the Incentive Plan in the year of receipt. That income will be subject to applicable income and employment tax withholding by the Company. If and to the extent that the Incentive Plan payments satisfy the requirements of Section 162(m) and otherwise satisfy the requirements for deductibility under federal income tax law, the Company may deduct the amounts paid to participants under the Incentive Plan.

**New Plan Benefits**

In August 2012, the Compensation Committee approved the participants and performance goals under the Incentive Plan for the performance period of July 1, 2012 through June 30, 2013, subject to stockholder approval of the Incentive Plan prior to the payment of any bonuses thereunder. The following table sets forth information with respect to the awards granted in August 2012 under the Incentive Plan.

| Name and Position | Dollar Value ($)(1) | Number of Units |
|---|---|---|
| John A. Kanas, Chairman, President and Chief Executive Officer | 1,530,000 | — |
| Leslie Lunak, Chief Financial Officer | — | — |
| John Bohlsen, Vice Chairman and Chief Lending Officer | 375,000 | — |
| Rajinder P. Singh, Chief Operating Officer | 375,000 | — |
| Randy R. Melby, Senior Executive Vice President, Chief Risk Officer of the Bank | — | — |
| Douglas J. Pauls, Former Chief Financial Officer | — | — |
| Executive Group | — | — |
| Non-Executive Director Group | — | — |
| Non-Executive Officer Employee Group | — | — |

(1) As described under "Compensation Discussion and Analysis—Executive Officer Compensation—Performance-Based Annual Bonuses," the dollar values set forth below reflect the target value of the annual cash bonus awards that may be paid in respect of the performance period described above.

Future participation under the Incentive Plan is in the discretion of the Compensation Committee. Moreover, future awards under the Incentive Plan for a given performance period are subject to the performance objectives and targets established by the Compensation Committee in accordance with the terms of the Incentive Plan. Accordingly, it is not possible to determine the actual amounts that will be paid to particular individuals in the future under the Incentive Plan.

***THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE BANKUNITED, INC. ANNUAL INCENTIVE PLAN.***

## BENEFICIAL OWNERSHIP OF THE COMPANY'S COMMON STOCK

The following table sets forth certain information with respect to the beneficial ownership of the Company's equity securities as of April 18, 2013: (1) each person or entity, based on information contained in Schedules 13G filed with the SEC, who owns of record or beneficially 5% or more of any class of the Company's voting securities; (2) each of the Company's executive officers and directors; and (3) all of the Company's directors and named executive officers as a group. Beneficial ownership is determined in accordance with the rules of SEC. To our knowledge, each stockholder will have sole voting and investment power with respect to the shares indicated as beneficially owned, unless otherwise indicated in a footnote to the following table. Unless otherwise indicated in a footnote, the business address of each person is our corporate address, c/o BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016.

In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of common stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of April 18, 2013. We did not, however, deem these shares outstanding for the purpose of computing the percentage ownership of any other person. Beneficial ownership representing less than 1% is denoted with an asterisk (*).

| | Shares of Common Stock Beneficially Owned | |
|---|---|---|
| **Name of beneficial owner** | **Number** | **%** |
| **Executive Officers and Directors:** | | |
| John A. Kanas(1) | 4,724,335 | 4.7 |
| John Bohlsen(2) | 1,916,696 | 1.9 |
| Douglas J. Pauls(3) | 283,663 | * |
| Rajinder P. Singh(4) | 1,231,504 | 1.2 |
| Randy R. Melby(5) | 52,600 | * |
| Leslie N. Lunak(6) | 46,500 | * |
| Chinh E. Chu(7) | 100 | — |
| Ambassador Sue M. Cobb(8) | 114,559 | * |
| Eugene F. DeMark(9) | 15,067 | * |
| Richard S. LeFrak(10) | 485,426 | * |
| Thomas M. O'Brien(11) | 6,000 | * |
| Wilbur L. Ross, Jr.(12) | 8,189,631 | 8.2 |
| Pierre Olivier Sarkozy(13) | 100 | * |
| Lance N. West(14) | 100 | * |
| All executive officers and directors as a group (14 persons)(15) | 16,951,722 | 16.9 |
| **Greater than 5% Stockholders (Other than Executive Officers and Directors):** | | |
| Investment funds affiliated with WL Ross & Co. LLC(15) | 8,189,631 | 8.2 |
| Investment funds affiliated with The Carlyle Group: | | |
| DBD Cayman Holdings, Ltd.(16) | 4,517,151 | 4.5 |
| TCG Holdings, L.L.C.(17) | 3,672,480 | 3.7 |
| Investment funds affiliated with Centerbridge Partners, L.P.(18) | 6,432,204 | 6.4 |
| Investment funds affiliated with The Blackstone Group(19) | 8,189,631 | 8.2 |
| T. Rowe Price Associates, Inc.(20) | 9,095,420 | 9.1 |

(1) Includes 119,095 restricted shares and 2,226, 258 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days

following April 18, 2013. Also includes 709,045 shares of common stock held by the Kanas 2011 Annuity Trust, which is a grantor retained annuity trust. Mr. Kanas is the trustee of the Kanas 2011 Annuity Trust. Mr. Kanas disclaims any beneficial ownership of these shares except to the extent of his pecuniary interests therein, if any. The address of the Kanas 2011 Annuity Trust is 32 Adelaide Ave., East Moriches, NY 11940.

(2) Includes 29,774 restricted shares and 1,171,1999 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days following April 18, 2013. Also includes 537,763 shares of common stock held by the Bohlsen 2010 Annuity Trust, which is a grantor retained annuity trust and 120,000 shares held by the Bohlsen Family Foundation. Mr. Bohlsen is the trustee of the Bohlsen 2010 Annuity Trust and president of the Bohlsen Family Foundation. Mr. Bohlsen disclaims any beneficial ownership of these shares except to the extent of his pecuniary interests therein, if any. The address of the Bohlsen 2010 Annuity Trust and the Bohlsen Family Foundation is 135 The Helm, East Islip, NY 11730.

(3) Includes 214,733 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days following April 18, 2013 and 30,000 shares held by the Pauls Family Foundation, for which Mr. Pauls serves as a co-trustee. Mr. Pauls disclaims beneficial ownership of these shares except to the extent of his pecuniary interests therein, if any. The address of the Pauls Family Foundation is 4055 Gnarled Oaks Lane, Johns Island, SC 29455.

(4) Includes 59,548 restricted shares and 1,022,782 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days following April 18, 2013.

(5) Includes 26,667 restricted shares and 14,600 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days following April 18, 2013.

(6) Includes 23,166 restricted shares and 12,000 shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within 60 days following April 18, 2013.

(7) Does not include shares of common stock held by investment funds affiliated with The Blackstone Group. Mr. Chu is a member of our Board and is a Senior Managing Director of The Blackstone Group. Mr. Chu disclaims beneficial ownership of the shares held by investment funds affiliated with The Blackstone Group.

(8) Includes 666 restricted shares. Also includes 39,745 shares of common stock held by the Cobb Family Twenty-Second Century Fund I , 17,034 shares of common stock held by the Cobb Family Foundation and 56,780 shares held by McCourt Griffin LP. Ambassador Cobb is a member of our Board and Ambassador Cobb is a voting director of the Cobb Family Foundation, a trustee of the Cobb Twenty-Second Century Fund and the general partner and a limited partner of McCourt Griffin LP. Ambassador Cobb disclaims beneficial ownership of such shares except to the extent of her pecuniary interests therein, if any. The address of each of the entities and persons identified in this note is c/o Cobb Partners Limited, P.O. Box 144200, Coral Gables, FL 33134.

(9) Includes 666 restricted shares.

(10) Includes 666 restricted shares. Also includes 369,631 shares of common stock held by LF Moby LLC and 114,795 shares of common stock held by the Richard S. and Karen LeFrak Charitable Foundation. LF Moby LLC is beneficially owned by Richard S. LeFrak

and his sons Harrison T. LeFrak and James T. LeFrak via various LLCs and trusts. Richard LeFrak is a member of our Board. Mr. LeFrak is the sole member of the Richard S. and Karen LeFrak Charitable Foundation. Mr. LeFrak disclaims beneficial ownership of the shares held by the Richard S. and Karen LeFrak Charitable Foundation except to the extent of his pecuniary interests therein, if any. The address of each of the entities and persons identified in this note is c/o The LeFrak Organization, 40 West 57th Street, New York, NY 10019. The address of the Richard S. and Karen LeFrak Charitable Foundation, Inc. is 1007 North Orange Street, Suite 210; Wilmington, DE 19801.

(11) Includes 1,000 restricted shares.

(12) Consists of 100 shares of common stock held by Mr. Ross, 7,425,314 shares of common stock held by WLR Recovery Fund IV, L.P., 29,821 shares of common stock held by WLR IV Parallel ESC, L.P., and 734,496 shares of common stock held by WLR/GS Master Co-Investment, L.P. (collectively, the "WL Ross Funds"). WLR Recovery Associates IV, LLC is the general partner of WLR Recovery Fund IV, L.P. Invesco WLR IV Recovery Associates, LLC is the general partner of WLR IV Parallel ESC, L.P. WLR Master Co-Investment GP, LLC, is the general partner of WLR/GS Master Co-Investment, L.P. Mr. Ross is a member of the investment committee of each WL Ross Fund's general partner, which has investment and voting control over the shares held or controlled by each of the WL Ross Funds. Mr. Ross disclaims beneficial ownership of such shares except for his pecuniary interest therein. Mr. Ross is a member of our Board and Mr. Ross is the Chairman and CEO of WL Ross & Co. LLC. The address of each of the entities and persons identified in this note is c/o WL Ross & Co. LLC, 1166 Avenue of the Americas, New York, NY 10036.

(13) Does not include shares of common stock held by investment funds affiliated with The Carlyle Group. Mr. Sarkozy is a member of our Board and is a Managing Director of The Carlyle Group. Mr. Sarkozy disclaims beneficial ownership of the shares held by investment funds affiliated with The Carlyle Group.

(14) Does not include shares of common stock held by investment funds affiliated with Centerbridge Partners, L.P. Mr. West is a member of our Board and Mr. West is a Senior Managing Director of Centerbridge Partners, L.P. Mr. West disclaims beneficial ownership of the shares held by investment funds affiliated with Centerbridge Partners, L.P.

(15) Includes shares beneficially owned by WL Ross & Co. LLC. See footnote 12 above.

(16) Consists of 3,672,481 shares of common stock held by Carlyle Financial Services BU, L.P., 816,296 shares of common stock held by Carlyle Strategic Partners II, L.P., and 28,374 shares of common stock held by CSP II Coinvestment, L.P. (collectively, the "DBD Cayman Holdings Shares"). DBD Cayman Holdings, Ltd., or "DBD Cayman Holdings," is the sole shareholder of DBD Cayman, Ltd., or "DBD Cayman," which is the general partner of TCG Holdings Cayman II, L.P., which is the general partner of TC Group Cayman Investment Holdings, L.P., or "TCGIH." TCGIH is the sole shareholder of Carlyle Financial Services, Ltd., which is the general partner of TCG Financial Services, L.P., which is the general partner of Carlyle Financial Services BU, L.P. TCGIH is also the managing member of TC Group CSP II, LLC, which is the general partner of CSP II General Partner, LP, which is the general partner of Carlyle Strategic Partners II, L.P. and CSP II Coinvestment, L.P. DBD Cayman Holdings is controlled by its ordinary members, William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein and all action relating to the investment and disposition of the DBD Cayman Holdings Shares requires their approval. William E. Conway, Jr., Daniel A. D'Aniello and

David M. Rubenstein each disclaim beneficial ownership of the DBD Cayman Holdings Shares. The address of each of the entities and persons identified in this note is c/o The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, DC 20004.

(17) Consists of 3,456,473 shares of common stock held by Carlyle Partners V, L.P., 138,818 shares of common stock held by CP V Coinvestment A, L.P., 7,647 shares of common stock held by CP V Coinvestment B, L.P., and 69,542 shares of common stock held of record by Carlyle Partners V-A, L.P., referred to as the "TCG Holdings Shares." TCG Holdings, L.L.C. is the managing member of TC Group, L.L.C., which is the sole managing member of TC Group V Managing GP, L.L.C., which is the sole general partner of TC Group V, L.P., which is the sole general partner of Carlyle Partners V, L.P, Carlyle Partners V-A, L.P., CP V Coinvestment A, L.P and CP V Coinvestment B, L.P. TCG Holdings, L.L.C. is managed by a three person managing board, consisting of William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein, and all board action relating to the voting or disposition of the TCG Holdings Shares requires approval of a majority of the board. William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein each disclaim beneficial ownership of the TCG Holdings Shares. The address of each of the entities and persons identified in this note is c/o The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, DC 20004.

(18) Consists of 5,485,440 shares of common stock held by Centerbridge Capital Partners, L.P., 202,628 shares of common stock held by Centerbridge Capital Partners Strategic, L.P., 9,028 shares of common stock Centerbridge Capital Partners SBS, L.P., 349,176 shares of common stock held by CB BU Investors, LLC., 202,154 shares of common stock held by CB BU Investors II, LLC and 183,778 shares of common stock held by CB BU Investors III, LLC (collectively, the "Centerbridge Funds"). Centerbridge Associates, L.P. is the general partner of each of such entities. Mr. West is a member of Centerbridge Associates, L.P., which has investment and voting control over the shares held or controlled by each of the Centerbridge Funds. Mr. West disclaims beneficial ownership of such shares. Mr. West is a member of our Board and Mr. West is a Senior Managing Director of Centerbridge Partners, L.P. The address of each of the entities and persons identified in this note is c/o Centerbridge Partners, L.P., 375 Park Avenue, 12th Floor, New York, NY 10152.

(19) Consists of 6,225,675 shares of common stock held by Blackstone Capital Partners V L.P., 1,946,758 shares of common stock held by Blackstone Capital Partners V-AC, L.P., 10,877 shares of common stock held by Blackstone Family Investment Partnership V, L.P. and 6,321 shares of common stock held by Blackstone Participation Partnership V, L.P. Blackstone Management Associates V L.L.C. is the general partner of Blackstone Capital Partners V L.P. and Blackstone Capital Partners V-AC L.P. BCP V Side-by-Side GP L.L.C. is the general partner of Blackstone Family Investment Partnership V, L.P. and Blackstone Participation Partnership V, L.P. Mr. Chu is a member of Blackstone Management Associates V L.L.C., which has investment and voting control over the shares held or controlled by Blackstone Capital Partners V L.P. and Blackstone Capital Partners V-AC L.P., and Mr. Chu is a member of BCP V Side-by-Side GP L.L.C., which has investment and voting control over the shares held or controlled by Blackstone Family Investment Partnership V, L.P. and Blackstone Participation Partnership V, L.P. Mr. Chu disclaims beneficial ownership of such shares. Mr. Chu is a member of our Board and Mr. Chu is a Senior Managing Director of The Blackstone Group. The address of each of the entities and persons identified in this note is c/o The Blackstone Group, 345 Park Avenue, New York, NY 10154.

(20) Based upon the Schedule 13G dated as of December 31, 2012 filed with the SEC, T. Rowe Price Associates, Inc. is deemed to have beneficial ownership of 9,095,420 shares of common stock, of which such entity held sole investment power as to 9,095,420 shares and sole voting power as to 1,740,200 shares. The address of T. Rowe Price Associates, Inc. is 100 E. Pratt Street, Baltimore, Maryland 21202.

## CERTAIN RELATED PARTY RELATIONSHIPS

### Review and Approval of Transactions with Related Persons

Transactions by us with related parties are subject to a formal written policy, as well as regulatory requirements and restrictions. These requirements and restrictions include Sections 23A and 23B of the Federal Reserve Act (which govern certain transactions by the Bank with its affiliates) and the Federal Reserve's Regulation O (which governs certain loans by the Bank to its executive officers, directors and principal stockholders). We have adopted policies to comply with these regulatory requirements and restrictions. In addition, certain of our investors entered into Rebuttal of Control Agreements with the Office of Thrift Supervision (the "OTS") in connection with their initial investments in us. On July 21, 2011, the OTS became part of the Office of the Comptroller of the Currency (the "OCC"). Pursuant to 12 USC § 5414, the Rebuttal of Control Agreements will continue in effect according to their terms and are enforceable by the OCC. The Rebuttal of Control Agreements limit the ability of these investors to conduct transactions with us or our affiliates. We have adopted a policy to assist these investors in complying with this aspect of their respective Rebuttal of Control Agreements.

Our Board of Directors has also adopted a written policy governing the approval of related party transactions that complies with all applicable requirements of the SEC and the NYSE concerning related party transactions. Related party transactions are transactions in which our Company is a participant, the amount involved exceeds $120,000 and a related party has or will have a direct or indirect material interest. Related parties of our Company include directors (including nominees for election as directors), executive officers, greater than 5% stockholders of our Company and the immediate family members of these persons. The General Counsel, in consultation with management and outside counsel, as appropriate, will review potential related party transactions to determine if they are subject to our Related Party Transactions Policy. If so, the transaction will be referred for approval or ratification to the Nominating and Corporate Governance Committee. In determining whether to approve a related party transaction, the Nominating and Corporate Governance Committee will consider, among other factors, the fairness of the proposed transaction; the direct or indirect nature of the director's, executive officer's or related party's interest in the transaction; the appearance of an improper conflict of interests for any director or executive officer of the Company, taking into account the size of the transaction and the financial position of the director, executive officer or related party; whether the transaction would impair an outside director's independence; the acceptability of the transaction to the Company's regulators; and the potential violations of other Company policies. Our Related Party Transactions Policy is available on our website at http://ir.bankunited.com, as Annex B to our Corporate Governance Guidelines.

### Blackstone Exchange Agreement and Secondary Offering

#### *Blackstone Exchange Agreement*

On February 29, 2012, BankUnited, Inc. entered into an exchange agreement (the "Exchange Agreement") with funds affiliated with The Blackstone Group (collectively, the "Blackstone Funds") pursuant to which the Blackstone Funds exchanged (the "Blackstone Exchange") 5,415,794 shares of common stock, par value $0.01 per share, of the Company held by the Blackstone Funds for 5,415,794 shares of a newly created series of preferred stock, par value $0.01 per share, of the Company designated "Series A Nonvoting Convertible Preferred Stock" (the "Series A Preferred Stock"). Other than the Blackstone Funds, no stockholder of the Company was issued shares of Series A Preferred Stock.

#### *Secondary Offering*

In March 2013, certain stockholders of the Company, including the Blackstone Funds, sold 22,540,000 shares of common stock in a registered secondary offering (the "Secondary Offering"). As a result of the Secondary Offering, and in accordance with the terms of the Series A Preferred Stock, all shares of Series A Preferred Stock held by the Blackstone Funds were automatically converted into an equal number of shares of common stock. All of the shares of common stock into which the Series A Preferred Stock were automatically converted were sold in the Secondary Offering. As of April 18, 2013, the Blackstone Funds collectively hold approximately 8.2% of the Company's outstanding common stock, and there are no shares of Series A Preferred Stock outstanding.

**Registration Rights Agreement**

In connection with our IPO, BankUnited, Inc., the Sponsors, LF Moby LLC (which is beneficially owned by Mr. LeFrak and his sons), Mr. DeMark, Ambassador Cobb, Mr. Kanas, Mr. Bohlsen, Mr. Pauls, Mr. Singh and certain former members of BU Financial Holdings LLC (our parent Company prior to the initial public offering) entered into a registration rights agreement, dated February 2, 2011 (the "Registration Rights Agreement"). In connection with the Blackstone Exchange, on February 29, 2012, the Company and certain of the stockholders party thereto entered into an amendment to the Registration Rights Agreement in order to provide the Blackstone Funds with substantially the same rights under the Registration Rights Agreement, as amended, with respect to the Series A Preferred Stock as the Blackstone Funds then had with respect to the common stock (other than the right to list the common stock on a U.S. securities exchange).

Pursuant to the Registration Rights Agreement, Blackstone, Carlyle, Centerbridge and WL Ross have demand registration rights. The registration rights provisions require us to register the shares of common stock beneficially owned by the demanding Sponsor with the SEC for sale by it to the public, provided that the value of the registrable securities proposed to be sold by such demanding Sponsor is at least the lesser of $50.0 million or the value of all registrable securities held by such Sponsor. The registration rights provisions also provide that we may be required under certain circumstances to file a shelf registration statement for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act. We may postpone the filing of such a registration statement or suspend the effectiveness of any registration statement for a reasonable "blackout period" not in excess of 90 days if our Board determines that such registration or offering could materially interfere with a bona fide business or financing transaction of the Company or is reasonably likely to require premature disclosure of material, non-public information, the premature disclosure of which the Board reasonably determines in the exercise of its good faith judgment would not be in the best interests of the Company; provided that we shall not postpone the filing of a registration statement or suspend the effectiveness of any registration statement for more than 90 days in the aggregate in any 360-day period.

In addition, pursuant to the registration rights provisions, in the event that we are registering additional shares of common stock for sale to the public, whether on our own behalf (except in connection with a registration on Form S-4 or Form S-8 or any successor or similar form or in a registration of securities solely relating to an offering and sale to employees pursuant to any employee stock plan or other employee benefit plan arrangement) or through a demand registration on behalf of a Sponsor (as described above), we are required to give notice of such registration to all parties to the Registration Rights Agreement that hold registrable securities (which includes members of our management that hold shares of our common stock) of the intention to effect such a registration. Such notified persons have piggyback registration rights providing them the right to have us include the shares of common stock owned by them in any such registration if we have received written requests for inclusion therein within prescribed time limits, subject to other provisions under the Registration Rights Agreement.

**Director Nomination Agreement**

In January 2011, we entered into the Director Nomination Agreement with John A. Kanas and certain funds affiliated with our Sponsors. The Director Nomination Agreement provides for the rights of our Sponsors and Mr. Kanas to nominate individuals to our Board of Directors. Pursuant to the agreement, the Sponsors and Mr. Kanas have the right to nominate individuals to our Board of Directors at each meeting of stockholders where directors are to be elected and, subject to limited exceptions, we will include in the slate of nominees recommended to our stockholders for election as directors the number of individuals designated by the Sponsors and Mr. Kanas as follows:

- so long as Blackstone owns more than 40% of the common stock owned by Blackstone immediately prior to the consummation of the IPO, one individual nominated by Blackstone;
- so long as Carlyle owns more than 40% of the common stock owned by Carlyle immediately prior to the consummation of the IPO, one individual nominated by Carlyle;
- so long as WL Ross owns more than 40% of the common stock owned by WL Ross immediately prior to the consummation of the IPO, one individual nominated by WL Ross;
- so long as Centerbridge owns more than 40% of the common stock owned by Centerbridge immediately prior to the consummation of the IPO, one individual nominated by Centerbridge; and
- so long as Mr. Kanas is our CEO, two individuals (one of which will be Mr. Kanas) nominated by Mr. Kanas.

In addition, each of Blackstone, Carlyle, WL Ross and Centerbridge has the right to appoint one non-voting observer to attend all meetings of our Board until such time as such Sponsor ceases to own 5% of our outstanding common stock.

In connection with the Blackstone Exchange, on February 29, 2012, the Company and the shareholders party thereto amended and restated the Director Nomination Agreement in order to provide for the recognition of the Series A Preferred Stock held by the Blackstone Funds with respect to certain ownership thresholds for the existence of the rights provided by such agreement. As discussed under "Blackstone Exchange Agreement and Secondary Offering," there are no longer any shares of Series A Preferred Stock outstanding.

## REQUIREMENTS, INCLUDING DEADLINES, FOR SUBMISSION OF PROXY PROPOSALS, NOMINATION OF DIRECTORS AND OTHER BUSINESS OF STOCKHOLDERS

In order to submit stockholder proposals for the 2014 annual meeting of stockholders for inclusion in the Company's Proxy Statement pursuant to SEC Rule 14a-8, materials must be received by the Corporate Secretary at the Company's principal office in Miami Lakes, Florida, no later than December 26, 2013.

The proposals must comply with all of the requirements of SEC Rule 14a-8. Proposals should be addressed to: Corporate Secretary, BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016. As the rules of the SEC make clear, simply submitting a proposal does not guarantee its inclusion.

The Company's Amended and Restated By-Laws also establish an advance notice procedure with regard to director nominations and stockholder proposals that are not submitted for inclusion in the Proxy Statement, but that a stockholder instead wishes to present directly at an annual meeting. To be properly brought before the 2014 annual meeting of stockholders, a notice of the nomination or the matter the stockholder wishes to present at the meeting must be delivered to the Corporate Secretary at the Company's principal office in Miami Lakes, Florida (see above), not less than 90 or more than 120 days prior to the first anniversary of the date of this year's Annual Meeting. As a result, any notice given by or on behalf of a stockholder pursuant to these provisions of the Company's Amended and Restated By-Laws (and not pursuant to Exchange Act Rule 14a-8) must be received no earlier than January 23, 2014, and no later than February 22, 2014. All director nominations and stockholder proposals must comply with the requirements of the Company's By-Laws, a copy of which may be obtained at no cost from the Corporate Secretary of the Company.

Other than the three proposals described in this Proxy Statement, the Company does not expect any matters to be presented for a vote at the Annual Meeting. If you grant a proxy, the persons named as proxy holders on the proxy card will have the discretion to vote your shares on any additional matters properly presented for a vote at the Annual Meeting. If for any unforeseen reason, any one or more of the Company's nominees is not available as a candidate for director, the persons named as proxy holders will vote your proxy for such other candidate or candidates as may be nominated by the Board of Directors.

The chairman of the meeting may refuse to allow the transaction of any business not presented beforehand, or to acknowledge the nomination of any person not made in compliance with the foregoing procedures.

**APPENDIX A**
**BANKUNITED, INC.**
**ANNUAL INCENTIVE PLAN**

**1. Purpose.**

The purposes of the BankUnited, Inc. Annual Incentive Plan are to reinforce corporate, organizational and business-development goals, to promote the achievement of year-to-year financial and other business objectives and to reward the performance of selected executive officers in fulfilling their professional responsibilities. The Plan is consistent with the objectives of the BankUnited, Inc. Policy on Incentive Compensation adopted by the Board. The Plan is not intended to be (and shall not be construed and administered as) an employee benefit plan within the meaning of ERISA.

**2. Definitions.**

The following terms, as used herein, shall have the following meanings:

(a) "*Affiliate*" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. An entity shall be deemed an Affiliate of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

(b) "*Award*" means an incentive compensation award, granted pursuant to the Plan, that is contingent upon the attainment of one or more Performance Goals with respect to a Performance Period.

(c) "*Base Salary*" means a Participant's annual base salary as in effect on the date on which the applicable Performance Goals are established with respect to a Performance Period.

(d) "*Board*" means the Board of Directors of the Company.

(e) "*Change in Control*" shall mean the first to occur of the following events:

(1) any Person is or becomes the Beneficial Owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company (not including the securities beneficially owned by such Person or any securities acquired directly from the Company or any Affiliate thereof) representing 50% or more of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (A) of paragraph (3) below; or

(2) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date hereof, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved or recommended by a vote of at least two-thirds (⅔) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended; or

(3) there is consummated a merger, amalgamation or consolidation of the Company or any Subsidiary thereof with any other corporation, other than (A) a merger, amalgamation or consolidation which results in the voting securities of the Company outstanding immediately prior to such merger, amalgamation or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the securities of the Company or such

surviving entity or any parent thereof outstanding immediately after such merger, amalgamation or consolidation or (B) a merger, amalgamation or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company or its Affiliates) representing 50% or more of the combined voting power of the Company's then outstanding securities; or

(4) the shareholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than (A) a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Company following the completion of such transaction in substantially the same proportions as their ownership of the Company immediately prior to such sale or (B) a sale or disposition of all or substantially all of the Company's assets immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or, if such entity is a subsidiary, the ultimate parent thereof.

For each Award that constitutes deferred compensation under Section 409A of the Code, a Change in Control shall be deemed to have occurred under the Plan with respect to such Award, resulting in the payment of such Award, only if a change in the ownership or effective control of the Company or a change in ownership of a substantial portion of the assets of the Company shall also be deemed to have occurred within the meaning of Section 409A of the Code.

Notwithstanding the foregoing, a Change in Control shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the holders of shares of Common Stock immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

(f) "*Code*" means the Internal Revenue Code of 1986, as amended.

(g) "*Committee*" means the Compensation Committee of the Board, which shall be comprised solely of two or more outside directors meeting the requirements of Section 162(m) of the Code to the extent the Plan is intended to satisfy the requirements of Section 162(m) of the Code.

(h) "*Company*" means BankUnited, Inc., a Delaware corporation.

(i) "*Covered Award*" means an Award (i) that will be paid to a Covered Employee, (ii) that the Committee expressly designates as performance-based compensation and intends to be fully deductible under Section 162(m) of the Code, and (iii) that will be paid following the shareholder approval required by Section 162(m)(4)(C)(ii) of the Code.

(j) "*Covered Employee*" means an individual who is a "covered employee" within the meaning of Section 162(m)(3) of the Code.

(k) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(l) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(m) "*Participant*" means an employee of the Company or any Subsidiary who is, pursuant to Section 4 of the Plan, selected to participate herein.

(n) "*Performance Goals*" means performance goals based on one or more of the following criteria: (i) return on assets, return on tangible assets, cash return on assets, or cash return on tangible assets; (ii) return on equity, return on tangible equity, cash return on equity, or cash return on tangible equity; (iii) levels of or changes in levels of net interest income, net interest margin, efficiency ratio, cash efficiency ratio, provision, provision rate, net charge-off, net charge-off ratio, fee income, total revenue, pre-tax income, or net income; (iv) levels or trends in specified financial statement line items or components thereof (may include cost of deposits, growth of deposits, cost of funds, loan growth, loan yields, or interest earning asset yields); (v) levels of or trends in non-performing assets; (vi) earnings per share (basic or diluted), or core earnings per share and growth (vii) book value per share, tangible book value per share or growth thereof; (viii) absolute or relative metrics of stock performance, dividends, and total capital returned to shareholders; (ix) achieving or maintaining specified levels of GAAP and/or regulatory capital (x) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, regulatory matters, information technology, and goals relating to acquisitions, divestitures, joint ventures and similar transactions, and budget comparisons; (xi) personal professional objectives, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions, the development of long term business goals, formation of joint ventures, and the completion of other corporate transactions; and (xii) any combination of, or a specified increase in, any of the foregoing, and any of the foregoing goals may be measured at enterprise level or at business line or geographic level. Performance Goals not specified herein may be used to the extent that an Award is not intended to comply with Section 162(m) of the Code. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company or Affiliate thereof, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no payment shall be made (or no vesting shall occur), levels of performance at which specified payments shall be made (or specified vesting shall occur), and a maximum level of performance above which no additional payment shall be made (or at which full vesting shall occur). Each of the foregoing Performance Goals shall be determined in accordance with generally accepted accounting principles, and the Committee shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Affiliate thereof or the financial statements of the Company or any Affiliate thereof, in response to changes in applicable laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles, provided that the Committee's ability to make equitable adjustments to the Performance Goals applicable to any Covered Awards shall be governed by Section 8(d).

(o) "*Performance Period*" means, unless the Committee determines otherwise, a period of no longer than 12 months.

(p) "*Person*" shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company or any Subsidiary thereof, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary thereof, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, or (iv) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company.

(q) "*Plan*" means the BankUnited, Inc. Annual Incentive Plan, as amended from time to time.

(r) "*Subsidiary*" means, with respect to any Person, as of any date of determination, any other Person as to which such first Person owns or otherwise controls, directly or indirectly, more than 50% of the voting shares or other similar interests or a sole general partner interest or managing member or similar interest of such other Person. An entity shall be deemed a Subsidiary of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

**3. Administration.**

(a) *Administrator.* At the discretion of the Board, the Plan shall be administered either (i) by the Board or (ii) by the Committee. In the event the Board is the administrator of the Plan, references herein to the Committee shall be deemed to include the Board. The Plan shall be administered in accordance with the requirements of Section 162(m) of the Code to the extent necessary and desirable to maintain qualification of Covered Awards under the Plan under Section 162(m) of the Code and, to the extent applicable, Rule 16b-3 under the Exchange.

(b) *Powers and Authorities.* The Committee shall have the authority in its sole discretion, subject to and not inconsistent with the express provisions of the Plan, to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including, without limitation, the authority to: (i) grant Awards; (ii) determine the persons to whom and the time or times at which Awards shall be granted; (iii) determine all of the terms and conditions (including but not limited to the Performance Goals) relating to any Award; (iv) determine whether, to what extent, and under what circumstances an Award may be settled, cancelled or forfeited; (v) make adjustments in the Performance Goals; (vi) construe and interpret the Plan and any Award; (vii) prescribe, amend and rescind rules and regulations relating to the Plan; and (viii) make all other determinations deemed necessary or advisable for the administration of the Plan.

(c) *Binding Effect.* All decisions made by the Committee pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, including the Company and the Participants. No member of the Board or the Committee, nor any officer or employee of the Company or any Subsidiary thereof acting on behalf of the Board or the Committee, shall be personally liable for any action, omission, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Committee and each and any officer or employee of the Company and of any Subsidiary thereof acting on their behalf shall, to the maximum extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, omission, determination or interpretation.

**4. Eligibility.**

Awards may be granted to employees of the Company and its Subsidiaries. In determining the persons to whom Awards shall be granted and the Performance Goals relating to each Award, the Committee shall take into account such factors as the Committee shall deem relevant in connection with accomplishing the purposes of the Plan.

**5. Terms of Awards.**

(a) *Determination of Performance Goals; Notification.* With respect to each Performance Period, the Committee shall specify the Performance Goals applicable to each Award no later than 90 days following the commencement of such Performance Period. At such time the Committee shall also, if applicable, specify the threshold, target and maximum levels of performance applicable to the Performance Goals. Performance Goals need not be the same for each Participant. Awards for any Performance Period may be expressed as a dollar amount or as a percentage of the Participant's Base

Salary. Participants shall be notified of their Awards with respect to each Performance Period. Such notification shall include the Performance Goals with respect to the Award, the weight to be given to each such Performance Goal and, if applicable, the threshold, target and maximum levels of performance applicable to such Performance Goals.

(b) *Determination of Achievement of Performance Goals.* Following the end of the Performance Period and prior to the payment of an amount under any Award, and in any event not later than 45 days following the end of such Performance Period, the Committee shall determine whether, and to what extent, the applicable Performance Goals have been satisfied. Notwithstanding the foregoing and the terms of Section 2(n), the Committee may, in its sole discretion, reduce an amount of an Award otherwise determined pursuant to the Plan.

(c) *Time and Form of Payment.* All payments in respect of Awards granted under the Plan shall be made in cash no later than 60 days following the last day of the Performance Period to which an Award relates. Notwithstanding the foregoing, payment of Awards intended to comply with the "short-term deferral" exemption from Section 409A of the Code shall be made no later than the $15^{th}$ day of the third month following the later to occur of (i) the end of the Company's fiscal year in which the relevant Performance Period ended and (ii) the end of the calendar year in which such Performance Period ended.

(d) *Deferral of Payment.* The Committee shall have the authority to establish such procedures and programs that it deems appropriate to provide Participants with the ability to defer receipt of cash under Awards. If such a deferral procedure or program is adopted, the terms of such procedure or program shall be set forth in writing prior to its adoption and shall comply with Section 409A of the Code.

**6. Change in Control.**

In the event of a Change in Control, (i) any Award payable in accordance with Section 5(b) in respect of a completed Performance Period, but unpaid, shall be paid to the Participant upon such Change in Control and (ii) each Participant with respect to each Performance Period then in effect shall be paid, upon such Change in Control, an amount in cash equal to (A) such Participant's Award with respect to the entire Performance Period, assuming that the greater of (x) target levels of performance for the entire Performance Period or (y) actual levels of performance through the end of the calendar month immediately preceding the calendar month in which the Change in Control occurs and annualized for purposes of this calculation, had been met, multiplied by (B) a fraction, (x) the numerator of which is the number of days elapsed in such Performance Period as of the date on which the Change in Control occurs and (y) the denominator of which is the total number of days in such Performance Period.

**7. Termination of Employment.**

In the event that a Participant's employment with the Company and its Subsidiaries is terminated during a Performance Period, such Participant shall not be entitled to any portion of such Participant's Award with respect to such Performance Period. Any Award payable in accordance with Section 5(b) in respect of a completed Performance Period, but unpaid, shall be paid to such Participant in accordance with Section 5(c) or, to the extent payment of the Award has been deferred pursuant to Section 5(d), the Award shall be paid in full at the earliest such time as is provided under such deferral arrangement.

## 8. Special Rules for Covered Awards.

Notwithstanding any other provision of this Plan to the contrary, the following provisions shall control with respect to any Covered Award:

(a) *Pre-established Incentive Opportunity and Performance Goals.* The Performance Goals upon which a Covered Award is based or subject shall be established by the Committee in writing not later than 90 days after the commencement of the Performance Period, provided that the outcome is substantially uncertain at the time the Committee actually establishes such factors and the objectives upon which they are based (or at such earlier time as may be required or such later time as may be permissible under Section 162(m) of the Code). The Committee shall not make Covered Awards based on Performance Goals not specifically provided under this Plan if it determines that use of such Performance Goals would cause a Covered Award to not be deductible under Section 162(m) of the Code.

(b) *Certification of Performance Goals.* Prior to the payment of a Covered Award, the Committee shall determine and certify in writing whether and to what extent the Performance Goals referred to in Section 8(a) have been satisfied for an applicable Performance Period.

(c) *Discretionary Reduction of Covered Award.* Notwithstanding anything in this Plan to the contrary, the Committee may, in its sole discretion, reduce a Covered Award otherwise determined pursuant to the Plan.

(d) *Limited Adjustments of Selected Performance Goals.* In the event of (i) any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, extraordinary dividend or divestiture (including a spin-off) or any other change in corporate structure or shares; (ii) any purchase, acquisition, sale, disposition or write-down of a significant amount of assets or a significant business; (iii) any change in accounting principles or practices, tax laws or other such laws or provisions affecting reported results; (iv) any uninsured catastrophic losses or extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 or in management's discussion and analysis of financial performance appearing in the Company's annual report to stockholders for the applicable year; or (v) any other similar change, in each case with respect to the Company or any other entity whose performance is relevant to the achievement of any Performance Goal included in a Covered Award, the Committee (or, if the Company is not the surviving corporation in any such transaction, a committee of the board of directors of the surviving corporation consisting solely of two or more "outside directors" within the meaning of Section 162(m)(4)(C)(i) of the Code) may, without the consent of any affected Participant, amend or modify the terms of any outstanding Covered Award that includes any Performance Goals based in whole or in part on the financial performance of the Company (or any Subsidiary or division thereof) or such other entity so as equitably to reflect such event, such that the criteria for evaluating such financial performance of the Company or such other entity (and the achievement of the corresponding Performance Goals) shall be substantially the same (as determined by the Committee or such committee of the board of directors of the surviving corporation) following such event as prior to such event; provided, however, that any such change to any outstanding Covered Award pursuant to this Section 8(d) must be made in such a manner that it is independently determinable by a hypothetical third party having knowledge of the relevant facts, and the Committee shall take no action pursuant to this Section 8(d) that would constitute an impermissible exercise of discretion within the meaning of Section 162(m) of the Code, or would otherwise cause the Covered Award to not be deductible under Section 162(m) of the Code.

(e) *Maximum Amount.* The maximum amount of any Covered Award to any Covered Employee with respect to a Performance Period, determined as of the time the Covered Award is paid, shall not exceed $5,000,000.

**9. General Provisions.**

(a) *Compliance With Legal Requirements.* The Plan and the granting and payment of Awards, and the other obligations of the Company under the Plan and any Award, shall be subject to all applicable Federal and state laws, rules and regulations (including 12 C.F.R. part 359) and to required approvals by any regulatory or governmental agency.

(b) *Nontransferability.* A Participant's rights and interests in and to payment of any Award under the Plan may not be assigned, transferred, encumbered or pledged other than by will or the laws of descent and distribution; and are not subject to attachment, garnishment, execution or other creditor's processes.

(c) *Participant Rights.* No employee of the Company or any Subsidiary or any other person shall have any claim to be granted any Award under the Plan. There is no obligation for uniformity of treatment among Participants. Nothing in the Plan or in any Award granted pursuant hereto shall constitute a contract of employment or confer upon any Participant the right to continue in the employ of the Company in any position or at any level of compensation, to be entitled to any remuneration or benefits not set forth in the Plan or under such Award, or to interfere with or limit in any way the right of the Company to terminate such Participant's employment. The granting of one Award to an eligible employee shall not entitle such individual to any additional grants of Awards thereafter.

(d) *Withholding Taxes.* The Company or its Subsidiary shall have the right to withhold the amount of any taxes that the Company or such subsidiary may be required to withhold before delivery of payment of an Award to the Participant or other person entitled to such payment, or to make such other arrangements for the withholding of taxes that the Company deems satisfactory.

(e) *Compliance with Section 162(m) of the Code.* To the extent any provision of the Plan or an Award or any action of the Committee or the Company as it relates to a Covered Award may result in the application of Section 162(m)(1) of the Code to compensation payable to a Covered Employee, such provision or action shall be deemed null and void to the extent permitted by law and deemed advisable to the Committee.

(f) *Section 409A.* The Plan is intended to comply with the requirements of Section 409A of the Code, or an exception or exemption therefrom, and accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered in accordance with such intention. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A of the Code shall not be treated as deferred compensation unless applicable law requires otherwise. All payments to be made upon a termination of employment under this Agreement shall, to the extent required to avoid an accelerated or additional tax under Section 409A of the Code, be made only upon a "separation from service" within the meaning under Section 409A of the Code. In addition, to the extent required in order to avoid an accelerated or additional tax under Section 409A of the Code, amounts that would otherwise be payable pursuant to this Agreement during the six-month period immediately following Executive's separation from service shall instead be paid on the first business day after the date that is six months following Executive's separation from service (or, if earlier, Executive's death).

(g) *Amendment and Termination of the Plan.* The Plan may at any time be amended, modified, or terminated, as the Committee in its discretion determines. Such amendment, modification, or termination of the Plan shall not require the consent, ratification, or approval of any party, including any Participant. The Committee may amend the Performance Goals as well as any Award (including increasing, decreasing or eliminating any or all Awards) prior to the payment thereof to the extent it deems appropriate for any reason, including compliance with applicable securities laws. Notwithstanding the foregoing, to the extent the Committee has expressly designated an Award as a Covered Award, the

Committee shall not have any authority to amend or modify the terms of any Covered Award in any manner that would impair its deductibility under Section 162(m) of the Code.

(h) *Unfunded Status of Awards.* A Participant's only interest under the Plan shall be the right to receive a payment of cash pursuant to the terms of an applicable Award and the Plan. The Plan is intended to constitute an "unfunded" plan for incentive compensation, and no portion of the amount payable to a Participant under this Plan shall be held by the Company or any Subsidiary in trust or escrow or any other form of asset segregation. With respect to any payments not yet made to a Participant pursuant to an Award, to the extent that a Participant acquires a right to receive a payment of cash under the Plan, nothing contained in the Plan or any Award shall give any such Participant any rights that are greater than those of a general creditor of the Company, and no trust in favor of any Participant shall be implied.

(i) *Governing Law.* The Plan and all determinations made and actions taken pursuant hereto shall be governed by the laws of the State of New York without giving effect to the conflict of laws principles thereof.

(j) *Effective Date.* The Plan shall take effect as of the date of its approval by the shareholders of the company.

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

# FORM 10-K

## ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2012**
**Commission file number: 001-35039**

# BankUnited, Inc.
(Exact name of registrant as specified in its charter)

| | |
|---|---|
| **Delaware**<br>(State or other jurisdiction of incorporation or organization) | **27-0162450**<br>(I.R.S. Employer Identification No.) |
| **14817 Oak Lane, Miami Lakes, FL**<br>(Address of principal executive offices) | **33016**<br>(Zip Code) |

**(305) 569-2000**
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock, $0.01 par value | New York Stock Exchange |

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a "smaller reporting company."

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2012 was $938,697,163.

The number of outstanding shares of the registrant's common stock, $0.01 par value, as of February 20, 2013, was 95,038,213.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the registrant's definitive proxy statement for the 2013 annual meeting of stockholders are incorporated by reference in this Annual Report on Form 10-K in response to Part III. Items 10, 11, 12, 13 and 14.

**BANKUNITED, INC.**
**Form 10-K**
**For the Year Ended December 31, 2012**

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## Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipate," "expect," "intend," "plan," "believe," "seek," "estimate," "project," "predict," "will" and similar expressions identify forward-looking statements.

These forward-looking statements are based on management's current views with respect to future results, and are subject to risks and uncertainties. Forward-looking statements are based on beliefs and assumptions made by management using currently available information, such as market and industry materials, historical performance and current financial trends. These statements are only predictions and are not guarantees of future performance. The inclusion of forward-looking statements should not be regarded as a representation by the Company that the future plans, estimates or expectations contemplated by a forward-looking statement will be achieved. Forward-looking statements are subject to various risks and uncertainties and assumptions, including those relating to the Company's operations, financial results, financial condition, business prospects, growth strategy and liquidity. If one or more of these or other risks or uncertainties materialize, or if the Company's underlying assumptions prove to be incorrect, the Company's actual results could differ materially from those contemplated by a forward looking statement. These risks and uncertainties include, without limitation:

- failure to comply with the terms of the Company's Loss Sharing Agreements (as defined below) with the FDIC (as defined below);
- geographic concentration of the Company's markets in the coastal regions of Florida which makes the Company's business highly susceptible to local economic conditions and natural disasters;
- court backlogs and an increase in the amount of legislative action that might restrict or delay the Company's ability to foreclose on residential mortgages and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements;
- ongoing correction in residential and commercial real estate prices and reduced levels of residential and commercial real estate sales;
- credit risk;
- interest rate risk;
- loss of executive officers or key personnel; and
- inadequate allowance for credit losses.

Additional factors are set forth in the Company's filings with the Securities and Exchange Commission, or the SEC, including this Annual Report on Form 10-K.

Forward-looking statements speak only as of the date on which they are made. The Company expressly disclaims any obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

As used herein, the terms the "Company," "we," "us" and "our" refer to BankUnited, Inc. and its subsidiaries unless the context otherwise requires.

## PART I

### Item 1. Business

#### Summary

BankUnited, Inc. (“BankUnited, Inc.” or “BKU”) is a national bank holding company with three direct wholly-owned subsidiaries: BankUnited, National Association (“BankUnited” or the “Bank”), Herald National Bank (“Herald”), and BankUnited Investment Services, Inc. (“BUIS”), collectively, the Company. BankUnited, a national banking association headquartered in Miami Lakes, Florida with $11.7 billion of assets, provides a full range of banking services to individual and corporate customers through 98 branches located in 15 Florida counties. Herald is a national banking association with 2 branch locations in the New York metropolitan area. BUIS is a Florida insurance agency providing wealth management and financial planning services. The operations of BUIS have not historically been significant to the results of operations or financial position of the Company. We intend to discontinue the operations of BUIS in 2013. The Company has built, through organic growth and acquisitions, a premier regional bank with a low-risk, long-term value-oriented business model focused on small and medium sized businesses and consumers. We endeavor to provide personalized customer service and offer a full range of traditional banking products and services to both our commercial and retail customers.

BankUnited, Inc. was organized by a management team led by our Chairman, President and Chief Executive Officer, John A. Kanas, on April 28, 2009 and was initially capitalized with $945.0 million by a group of investors. On May 21, 2009, BankUnited acquired substantially all of the assets and assumed all of the non-brokered deposits and substantially all other liabilities of BankUnited, FSB (the “Failed Bank”), from the Federal Deposit Insurance Corporation, or the FDIC, in a transaction which we refer to as the FSB Acquisition. On February 2, 2011, we completed the initial public offering of 33,350,000 shares of our common stock, 4,000,000 of which was sold by us, for which we received proceeds, after deducting underwriting discounts and estimated offering expenses, of approximately $98.6 million. We refer to this transaction as the IPO. Prior to the IPO we were a direct, wholly owned subsidiary of BU Financial Holdings LLC, (“BUFH” or the “LLC”), a Delaware limited liability company. Immediately prior to the consummation of the IPO, the LLC was liquidated and all LLC interests were distributed to the members of the LLC.

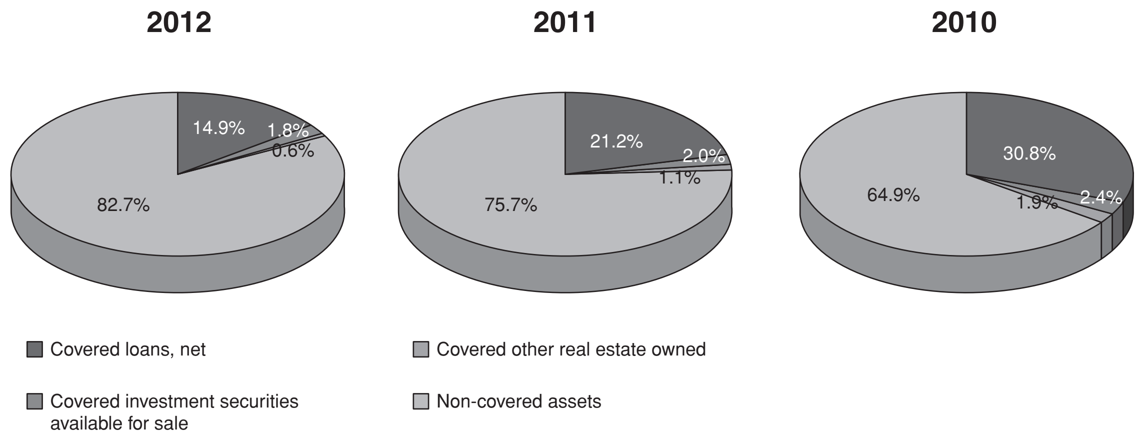
On February 29, 2012, BKU completed the acquisition of Herald for an aggregate purchase price of $65.0 million in cash and stock. We plan to merge Herald into BankUnited in 2013.

#### The FSB Acquisition

On May 21, 2009, BankUnited entered into a purchase and assumption agreement (the “Purchase and Assumption Agreement”) with the FDIC, Receiver of the Failed Bank, to acquire substantially all of the assets and assume all of the non-brokered deposits and substantially all other liabilities of the Failed Bank. Excluding the effects of acquisition accounting adjustments, BankUnited acquired $13.6 billion of assets and assumed $12.8 billion of liabilities. The fair value of the assets acquired was $10.9 billion and the fair value of the liabilities assumed was $13.1 billion. BankUnited received net cash consideration from the FDIC in the amount of $2.2 billion.

The acquired assets included $5.0 billion of loans with a corresponding unpaid principal balance (“UPB”) of $11.2 billion, a $3.4 billion FDIC indemnification asset, $538.9 million of investment securities, $1.2 billion of cash and cash equivalents, $177.7 million of foreclosed assets and $590.7 million of other assets. Liabilities assumed included $8.3 billion of non-brokered deposits, $4.6 billion of Federal Home Loan Bank (“FHLB”) advances, and $112.2 million of other liabilities.

Concurrently with the FSB Acquisition, the Bank entered into two loss sharing agreements, or the Loss Sharing Agreements, which cover certain legacy assets, including the entire legacy loan portfolio and other real estate owned ("OREO") and certain purchased investment securities. We refer to assets covered by the Loss Sharing Agreements as covered assets or, in certain cases, covered loans or covered securities. The Loss Sharing Agreements do not apply to subsequently acquired, purchased or originated assets. At December 31, 2012, the covered assets had an aggregate carrying value of $2.1 billion. The total UPB or, for investment securities, unamortized cost basis, of the covered assets at December 31, 2012 was $4.6 billion. The following charts illustrate the percentage of total assets represented by covered assets at December 31, 2012, 2011 and 2010:




Pursuant to the terms of the Loss Sharing Agreements, the covered assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses up to a $4.0 billion stated threshold and 95% of losses in excess of the $4.0 billion stated threshold, calculated, in each case, based on UPB (or, for investment securities, unamortized cost basis) plus certain interest and expenses. The carrying value of the FDIC indemnification asset at December 31, 2012 was $1.5 billion. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the Loss Sharing Agreements. The FDIC's obligation to reimburse the Company for losses with respect to the covered assets began with the first dollar of loss incurred. We have received reimbursements of $2.3 billion for claims submitted to the FDIC under the Loss Sharing Agreements as of December 31, 2012.

The Loss Sharing agreements consist of a single family shared-loss agreement (the "Single Family Shared-Loss Agreement"), and a commercial and other loans shared-loss agreement, (the "Commercial Shared-Loss Agreement"). The Single Family Shared-Loss Agreement provides for FDIC loss sharing and the Bank's reimbursement for recoveries to the FDIC for ten years from May 21, 2009 for single family residential loans. The Commercial Shared-Loss Agreement provides for FDIC loss sharing for five years from May 21, 2009 and the Bank's reimbursement for recoveries to the FDIC for eight years from May 21, 2009 for all other covered assets.

Under the Purchase and Assumption Agreement, the Bank may sell up to 2.5% of the covered loans based on the UPB at acquisition, or approximately $280.0 million, on an annual basis without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements. Any loan sale in excess of the annual 2.5% of the covered loans requires approval from the FDIC to be eligible for loss share coverage. However, if the Bank seeks to sell residential or non-residential loans in excess of the agreed 2.5% threshold in the nine months prior to the tenth anniversary or the fifth anniversary, respectively, and the FDIC refuses to consent, then the Single Family Shared-Loss Agreement and the Commercial Shared-Loss Agreement will be extended for two years after their respective anniversaries. The terms of the Loss Sharing Agreements are extended only with respect to the loans to be included in such sales. The Bank will have the right to sell all or any portion of such loans without FDIC consent at any time within the nine months prior to the respective extended termination dates, and any losses incurred will be covered under the Loss Sharing Agreements. If exercised, this final sale mechanism ensures no residual credit risk in our covered loan portfolio that would otherwise arise from credit losses occurring after the five- and ten-year periods, respectively.

**Our Market Areas**

Our primary banking market has historically been Florida, in particular the Miami metropolitan statistical area, or MSA. We believe Florida represents a long-term attractive banking market, particularly as the economy has shown signs of improvement.

As a result of the recent financial crisis, many Florida banks have experienced capital constraints and liquidity and earnings challenges. Undercapitalization and increased regulation of the banking sector have caused many banks to reduce lending to new and existing clients and focus primarily on improving their balance sheets, putting pressure on borrowers to look for new banking relationships. Our competitive strengths, including an experienced management team, robust capital position and scalable platform, have allowed us to take advantage of the resultant opportunities. We expect recent improving economic trends in Florida to further enhance our opportunities for growth in that market.

The acquisition of Herald allowed us to begin establishing a presence in the New York metropolitan market. In the first quarter of 2013, we intend to fully launch our entry into New York, New Jersey and Connecticut (the "Tri-State market"), where we see significant long-term growth opportunities, with the opening of three de novo branches in New York City. We believe the economic health of the Tri-State market, coupled with our management team's experience in building a successful Northeast regional bank in the past, position us well to grow in this market.

**Products and Services**

***Lending***

*General*—Our primary lending focus is to serve commercial and middle-market businesses, their executives and consumers with a variety of financial products and services, while maintaining a strong and disciplined credit culture.

We offer a full array of lending products that cater to our customers' needs including small business loans, commercial real estate loans, equipment loans and leases, term loans, asset-backed loans, municipal loans and leases, commercial lines of credit, letters of credit, residential mortgage and consumer loans. We also purchase performing residential loans on a national basis. We do not originate or purchase negatively amortizing or sub-prime residential loans.

We have attracted and invested in experienced commercial lending teams from competing institutions in our Florida markets, resulting in significant growth in our new loan portfolio. At December 31, 2012, our loan portfolio included $3.7 billion in loans originated or purchased since the FSB Acquisition, or new loans, including $2.7 billion in commercial and commercial real estate loans, $922.7 million in residential loans and $33.5 million in consumer loans. We have started hiring commercial lending teams in New York and expect the trend of strong loan growth to continue in both the Florida and Tri-State markets.

*Commercial loans*—Our commercial loans, which are generally made to small and middle-market businesses, include equipment loans, lines of credit, acquisition finance credit facilities and an array of Small Business Administration product offerings. We offer term financing for the acquisition or refinancing of properties, primarily rental apartments, industrial properties, retail shopping centers and free-standing buildings, office buildings and hotels. Other products that we provide include secured lines of credit, acquisition, development and construction loan facilities, construction financing and taxi medallion lending. Through two businesses acquired in 2010, we provide municipal leasing and small business equipment financing on a national basis. Pinnacle Public Finance offers municipal leasing products and United Capital Business Lending offers small business equipment leases and loans.

*Residential mortgages*—At December 31, 2012, the portfolio of new 1-4 single family residential loans included $827.7 million of purchased loans and $93.0 million of originated loans. We purchase loans to supplement our mortgage origination platform and to geographically diversify our loan portfolio. While the credit parameters we use for purchased loans are substantially similar to the underwriting guidelines we use for originated loans, differences include: (i) loans are purchased on a nationwide basis, while originated loans have historically been limited to Florida; (ii) purchased loans, on average, have higher principal balances than originated loans; and (iii) we consider payment history in selecting which seasoned loans to purchase, while such information is not available for originated loans. We intend to expand our in-house residential mortgage origination channel in 2013. Additionally, we anticipate launching a mortgage servicing business in 2013 to take advantage of existing capacity in this area.

Home equity loans and lines of credit are not a material component of the new loan portfolio.

*Consumer loans*—We offer consumer loans to our customers for personal, family and household purposes, including auto, boat and personal installment loans and recently added indirect auto lending to our product suite. At December 31, 2012, the majority of our consumer loans were indirect auto loans.

***Credit Policy and Procedures***

The foundation underlying the Company's credit culture, policy and procedures is high credit quality standards, which enhance the long term value of the Company to its customers, employees, stockholders and communities. Credit quality is a key corporate objective that is managed in concert with other key objectives including volume growth, earnings and expense management.

Since lending represents risk exposure, our Board of Directors and its duly appointed committees seek to ensure that the Company maintains high credit quality standards. The Company has established asset oversight committees to administer the loan portfolio and monitor and manage credit risk. These committees include: (i) the Enterprise Risk Management Committee,(ii) the Credit Risk Management Committee, (iii) the Asset Recovery Committee, and (iv) the Criticized Asset Committee. These committees meet at least quarterly.

The credit approval process provides for prompt and thorough underwriting and approval or decline of loan requests. The approval method used is a hierarchy of individual lending authorities for new credits and renewals. The Credit Risk Management Committee approves authorities for lending and credit personnel, which are ultimately submitted to our Board for ratification. Lending authorities are based on position, capability and experience of the individuals filling these positions. Authorities are periodically reviewed and updated.

BankUnited has established in-house borrower lending limits which are significantly lower than its legal lending limit of approximately $204.3 million, at December 31, 2012. The present in-house lending limit is $75.0 million based on total credit exposure of a borrower. These limits are reviewed periodically by the Credit Risk Management Committee and approved annually by the Board of Directors. A similar risk management and approval structure has been implemented at Herald, which had a legal lending limit of $14.0 million at December 31, 2012.

***Deposits***

We offer traditional deposit products including checking accounts, money market deposit accounts, savings accounts and certificates of deposit with a variety of rates. Our deposits are insured by the FDIC up to statutory limits. Our strategy is to increase the proportion of total deposits represented by lower cost demand deposits. Demand deposits comprised 22% of total deposits at December 31, 2012. Demand deposit balances are concentrated in commercial and small business accounts. Our service fee schedule and rates are competitive with other financial institutions in our market.

**Investment Securities**

The primary objectives of our investment policy are to provide liquidity necessary for the day-to-day operations of the Company, provide a suitable balance of high credit and diversified quality assets to the consolidated balance sheet, manage interest rate risk exposure, and generate acceptable returns given the Company's established risk parameters.

The investment policy is reviewed annually by our Board of Directors. Overall investment goals are established by our Board, Chief Executive Officer, Chief Financial Officer, and members of the Asset/Liability Committee ("ALCO"). The Board has delegated the responsibility of monitoring our investment activities to ALCO. Day-to-day activities pertaining to the investment portfolio are conducted within the Company's Treasury division under the supervision of the Chief Financial Officer.

**Marketing and Distribution**

We conduct our banking business through 98 branches located in 15 Florida counties as well as 2 branches in the New York Metropolitan area as of December 31, 2012. Our distribution network also includes 97 ATMs, fully integrated on-line banking, and a telephone banking service. We target growing companies and commercial and middle-market businesses, as well as individual consumers.

In order to market our products, we use local television, radio, print and direct mail advertising and provide sales incentives for our employees.

**Competition**

Our markets are highly competitive. Our markets contain not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in our market areas as well as savings associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services. Our largest banking competitors in the Florida market include Bank of America, BB&T, JPMorgan Chase, Regions Bank, SunTrust Banks, TD Bank and Wells Fargo. In the Tri-State market, we also anticipate significant competition from, in addition to those listed, Capital One, Signature Bank, New York Community Bank, Valley National and M&T.

Interest rates, on both loans and deposits, and prices of fee-based services are significant competitive factors among financial institutions generally. Other important competitive factors include office location, office hours, quality of customer service, community reputation, continuity of personnel and services, and, in the case of larger commercial customers, relative lending limits and ability to offer sophisticated cash management and other commercial banking services. While we continue to provide competitive interest rates on both depository and lending products, we believe that we can compete most successfully by focusing on the financial needs of growing companies and their executives, consumers and commercial and middle-market businesses, and offering them a broad range of personalized services and sophisticated cash management tools tailored to their businesses.

## Regulation and Supervision

The U.S. banking industry is highly regulated under federal and state law. These regulations affect the operations of the Company and its subsidiaries.

Statutes, regulations and policies limit the activities in which we may engage and the conduct of our permitted activities. Further, the regulatory system imposes reporting and information collection obligations. We incur significant costs relating to compliance with these laws and regulations. Banking statutes, regulations and policies are continually under review by federal and state legislatures and regulatory agencies, and a change in them, including changes in how they are interpreted or implemented, could have a material adverse effect on our business.

The material statutory and regulatory requirements that are applicable to us are summarized below. The description below is not intended to summarize all laws and regulations applicable to us.

### *Bank and Bank Holding Company Regulation*

BankUnited and Herald are currently national banks. As national banks organized under the National Bank Act, BankUnited and Herald are subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the Office of the Comptroller of the Currency (“OCC”).

Any entity that directly or indirectly controls a bank must be approved by the Federal Reserve Board under the Bank Holding Company Act of 1956 (“BHC Act”) to become a bank holding company (“BHC”). BHCs are subject to regulation, inspection, examination, supervision and enforcement by the Federal Reserve Board under the BHC Act. The Federal Reserve Board’s jurisdiction also extends to any company that is directly or indirectly controlled by a BHC.

The Company, which controls BankUnited and Herald, became a BHC on February 29, 2012.As a BHC, the Company is subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the Federal Reserve Board.

### *History of the Company as a Regulated Entity*

On May 21, 2009, we received approvals from the Office of Thrift Supervision (“OTS”) and FDIC for the organization of BankUnited as a federal savings association, for the Company to become a savings and loan holding company (“SLHC”), and for BankUnited to obtain federal deposit insurance.

Subsequently, on February 13, 2012, we received approval of the Federal Reserve Board to become a bank holding company in connection with the conversion of BankUnited from a federal savings association to a national bank and the acquisition of Herald by BankUnited, Inc. On February 14, 2012, we received approval of the OCC to convert BankUnited to a national bank. In connection with the conversion, BankUnited made certain commitments to the OCC regarding the business and capital plans of BankUnited. BankUnited, Inc. consummated these transactions on February 29, 2012, and became a BHC as of that date.

In connection with the approval to become a BHC, the Company committed that within a period of two years of becoming a BHC, or by February 28, 2014, we would conform our nonbanking activities to those permissible for a BHC under the BHC Act. In addition, we committed to adding another independent member to our board of directors within 18 months of becoming a BHC, or by the end of August 2013.

### *FDIC Deposit Insurance*

The FDIC is an independent federal agency that insures the deposits of federally insured depository institutions up to applicable limits. The FDIC also has certain regulatory, examination and enforcement powers with respect to FDIC-insured institutions. The deposits of BankUnited and Herald are insured by the FDIC up to applicable limits. As a general matter, the maximum deposit insurance amount is $250,000 per depositor.

*Broad Supervision, Examination and Enforcement Powers*

A principal objective of the U.S. bank regulatory system is to protect depositors by ensuring the financial safety and soundness of banking organizations. To that end, the banking regulators have broad regulatory, examination and enforcement authority. The regulators regularly examine the operations of banking organizations. In addition, banking organizations are subject to periodic reporting requirements.

The regulators have various remedies available if they determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of a banking organization's operations are unsatisfactory. The regulators may also take action if they determine that the banking organization or its management is violating or has violated any law or regulation. The regulators have the power to, among other things:

- enjoin "unsafe or unsound" practices;
- require affirmative actions to correct any violation or practice;
- issue administrative orders that can be judicially enforced;
- direct increases in capital;
- direct the sale of subsidiaries or other assets;
- limit dividends and distributions;
- restrict growth;
- assess civil monetary penalties;
- remove officers and directors; and
- terminate deposit insurance.

The FDIC may terminate a depository institution's deposit insurance upon a finding that the institution's financial condition is unsafe or unsound or that the institution has engaged in unsafe or unsound practices or has violated any applicable rule, regulation, order or condition enacted or imposed by the institution's regulatory agency. Engaging in unsafe or unsound practices or failing to comply with applicable laws, regulations and supervisory agreements could subject the Company, and subsidiaries of the Company or their officers, directors and institution-affiliated parties to the remedies described above and other sanctions.

*The Dodd-Frank Act*

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, was signed into law. The Dodd-Frank Act is having a broad impact on the financial services industry, and imposes significant regulatory and compliance requirements, including the designation of certain financial companies as systemically important financial companies, or SIFIs, the changing roles of credit rating agencies, the imposition of increased capital, leverage, and liquidity requirements, and numerous other provisions designed to improve supervision and oversight of, and strengthen safety and soundness within, the financial services sector. Additionally, the Dodd-Frank Act establishes a new framework of authority to conduct systemic risk oversight within the financial system to be distributed among new and existing federal regulatory agencies, including the Financial Stability Oversight Council, or Council, the Federal Reserve Board, the OCC, and the FDIC.

The following items provide a brief description of certain provisions of the Dodd-Frank Act that are most relevant to the Company and its banking subsidiaries.

- *Source of strength.* The Dodd-Frank Act requires all companies, including BHCs, that directly or indirectly control an insured depository institution to serve as a source of strength for the institution. Under this requirement, the Company in the future could be required to provide financial assistance to its insured depository institution subsidiaries should they experience financial distress.

- *Limitation on federal preemption.* The Dodd-Frank Act significantly reduces the ability of national banks to rely on federal preemption of state consumer financial laws. Although the OCC, as the primary regulator of national banks, will have the ability to make preemption determinations where certain conditions are met, the broad rollback of federal preemption has the potential to create a patchwork of federal and state compliance obligations. This could, in turn, result in significant new regulatory requirements applicable to BankUnited, with potentially significant changes in our operations and increases in our compliance costs. It could also result in uncertainty concerning compliance, with attendant regulatory and litigation risks.

- *Mortgage loan origination and risk retention.* The Dodd-Frank Act contains additional regulatory requirements that may affect our operations and result in increased compliance costs. For example, the Dodd-Frank Act imposes new standards for mortgage loan originations on all lenders, including banking organizations, in an effort to require steps to verify a borrower's ability to repay. In addition, the Dodd-Frank Act generally requires lenders or securitizers to retain an economic interest in the credit risk relating to loans the lender sells or mortgage and other asset-backed securities that the securitizer issues. The risk retention requirement generally will be 5%, but could be increased or decreased by regulation. On January 10, 2013, federal regulators released the "qualified mortgage" rule. The qualified mortgage rule is intended to clarify the application of the Dodd-Frank Act requirement that mortgage lenders have a reasonable belief that borrowers can afford their mortgages, or the lender may not be able to foreclose on the mortgage. It is expected that the standards used in the qualified mortgage rule will also inform the rules implementing the Dodd-Frank Act's risk retention requirement.

- *Imposition of restrictions on certain activities.* The Dodd-Frank Act imposes a new regulatory structure on the over-the-counter derivatives market, including requirements for clearing, exchange trading, capital, margin, reporting, and record keeping. In addition, certain swaps and other derivatives activities are required to be "pushed out" of insured depository institutions and conducted in separately capitalized non-bank affiliates. The Dodd-Frank Act also requires certain persons to register as a "major security-based swap participant" or a "security-based swap dealer." The U.S. Commodity Futures Trading Commission, the SEC and other U.S. regulators are in the process of adopting regulations to implement the Dodd-Frank Act. It is anticipated that this rulemaking process will further clarify, among other things, reporting and recordkeeping obligations, margin and capital requirements, the scope of registration requirements, and what swaps are required to be centrally cleared and exchange-traded. Rules will also be issued to enhance the oversight of clearing and trading entities. These restrictions may affect our ability to manage certain risks in our business.

- *Expanded FDIC resolution authority.* While insured depository institutions have long been subject to the FDIC's resolution process, the Dodd-Frank Act creates a new mechanism for the FDIC to conduct the orderly liquidation of certain "covered financial companies," including bank and thrift holding companies and systemically significant non-bank financial companies. Upon certain findings being made, the FDIC may be appointed receiver for a covered financial company, and would conduct an orderly liquidation of the entity. The FDIC liquidation process is modeled on the existing Federal Deposit Insurance Act, or FDIA bank resolution process, and generally gives the FDIC more discretion than in the traditional bankruptcy context.The FDIC has issued final rules implementing the orderly liquidation authority.

- *Consumer Financial Protection Bureau ("CFPB").* The Dodd-Frank Act creates a new independent CFPB within the Federal Reserve Board. The CFPB is tasked with establishing and implementing rules and regulations under certain federal consumer protection laws with respect to the conduct of providers of certain consumer financial products and services. The CFPB has rulemaking authority over many of the statutes governing products and services offered to bank and thrift consumers. For banking organizations with assets of $10 billion or more, the CFPB has exclusive rule making and examination, and primary enforcement authority under federal consumer financial law. In addition, the Dodd-Frank Act permits states to adopt consumer protection laws and regulations that are stricter than those regulations promulgated by the CFPB. Compliance with any such new regulations would increase our cost of operations. On January 4, 2012, President Obama installed Richard Cordray as director of the CFPB through a recess appointment. On January 24, 2013, President Obama formally renominated Cordray to the same position. If confirmed by the Senate, he would serve a term expiring December 31, 2018.

- *Deposit insurance.* The Dodd-Frank Act makes permanent the general $250,000 deposit insurance limit for insured deposits. The Dodd-Frank Act also extended until January 1, 2013, federal deposit coverage for the full net amount held by depositors in non-interest bearing transaction accounts. Amendments to the FDIA also revise the assessment base against which an insured depository institution's deposit insurance premiums paid to the deposit insurance fund, or DIF, of the FDIC will be calculated. Under the amendments, the assessment base is no longer the institution's deposit base, but rather its average consolidated total assets less its average tangible equity. Additionally, the Dodd-Frank Act makes changes to the minimum designated reserve ratio of the DIF, increasing the minimum from 1.15 percent to 1.35 percent of the estimated amount of total insured deposits, and eliminating the requirement that the FDIC pay dividends to depository institutions when the reserve ratio exceeds certain thresholds. Several of these provisions may impact the FDIC deposit insurance premiums paid by BankUnited and Herald.

- *Transactions with affiliates and insiders.* The Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. Insider transaction limitations are expanded through the strengthening of loan restrictions to insiders and the expansion of the types of transactions subject to the various limits, including derivatives transactions, repurchase agreements, reverse repurchase agreements and securities lending or borrowing transactions. Restrictions are also placed on certain asset sales to and from an insider to an institution, including requirements that such sales be on market terms and, in certain circumstances, approved by the institution's board of directors.

- *Enhanced lending limits.* The Dodd-Frank Act strengthens the existing limits on a depository institution's credit exposure to one borrower.

- *Corporate governance.* The Dodd-Frank Act addresses many investor protection, corporate governance and executive compensation matters that will affect most U.S. publicly traded companies, including the Company. The Dodd-Frank Act (1) grants stockholders of U.S. publicly traded companies an advisory vote on executive compensation; (2) enhances independence requirements for compensation committee members; (3) requires companies listed on national securities exchanges to adopt incentive-based compensation clawback policies for executive officers; and (4) provides the SEC with authority to adopt proxy access rules that would allow stockholders of publicly traded companies to nominate candidates for election as a director and have those nominees included in a company's proxy materials.

Many of the requirements of the Dodd-Frank Act will be implemented over time and most will be subject to regulations implemented over the course of several years. Given the uncertainty associated with the manner in which the provisions of the Dodd-Frank Act will be implemented by the various regulatory agencies and through regulations, the full extent of the impact such requirements will have on our operations is unclear. The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements.

Failure to comply with the new requirements may negatively impact our results of operations and financial condition.

*Notice and Approval Requirements Related to Control*

Banking laws impose notice, approval, and ongoing regulatory requirements on any stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. These laws include the BHC Act, the Change in Bank Control Act, and the Savings and Loan Holding Company Act. Among other things, these laws require regulatory filings by a stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. The determination whether an investor "controls" a depository institution is based on all of the facts and circumstances surrounding the investment. As a general matter, a party is deemed to control a depository institution or other company if the party owns or controls 25% or more of any class of voting stock. Subject to rebuttal, a party may be presumed to control a depository institution or other company if the investor owns or controls 10% or more of any class of voting stock. Ownership by affiliated parties, or parties acting in concert, is typically aggregated for these purposes. If a party's ownership of the Company were to exceed certain thresholds, the investor could be deemed to "control" the Company for regulatory purposes. This could subject the investor to regulatory filings or other regulatory consequences.

*Permissible Activities and Investments*

Banking laws generally restrict the ability of the Company from engaging in activities other than those determined by the Federal Reserve Board to be so closely related to banking as to be a proper incident thereto. The Gramm-Leach-Bliley Financial Modernization Act of 1999, or "GLB Act," expanded the scope of permissible activities for a BHC that qualifies as a financial holding company. Under the regulations implementing the GLB Act, a financial holding company may engage in additional activities that are financial in nature or incidental or complementary to a financial activity. Those activities include, among other activities, certain insurance and securities activities. Qualifications for becoming a financial holding company include, among other things, meeting certain specified capital standards and achieving certain management ratings in examinations. Under the Dodd-Frank Act, BHCs and their subsidiaries must be well-capitalized and well-managed in order for the BHC and its nonbank affiliates to engage in the expanded financial activities permissible only for a financial holding company.

In addition, as a general matter, the establishment or acquisition by the Company of a depository institution or, in certain cases, a non-bank entity, requires prior regulatory approval.

*Regulatory Capital Requirements and Capital Adequacy*

The federal bank regulators view capital levels as important indicators of an institution's financial soundness. As a general matter, FDIC-insured depository institutions and their holding companies are required to maintain minimum capital relative to the amount and types of assets they hold. The final supervisory determination on an institution's capital adequacy is based on the regulator's assessment of numerous factors.

The Company became formally subject to regulatory capital requirements in February 2012, upon becoming a BHC. BankUnited and Herald, as national banks, are each subject to regulatory capital requirements.

The Federal Reserve Board has established risk-based and leverage capital guidelines for BHCs, including the Company. The OCC has established substantially similar risk-based and leverage capital guidelines applicable to national banks, including BankUnited and Herald.The current risk-based capital guidelines, commonly referred to as Basel I, are based upon the 1988 capital accord of the International Basel Committee on Banking Supervision ("Basel Committee"), a committee of central banks and bank supervisors, as implemented by the U.S. federal banking agencies. As discussed further below, the federal banking agencies have adopted separate risk-based capital guidelines for so-called "core banks" based upon the Revised Framework for the International Convergence of Capital Measurement and Capital Standards ("Basel II") issued by the Basel Committee in November 2005.

*Basel I*

Under the existing Basel I-based guidelines, the minimum ratio of total capital to risk-weighted assets (which are primarily the credit risk equivalents of balance sheet assets and certain off-balance sheet items such as standby letters of credit) is eight percent. At least half of total capital must be composed of tier 1 capital, which includes common stockholders' equity (including retained earnings), qualifying non-cumulative perpetual preferred stock (and, for BHCs only, a limited amount of qualifying cumulative perpetual preferred stock and a limited amount of trust preferred securities), and minority interests in the equity accounts of consolidated subsidiaries, less goodwill, other disallowed intangibles, and disallowed deferred tax assets, among other items. The Federal Reserve Board also has adopted a minimum leverage ratio for BHCs, requiring tier 1 capital of at least three percent of average quarterly total consolidated assets (as defined for regulatory purposes), net of goodwill and certain other intangible assets.

The federal banking agencies have also established risk-based and leverage capital guidelines that FDIC-insured depository institutions are required to meet. These regulations are generally similar to those established by the Federal Reserve Board for bank holding companies.

*Basel II*

Under the final U.S. Basel II rules issued by the federal banking agencies, there are a small number of "core" banking organizations that will be required to use the advanced approaches under Basel II for calculating risk-based capital related to credit risk and operational risk, instead of the methodology reflected in the regulations effective prior to adoption of Basel II. The rules also require core banking organizations to have rigorous processes for assessing overall capital adequacy in relation to their total risk profiles, and to publicly disclose certain information about their risk profiles and capital adequacy. The Company, BankUnited, and Herald are not among the core banking organizations required to use Basel II advanced approaches.

*Basel III*

On December 16, 2010, the Basel Committee released its final framework for strengthening international capital and liquidity regulation, known as Basel III. The Basel III calibration and phase-in arrangements were previously endorsed by the Seoul G20 Leaders Summit in November 2010, and will be subject to individual adoption by member nations, including the United States. Under these standards, when fully phased-in on January 1, 2019, banking institutions will be required to satisfy three risk-based capital ratios:

i. A common equity tier 1 ratio of at least 7.0%, inclusive of 4.5% minimum common equity tier 1 ratio, net of regulatory deductions, and the new 2.5% "capital conservation buffer" of common equity to risk-weighted assets;

ii. A tier 1 capital ratio of at least 8.5%, inclusive of the 2.5% capital conservation buffer; and

iii. A total capital ratio of at least 10.5%, inclusive of the 2.5% capital conservation buffer.

The capital conservation buffer is designed to absorb losses during periods of economic stress. Banking institutions with a common equity tier 1 ratio above the minimum but below the conservation buffer may face constraints on dividends, equity repurchases, and compensation based on the amount of such shortfall. The Basel Committee also announced that a "countercyclical buffer" of 0% to 2.5% of common equity or other loss-absorbing capital "will be implemented according to national circumstances" as an "extension" of the conservation buffer during periods of excess credit growth.

Basel I and Basel II do not include a leverage requirement as an international standard. However, Basel III introduces a non-risk adjusted tier 1 leverage ratio of 3%, based on a measure of total exposure rather than total assets and new liquidity standards.

The Basel Committee had initially planned for member nations to begin implementing the Basel III requirements by January 1, 2013, with full implementation by January 1, 2019. On November 9, 2012, U.S. regulators announced that implementation of Basel III's first requirements would be delayed until an undetermined future date. The regulators made no indication whether any other future regulatory phase-in dates would be delayed.

On November 4, 2011 the Basel Committee issued its final rule setting forth proposals to apply a new common equity tier 1 surcharge to certain designated global systemically important banks ("GSIBs"). GSIBs subject to the surcharge are identified by application of a quantitative "indicator-based approach" for evaluating systemic risk that weights both categories and indicators of size, substitutability, interconnectedness, cross-jurisdictional activity, and complexity. On November 1, 2012, using the Basel Committee's methodology, the Financial Stability Board and the Basel Committee identified 28 financial institutions determined to be GSIBs. The group of GSIBs is updated annually and published by the Financial Stability Board each November. The Company has not been designated as a GSIB.

On June 7, 2012, the Federal Reserve Board, in conjunction with the OCC and the FDIC, published three notices of proposed rulemaking related to the U.S. implementation of Basel III. The proposed rules include two methods for calculating risk-weighted assets: a standardized approach, applicable to all depository institutions, BHCs with consolidated assets of $500 million or more, and SLHCs, and an advanced approach, generally applicable only to the largest, most internationally active banking organizations.Under the proposed rules, core institutions must maintain capital levels that exceed the adequately capitalized minimum ratios under the most constraining of the two approaches. For advanced approaches institutions, the proposed rules state that for the capital conservation buffer, any countercyclical capital buffer applied, and any other capital surcharges that are applied, a depository institution's or BHC's capital adequacy will be assessed using the advanced approaches.

*Dodd-Frank Act Capital Changes*

Under the Dodd-Frank Act, the Federal Reserve Board may increase the capital buffer for systemically important financial institutions ("SIFIs"). The purpose of these new capital requirements is to ensure financial institutions are better capitalized to withstand periods of unfavorable financial and economic conditions. The Dodd-Frank Act also requires the establishment of more stringent prudential standards for SIFIs, which include requiring the federal banking agencies to adopt capital and liquidity requirements which address the risks that the activities of an institution pose to the institution and the public and private stakeholders, including risks arising from certain enumerated activities. In addition, the Dodd-Frank Act excludes trust preferred securities issued on or after May 19, 2010, from tier 1 capital for most institutions. For depository institution holding companies with total consolidated assets of more than $15 billion at December 31, 2009, trust preferred securities issued before May 19, 2010 will be phased-out of tier 1 capital over a three-year period.

The ultimate impact of the new capital and liquidity standards on the Company, BankUnited, and Herald is currently being reviewed and will depend on a number of factors, including the rulemaking and implementation by the U.S. banking regulators. The Company cannot determine the ultimate effect that potential legislation, or subsequent regulations, if enacted, would have upon the Company's earnings or financial position. In addition, significant questions remain as to how the capital and liquidity mandates of the Dodd-Frank Act will be integrated with the requirements of Basel III.

*Prompt Corrective Action*

Under the FDIA, the federal bank regulatory agencies must take "prompt corrective action" against undercapitalized U.S. depository institutions. U.S. depository institutions are assigned one of five capital categories: "well capitalized," "adequately capitalized," "undercapitalized," "significantly undercapitalized," and "critically undercapitalized," and are subjected to differential regulation corresponding to the capital category within which the institution falls. A depository institution is deemed to be "well capitalized" if the banking institution has a total risk-based capital ratio of 10.0% or greater, a tier 1 risk-based capital ratio of 6.0% or greater, and a leverage ratio of 5.0% or greater, and the institution is not subject to an order, written agreement, capital directive, or prompt corrective action directive to meet and maintain a specific level for any capital measure. Under certain circumstances, a well-capitalized, adequately capitalized or undercapitalized institution may be treated as if the institution were in the next lower capital category. A banking institution that is undercapitalized is required to submit a capital restoration plan. Failure to meet capital guidelines could subject the institution to a variety of enforcement remedies by federal bank regulatory agencies, including: termination of deposit insurance by the FDIC, restrictions on certain business activities, and appointment of the FDIC as conservator or receiver. As of December 31, 2012, the Company, BankUnited, and Herald were well-capitalized.

*Regulatory Limits on Dividends and Distributions*

Federal law currently imposes limitations upon certain capital distributions by national banks, such as certain cash dividends, payments to repurchase or otherwise acquire its shares, payments to stockholders of another institution in a cash-out merger and other distributions charged against capital. The Federal Reserve Board and OCC regulate all capital distributions by BankUnited and Herald directly or indirectly to the Company, including dividend payments.

BankUnited and Herald may not pay dividends to the Company if, after paying those dividends, it would fail to meet the required minimum levels under risk-based capital guidelines and the minimum leverage and tangible capital ratio requirements, or in the event the OCC notified BankUnited or Herald that it was in need of more than normal supervision. Under the FDIA, an insured depository institution such as BankUnited or Herald is prohibited from making capital distributions, including the payment of dividends, if, after making such distribution, the institution would become "undercapitalized." Payment of dividends by BankUnited or Herald also may be restricted at any time at the discretion of the appropriate regulator if it deems the payment to constitute an unsafe and unsound banking practice.

In addition, BankUnited is subject to supervisory limits on its ability to declare or pay a dividend or reduce its capital unless certain conditions are satisfied.

*Reserve Requirements*

Pursuant to regulations of the Federal Reserve Board, all banking organizations are required to maintain average daily reserves at mandated ratios against their transaction accounts. In addition, reserves must be maintained on certain non-personal time deposits. These reserves must be maintained in the form of vault cash or in an account at a Federal Reserve Bank.

*Liability of Commonly Controlled Institutions*

FDIC-insured depository institutions can be held liable for any loss incurred, or reasonably expected to be incurred, by the FDIC due to the default of an FDIC-insured depository institution controlled by the same company and for any assistance provided by the FDIC to an FDIC-insured depository institution that is in danger of default and that is controlled by the same company. "Default" means generally the appointment of a conservator or receiver for the institution. "In danger of default" means generally the existence of certain conditions indicating that a default is likely to occur in the absence of regulatory assistance.

The cross-guarantee liability for a loss at a commonly controlled institution is subordinated in right of payment to deposit liabilities, secured obligations, any other general or senior liability and any obligation subordinated to depositors or general creditors, other than obligations owed to any affiliate of the depository institution (with certain exceptions). BankUnited and Herald are commonly controlled by the Company.

*Limits on Transactions with Affiliates and Insiders*

Insured depository institutions are subject to restrictions on their ability to conduct transactions with affiliates and other related parties. Section 23A of the Federal Reserve Act imposes quantitative limits, qualitative requirements, and collateral requirements on certain transactions by an insured depository institution with, or for the benefit of, its affiliates. Transactions covered by Section 23A include loans, extensions of credit, investment in securities issued by an affiliate, and acquisitions of assets from an affiliate. Section 23B of the Federal Reserve Act requires that most types of transactions by an insured depository institution with, or for the benefit of, an affiliate be on terms at least as favorable to the insured depository institution as if the transaction were conducted with an unaffiliated third party.

As noted above, the Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. The ability of the Federal Reserve Board to grant exemptions from these restrictions is also narrowed by the Dodd-Frank Act, including by requiring coordination with other bank regulators.

The Federal Reserve Board's Regulation O and OCC regulations impose restrictions and procedural requirements in connection with the extension of credit by an insured depository institution to directors, executive officers, principal stockholders and their related interests.

*Examination Fees*

The OCC currently charges fees to recover the costs of examining national banks, processing applications and other filings, and covering direct and indirect expenses in regulating national banks. The Dodd-Frank Act provides various agencies with the authority to assess additional supervision fees.

*Deposit Insurance Assessments*

FDIC-insured depository institutions are required to pay deposit insurance assessments to the FDIC. The amount of a particular institution's deposit insurance assessment is based on that institution's risk classification under an FDIC risk-based assessment system. An institution's risk classification is assigned based on its capital levels and the level of supervisory concern the institution poses to the regulators. Deposit insurance assessments fund the DIF. As noted above, the Dodd-Frank Act changed the way an insured depository institution's deposit insurance premiums are calculated. These changes may impact assessment rates, which could impact the profitability of our operations.

*Depositor Preference*

The FDIA provides that, in the event of the "liquidation or other resolution" of an insured depository institution, the claims of depositors of the institution (including the claims of the FDIC as subrogee of insured depositors) and certain claims for administrative expenses of the FDIC as a receiver will have priority over other general unsecured claims against the institution. If we invest in or acquire an insured depository institution that fails, insured and uninsured depositors, along with the FDIC, will have priority in payment ahead of unsecured, non-deposit creditors, including us, with respect to any extensions of credit they have made to such insured depository institution.

*Federal Reserve System and Federal Home Loan Bank System*

As national banks, BankUnited and Herald are required to hold shares of capital stock in a Federal Reserve Bank. BankUnited holds capital stock in the Federal Reserve Bank of Atlanta, and Herald holds capital stock in the Federal Reserve Bank of New York. As members of the Federal Reserve System, BankUnited and Herald have access to the Federal Reserve discount window lending and payment clearing systems.

BankUnited and Herald are members of the Federal Home Loan Bank of Atlanta and the Federal Home Loan Bank of New York, respectively. Each FHLB provides a central credit facility primarily for its member institutions as well as other entities involved in home mortgage lending. Any advances from a FHLB must be secured by specified types of collateral, and all long-term advances may be obtained only for the purpose of providing funds for residential housing finance. As members of the FHLB, BankUnited and Herald are required to acquire and hold shares of capital stock in the FHLB of Atlanta and the FHLB of New York, respectively. BankUnited and Herald are in compliance with this requirement.

*Anti-Money Laundering and OFAC*

Under federal law, financial institutions must maintain anti-money laundering programs that include established internal policies, procedures, and controls; a designated compliance officer; an ongoing employee training program; and testing of the program by an independent audit function. Financial institutions are also prohibited from entering into specified financial transactions and account relationships and must meet enhanced standards for due diligence and customer identification in their dealings with non-U.S. financial institutions and non-U.S. customers. Financial institutions must take reasonable steps to conduct enhanced scrutiny of account relationships to guard against money laundering and to report any suspicious transactions, and law enforcement authorities have been granted increased access to financial information maintained by financial institutions. Bank regulators routinely examine institutions for compliance with these obligations and they must consider an institution's compliance in connection with the regulatory review of applications, including applications for banking mergers and acquisitions. The regulatory authorities have imposed "cease and desist" orders and civil money penalty sanctions against institutions found to be violating these obligations.

The U.S. Department of the Treasury's Office of Foreign Assets Control, or "OFAC," is responsible for helping to insure that U.S. entities do not engage in transactions with certain prohibited parties, as defined by various Executive Orders and Acts of Congress. OFAC publishes lists of persons, organizations, and countries suspected of aiding, harboring or engaging in terrorist acts, known as Specially Designated Nationals and Blocked Persons. If the Company, BankUnited, or Herald finds a name on any transaction, account or wire transfer that is on an OFAC list, the Company or BankUnited must freeze or block such account or transaction, file a suspicious activity report and notify the appropriate authorities.

*Consumer Laws and Regulations*

Banking organizations are subject to numerous laws and regulations intended to protect consumers. These laws include, among others:

- Truth in Lending Act;
- Truth in Savings Act;
- Electronic Funds Transfer Act;
- Expedited Funds Availability Act;
- Equal Credit Opportunity Act;
- Fair and Accurate Credit Transactions Act;
- Fair Housing Act;
- Fair Credit Reporting Act;
- Fair Debt Collection Act;
- Gramm-Leach-Bliley Act;
- Home Mortgage Disclosure Act;
- Right to Financial Privacy Act;
- Real Estate Settlement Procedures Act;
- laws regarding unfair and deceptive acts and practices; and
- usury laws.

Many states and local jurisdictions have consumer protection laws analogous, and in addition to, those listed above. These federal, state and local laws regulate the manner in which financial institutions deal with customers when taking deposits, making loans, or conducting other types of transactions. Failure to comply with these laws and regulations could give rise to regulatory sanctions, customer rescission rights, action by state and local attorneys general, and civil or criminal liability. The creation of the CFPB by the Dodd-Frank Act has led to enhanced enforcement of consumer financial protection laws.

*The Community Reinvestment Act*

The Community Reinvestment Act, or "CRA," is intended to encourage banks to help meet the credit needs of their service areas, including low and moderate-income neighborhoods, consistent with safe and sound operations. The bank regulators examine and assign each bank a public CRA rating. The CRA then requires bank regulators to take into account the federal banking bank's record in meeting the needs of its service area when considering an application by a bank to establish or relocate a branch or to conduct certain mergers or acquisitions. The Federal Reserve Board is required to consider the CRA records of a BHC's controlled banks when considering an application by the BHC to acquire a banking organization or to merge with another BHC. When the Company or BankUnited applies for regulatory approval to make certain investments, the regulators will consider the CRA record of target institutions and the Company's depository institution subsidiaries. An unsatisfactory CRA record could substantially delay approval or result in denial of an application. The regulatory agency's assessment of the institution's record is made available to the public. Following their most recent CRA examinations, BankUnited (October 2012) and Herald (October 2011) each received an overall rating of "Satisfactory."

*Changes in Laws, Regulations or Policies*

Federal, state and local legislators and regulators regularly introduce measures or take actions that would modify the regulatory requirements applicable to banks, their holding companies and other financial institutions. Changes in laws, regulations or regulatory policies could adversely affect the operating environment for the Company in substantial and unpredictable ways, increase our cost of doing business, impose new restrictions on the way in which we conduct our operations or add significant operational constraints that might impair our profitability. We cannot predict whether new legislation will be enacted and, if enacted, the effect that it, or any implementing regulations, would have on our business, financial condition or results of operations. The Dodd-Frank Act imposes substantial changes to the regulatory framework applicable to us and our subsidiaries. The majority of these changes will be implemented over time by various regulatory agencies. The full effect that these changes will have on us remains uncertain at this time and may have a material adverse effect on our business and results of operations.

**Employees**

At December 31, 2012, we employed 1,384 full-time employees and 45 part-time employees. None of our employees are parties to a collective bargaining agreement. We believe that our relations with our employees are good.

**Available Information**

Our website address is www.bankunited.com. Our electronic filings with the SEC (including all Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and if applicable, amendments to those reports) are available free of charge on the website as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information posted on our website is not incorporated into this Annual Report. In addition, the SEC maintains a website that contains reports and other information filed with the SEC. The website can be accessed at http://www.sec.gov.

## Item 1A. Risk Factors

**Risk Management and Oversight**

The Company's risk management framework and governance structure are intended to provide comprehensive controls and ongoing management of the major risks inherent in its business activities. The Company's ability to properly identify, measure, monitor and report risk is critical to both its soundness and profitability.

Our Board of Directors oversees our risk management process, including the company-wide approach to risk management, carried out by our management. Our Board approves the Company's business plans and the policies that set standards for the nature and level of risk the Company is willing to assume. The Board receives reports on the Company's management of critical risks and the effectiveness of risk management systems. While our full Board maintains the ultimate oversight responsibility for the risk management process, its committees, including the audit and risk committee, the compensation committee and the nominating and corporate governance committee, oversee risk in certain specified areas. The Chief Risk Officer is responsible for developing an Enterprise Risk Management framework to identify, manage and mitigate risks across our Company.

**Risks Related to Our Business**

***Our business is highly susceptible to credit risk on our non-covered assets.***

As a lender, we are exposed to the risk that our customers will be unable to repay their loans according to their terms and that the collateral securing the payment of their loans, if any, may not be sufficient to assure repayment. Similarly, we have credit risk embedded in our securities portfolio. Our credit standards, procedures and policies may not prevent us from incurring substantial credit losses, particularly in light of market conditions in recent years. The continued potential for economic disruption presents considerable risks to us. Although the economic slowdown that the U. S. and our market areas have experienced has begun to reverse and markets have generally improved, there is no assurance that this improvement will be sustained or will continue. It is difficult to determine the many ways in which a decline in economic or market conditions or a failure of those conditions to continue to improve may impact the credit quality of our asset or our business in general. The Loss Sharing Agreements only cover certain legacy assets, and credit losses on assets not covered by the Loss Sharing Agreements could have a material adverse effect on our operating results.

***Our allowance for credit losses may not be adequate to cover actual credit losses.***

We maintain an allowance for loan and lease losses that represents management's estimate of probable losses inherent in our credit portfolio. This estimate requires management to make certain assumptions and involves a high degree of judgment, particularly as our new loan portfolio is not yet seasoned and has not yet developed an observable loss trend. Management considers numerous factors in determining the amount of the allowance for loan and lease losses, including, but not limited to, internal risk ratings, loss forecasts, collateral values, delinquency rates, historical loss severities, the level of non-performing and restructured loans in the loan portfolio, product mix, underwriting practices, portfolio trends, industry conditions, economic trends and net charge-off trends.

If management's assumptions and judgments prove to be incorrect, our current allowance may be insufficient and we may be required to increase our allowance for loan and lease losses. In addition, federal and state regulators periodically review our allowance for loan and lease losses and may require us to increase our provision for loan losses or recognize further loan charge-offs, based on judgments different than those of our management. Adverse economic conditions could make management's estimate even more complex and difficult to determine. Any increase in our allowance for loan and lease losses will result in a decrease in net income and capital and could have a material adverse effect on our financial condition and results of operations. See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Analysis of the Allowance for Loan and Lease Losses" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates—Allowance for Loan and Lease Losses."

***Our business is susceptible to interest rate risk.***

Our earnings and cash flows depend to a great extent upon the level of our net interest income. The current low level of market interest limits our ability to add higher yielding assets to the balance sheet. A prolonged period of low rates may exacerbate downward pressure on our net interest margin and have a negative impact on our net interest income in the future. Changes in interest rates can increase or decrease our net interest income, because different types of assets and liabilities may react differently, and at different times, to market interest rate changes. Net interest income is the difference between the interest income we earn on loans, investments and other interest earning assets, and the interest we pay on interest bearing liabilities, such as deposits and borrowings. When interest bearing liabilities mature or reprice more quickly than interest earning assets in a period of rising rates, an increase in interest rates could reduce net interest income. Similarly, when interest earning assets mature or reprice more quickly than interest bearing liabilities, falling interest rates could reduce net interest income. Additionally, an increase in interest rates may, among other things, reduce the demand for loans and our ability to originate loans and decrease loan repayment rates. A decrease in the general level of interest rates may affect us through, among other things, increased prepayments on our loan and mortgage-backed securities portfolios and increased competition for deposits. Accordingly, changes in the level of market interest rates affect our net yield on interest earning assets, loan origination volume, loan and mortgage-backed securities portfolios, and our overall operating results.

We attempt to manage our risk from changes in market interest rates by adjusting the rates, maturity, repricing, and balances of the different types of interest-earning assets and interest bearing liabilities; however, interest rate risk management techniques are not precise, and we may not be able to successfully manage our interest rate risk. As a result, a rapid increase or decrease in interest rates could have an adverse effect on our net interest margin and results of operations.

Interest rates are highly sensitive to many factors beyond our control, including general economic conditions and policies of various governmental and regulatory agencies, particularly the Federal Reserve.

***We may not be successful in executing our strategy of creating a strong franchise in the Tri-State market.***

An important component of our growth strategy is to create a strong franchise in the Tri-State market by expanding our branch network in the area, including through our recent acquisition of Herald. The primary market we serve is Florida and there is no guarantee that we will be able to integrate successfully or operate profitably the branch locations currently operated by Herald or be able to expand our branch network in the Tri-State market. Consumer and commercial banking in this market is highly competitive, with a large number of community and regional banks and also a significant presence of the country's largest commercial banks. We will be competing with other state and national financial institutions located in the Tri-State market, as well as savings and loan associations, savings banks and credit unions for deposits and loans.

***Failure to comply with the terms of our Loss Sharing Agreements with the FDIC may result in significant losses.***

A significant portion of BankUnited's revenue continues to be derived from the covered assets. The Loss Sharing Agreements with the FDIC provide that a significant portion of losses related to the covered assets will be borne by the FDIC. Under the Loss Sharing Agreements, we are obligated to comply with certain loan servicing standards, including requirements to participate in government-sponsored loan modification programs. As these standards continue to evolve, we may experience difficulties in complying with the requirements of the Loss Sharing Agreements, which could result in covered assets losing some or all of their coverage. BankUnited's compliance with the terms of the Loss Sharing Agreements is subject to audit by the FDIC through its designated agent. The required terms of the agreements are extensive and failure to comply with any of the guidelines could result in a specific asset or group of assets losing their loss sharing coverage. See Item 1 "Business—The FSB Acquisition."

***The geographic concentration of our markets in the coastal regions of Florida makes our business highly susceptible to local economic conditions and natural disasters.***

Unlike larger financial institutions that are more geographically diversified, our branch offices are primarily concentrated in the coastal regions of Florida. Additionally, a significant portion of our loans secured by real estate are secured by commercial and residential properties in Florida. The Florida economy and our market in particular were affected by the downturn in commercial and residential property values, and the decline in real estate values in Florida during the downturn was higher than the national average. Additionally, the Florida economy relies heavily on tourism and seasonal residents. Disruption or deterioration in economic conditions in the markets we serve or the occurrence of a natural disaster, such as a hurricane, or a man-made catastrophe, such as the Gulf of Mexico oil spill, could result in one or more of the following:

- an increase in loan delinquencies;
- an increase in problem assets and foreclosures;
- a decrease in the demand for our products and services; or
- a decrease in the value of collateral for loans, especially real estate, in turn reducing customers' borrowing power, the value of assets associated with problem loans and collateral coverage.

Hurricanes and other catastrophes to which our markets in the coastal regions of Florida are susceptible also can disrupt our operations, result in damage to our properties, reduce or destroy the value of collateral and negatively affect the local economies in which we operate, which could have a material adverse effect on our results of operations.

Any decline in existing and new real estate sales could decrease lending opportunities, delay the collection of our cash flow from the Loss Sharing Agreements, and could negatively affect our income.

***Delinquencies and defaults in residential mortgages have created a backlog in courts and an increase in the amount of legislative action that might restrict or delay our ability to foreclose and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements.***

For the single family residential loans covered by the Loss Sharing Agreements, we cannot collect loss share payments until we liquidate the properties securing those loans. These loss share payments could be delayed by an extended foreclosure process, including delays resulting from a court backlog, local or national foreclosure moratoriums or other delays, and these delays could have a material adverse effect on our results of operations. Homeowner protection laws may also delay the initiation or completion of foreclosure proceedings on specified types of residential mortgage loans. Any such limitations are likely to cause delayed or reduced collections from mortgagors. Any restriction on our ability to foreclose on a loan, any requirement that we forgo a portion of the amount otherwise due on a loan or any requirement that we modify any original loan terms could negatively impact our business, financial condition, liquidity and results of operations.

***Since we engage in lending secured by real estate and may be forced to foreclose on the collateral property and own the underlying real estate, we may be subject to the increased costs and risks associated with the ownership of real property, which could have an adverse effect on our business or results of operations.***

A significant portion of our loan portfolio is secured by real property. During the ordinary course of business, we may foreclose on and take title to properties securing certain loans, in which case, we are exposed to the risks inherent in the ownership of real estate. The amount that we, as a mortgagee, may realize after a default is dependent upon factors outside of our control, including:

- general or local economic conditions;
- environmental cleanup liability;

- neighborhood values;
- interest rates;
- real estate tax rates;
- operating expenses of the mortgaged properties;
- supply of and demand for rental units or properties;
- ability to obtain and maintain adequate occupancy of the properties;
- zoning laws;
- governmental rules, regulations and fiscal policies; and
- hurricanes or other natural or man-made disasters.

Certain expenditures associated with the ownership of real estate, principally real estate taxes and maintenance costs, may also adversely affect our operating expenses.

***Our loan portfolio is affected by residential and commercial real estate prices and the level of residential and commercial real estate sales.***

Our financial results may be adversely affected by changes in real estate values. We make credit and reserve decisions based on current real estate values, the current conditions of borrowers or projects and our expectations for the future. If the real estate market does not recover or if real estate values decline, we could experience higher delinquencies and charge-offs beyond that provided for in the allowance for loan and lease losses. Although we have the Loss Sharing Agreements with the FDIC, these agreements do not cover 100% of the losses attributable to covered assets. In addition, the Loss Sharing Agreements will not mitigate any losses on our non-covered assets and our earnings could be adversely affected through a higher than anticipated provision for loan losses on such assets.

***We depend on our executive officers and key personnel to continue the implementation of our long-term business strategy and could be harmed by the loss of their services.***

We believe that our continued growth and future success will depend in large part on the skills of our senior management team. We believe our senior management team possesses valuable knowledge about and experience in the banking industry and that their knowledge and relationships would be very difficult to replicate. Although our senior management team has entered into employment agreements with us, they may not complete the term of their employment agreements or renew them upon expiration. Our success also depends on the experience of our branch managers and lending officers and on their relationships with the customers and communities they serve. The loss of service of one or more of our executive officers or key personnel, or the inability to recruit and retain qualified personnel in the future, could have an adverse effect on our business, financial condition or operating results.

***We may not be able to find suitable acquisition candidates and may be unable to manage our growth due to acquisitions.***

An important component of our growth strategy is to pursue acquisitions of complementary businesses. We compete with other financial institutions for acquisition opportunities and there are a limited number of candidates that meet our acquisition criteria. Consequently, we may not be able to identify suitable candidates for acquisitions. If we are unable to locate suitable acquisition candidates willing to sell on terms acceptable to us, we would not be able to execute a strategy of growth by acquisition and we would be required to depend on other methods to grow our business.

Even if suitable candidates are identified and we succeed in consummating future acquisitions, acquisitions involve risks that the acquired business may not achieve anticipated revenue, earnings or cash flows. There may also be unforeseen liabilities relating to the acquired institution or arising out of the acquisition, asset quality problems of the acquired entity, difficulty operating in markets in which we have had no or only limited experience and other conditions not within our control, such as adverse personnel relations, loss of customers because of change in identity, and deterioration in local economic conditions.

In addition, the process of integrating acquired entities will divert significant management time and resources. We may not be able to integrate successfully or operate profitably any financial institutions we may acquire. We may experience disruption and incur unexpected expenses in integrating acquisitions. Any acquisitions we do make may not enhance our cash flows, business, financial condition, results of operations or prospects and may have an adverse effect on our results of operations, particularly during periods in which the acquisitions are being integrated into our operations.

***We face significant competition from other financial institutions and financial services providers, which may decrease our growth or profits.***

The primary market we serve is Florida. Consumer and commercial banking in Florida is highly competitive. Our market contains not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in Florida and adjoining states as well as savings and loan associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries, such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services.

The financial services industry could become even more competitive as a result of legislative, regulatory and technological changes and continued consolidation. Banks, securities firms and insurance companies can merge under the umbrella of a financial holding company, which can offer virtually any type of financial service, including banking, securities underwriting, insurance (both agency and underwriting) and merchant banking. Increased competition among financial services companies may adversely affect our ability to market our products and services. Also, technology has lowered barriers to entry and made it possible for banks to compete in our market without a retail footprint by offering competitive rates, as well as non-banks to offer products and services traditionally provided by banks. Many of our competitors have fewer regulatory constraints and may have lower cost structures. Additionally, due to their size, many competitors may offer a broader range of products and services as well as better pricing for certain products and services than we can.

Our ability to compete successfully depends on a number of factors, including:

- the ability to develop, maintain and build upon long-term customer relationships based on quality service, high ethical standards and safe and sound assets;
- the ability to attract and retain qualified employees to operate our business effectively;
- the ability to expand our market position;
- the scope, relevance and pricing of products and services offered to meet customer needs and demands;
- the rate at which we introduce new products and services relative to our competitors;
- customer satisfaction with our level of service; and
- industry and general economic trends.

Failure to perform in any of these areas could significantly weaken our competitive position, which could adversely affect our growth and profitability, which, in turn, could harm our business, financial condition and results of operations.

***We are dependent on our information technology and telecommunications systems and third-party servicers. Systems failures, interruptions or breaches of security could have an adverse effect on our financial condition and results of operations.***

Our business is highly dependent on the successful and uninterrupted functioning of our information technology and telecommunications systems and third-party servicers. We outsource our major systems including our electronic funds transfer transaction processing, cash management and online banking services. We rely on these systems to process new and renewal loans, gather deposits, provide customer service, facilitate collections and share data across our organization. The failure of these systems, or the termination of a third-party software license or service agreement on which any of these systems is based, could interrupt our operations. Because our information technology and telecommunications systems interface with and depend on third-party systems, we could experience service denials if demand for such services exceeds capacity or such third-party systems fail or experience interruptions. If sustained or repeated, a system failure or service denial could result in a deterioration of our ability to process new and renewal loans, gather deposits and provide customer service, compromise our ability to operate effectively, damage our reputation, result in a loss of customer business, and/or subject us to additional regulatory scrutiny and possible financial liability, any of which could have a material adverse effect on our financial condition and results of operations.

In addition, we provide our customers the ability to bank remotely, including online and over the telephone. The secure transmission of confidential information over the Internet and other remote channels is a critical element of remote banking. Our network could be vulnerable to unauthorized access, computer viruses, phishing schemes and other security breaches. We may be required to spend significant capital and other resources to protect against the threat of security breaches and computer viruses, or to alleviate problems caused by security breaches or viruses. To the extent that our activities or the activities of our customers involve the storage and transmission of confidential information, security breaches and viruses could expose us to claims, litigation and other possible liabilities. Any inability to prevent security breaches or computer viruses could also cause existing customers to lose confidence in our systems and could adversely affect our reputation and our ability to generate business.

***Reputational risks could affect our results.***

Our ability to originate and maintain accounts is highly dependent upon consumer and other external perceptions of our business practices. Adverse perceptions regarding our business practices could damage our reputation in both the customer and funding markets, leading to difficulties in generating and maintaining accounts as well as in financing them. Adverse developments with respect to the consumer or other external perceptions regarding the practices of our competitors, or our industry as a whole, may also adversely impact our reputation. In addition, adverse reputational impacts on third parties with whom we have important relationships may also adversely impact our reputation. Adverse reputational impacts or events may also increase our litigation risk. We carefully monitor internal and external developments for areas of potential reputational risk and have established governance structures to assist in evaluating such risks in our business practices and decisions.

***Global economic conditions may adversely affect our business and results of operations.***

There continues to be significant volatility and uncertainty in the global economy which has affected and may continue to affect the markets in which we operate. In particular, the current uncertainty in Europe, including concerns that certain European countries may default on payments due on their sovereign debt, and any resulting disruption may affect interest rates, consumer confidence levels and spending, bankruptcy and default rates, commercial and residential real estate values, and other factors. While we do not have direct exposure to European sovereign debt or the European credit markets, market disruptions in Europe could spread into markets in which we operate. A sustained weakness or weakening in business and economic conditions generally or specifically in the markets in which we do business could have adverse effects on our business including:

- A decrease in the demand for loans and other products and services offered by us;
- A decrease in the value of our assets; and
- An increase in loan delinquencies and defaults.

If economic conditions worsen or remain volatile, our business, financial condition and results of operations could be adversely affected.

**Risks Relating to the Regulation of Our Industry**

***The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 may have a material effect on our operations.***

On July 21, 2010, the Dodd-Frank Act was signed into law. The Dodd-Frank Act imposes significant regulatory and compliance changes. There remains significant uncertainty surrounding the manner in which the provisions of the Dodd-Frank Act will be implemented by the various regulatory agencies and the full extent of the impact of the requirements on our operations is unclear. The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements. Failure to comply with the new requirements or with any future changes in laws or regulations may negatively impact our results of operations and financial condition. For a more detailed description of the Dodd-Frank Act, see Item 1 “Business—Regulation and Supervision—The Dodd-Frank Act.”

***We operate in a highly regulated environment and the laws and regulations that govern our operations, corporate governance, executive compensation and accounting principles, or changes in them, or our failure to comply with them, may adversely affect us.***

We are subject to extensive regulation, supervision, and legal requirements that govern almost all aspects of our operations. Intended to protect customers, depositors, the DIF, and the overall financial stability of the United States, these laws and regulations, among other matters, prescribe minimum capital requirements, impose limitations on the business activities in which we can engage, limit the dividend or distributions that BankUnited and Herald can pay to us, restrict the ability of institutions to guarantee our debt, and impose certain specific accounting requirements on us that may be more restrictive and may result in greater or earlier charges to earnings or reductions in our capital than generally accepted accounting principles. Compliance with laws and regulations can be difficult and costly, and changes to laws and regulations often impose additional compliance costs. Our failure to comply with these laws and regulations, even if the failure follows good faith effort or reflects a difference in interpretation, could subject us to restrictions on our business activities, fines and other penalties, any of which could adversely affect our results of operations, capital base and the price of our securities. Further, any new laws, rules and regulations could make compliance more difficult or expensive or otherwise adversely affect our business and financial condition.

***Failure to comply with the business plan filed with the OCC could have an adverse effect on our ability to execute our business plan.***

In conjunction with the conversion of its charter to that of a national bank, BankUnited was required to file a business plan with the OCC. Failure to comply with the business plan could subject the Bank to regulatory actions that could impede our ability to execute our business strategy. The provisions of the business plan restrict our ability to engage in business activities outside of those contemplated in the business plan without regulatory approval.

***Federal banking agencies periodically conduct examinations of our business, including compliance with laws and regulations, and our failure to comply with any supervisory actions to which we are or become subject as a result of such examinations may adversely affect us.***

Federal banking agencies, including the OCC and Federal Reserve Board, periodically conduct examinations of our business, including compliance with laws and regulations. If, as a result of an examination, a federal banking agency were to determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of any of our operations had become unsatisfactory, or that the Company or its management was in violation of any law or regulation, it may take a number of different remedial actions as it deems appropriate. These actions include the power to enjoin "unsafe or unsound" practices, to require affirmative actions to correct any conditions resulting from any violation or practice, to issue an administrative order that can be judicially enforced, to direct an increase in BankUnited's or Herald's capital, to restrict our growth, to assess civil monetary penalties against our officers or directors, to remove officers and directors and, if it is concluded that such conditions cannot be corrected or there is an imminent risk of loss to depositors, to terminate BankUnited's or Herald's deposit insurance. If we become subject to such regulatory actions, our business, results of operations and reputation may be negatively impacted.

***Many of our new activities and expansion plans require regulatory approvals, and failure to obtain them may restrict our growth.***

We intend to complement and expand our business by pursuing strategic acquisitions of financial institutions and other complementary businesses. We must generally receive federal regulatory approval before we can acquire an institution or business. In determining whether to approve a proposed acquisition, federal banking regulators will consider, among other factors, the effect of the acquisition on the competition, our financial condition, and our future prospects. The regulators also review current and projected capital ratios and levels, the competence, experience, and integrity of management and its record of compliance with laws and regulations, the convenience and needs of the communities to be served (including the acquiring institution's record of compliance under the CRA) and the effectiveness of the acquiring institution in combating money laundering activities. Such regulatory approvals may not be granted on terms that are acceptable to us, or at all. We may also be required to sell branches as a condition to receiving regulatory approval, which condition may not be acceptable to us or, if acceptable to us, may reduce the benefit of any acquisition.

In addition to the acquisition of existing financial institutions, as opportunities arise, we plan to continue *de novo* branching as a part of our internal growth strategy and possibly enter into new markets through *de novo* branching. *De novo* branching and any acquisition carries with it numerous risks, including the inability to obtain all required regulatory approvals. The failure to obtain these regulatory approvals for potential future strategic acquisitions and *de novo* branches may impact our business plans and restrict our growth.

***Financial institutions, such as BankUnited and Herald, face a risk of noncompliance and enforcement action with the Bank Secrecy Act and other anti-money laundering statutes and regulations.***

The federal Bank Secrecy Act, the USA PATRIOT Act, and other laws and regulations require financial institutions, among other duties, to institute and maintain an effective anti-money laundering program and file suspicious activity and currency transaction reports as appropriate. The federal Financial Crimes Enforcement Network, established by the U.S. Treasury Department to administer the Bank Secrecy Act, is authorized to impose significant civil money penalties for violations of those requirements, and has recently engaged in coordinated enforcement efforts with the individual federal banking regulators, as well as the U.S. Department of Justice, Drug Enforcement Administration, and Internal Revenue Service. There is also increased scrutiny of compliance with the sanctions programs and rules administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

In order to comply with regulations, guidelines and examination procedures in this area, we are dedicating significant resources to the enhancement of our anti-money laundering program, adopting enhanced policies and procedures and implementing a new, robust automated anti-money laundering software solution. If our policies, procedures and systems are deemed deficient or the policies, procedures and systems of the financial institutions that we have already acquired or may acquire in the future are deemed deficient, we could be subject to liability, including fines and regulatory actions such as restrictions on our ability to pay dividends and the necessity to obtain regulatory approvals to proceed with certain aspects of our business plan, including our expansion plans.

***We are subject to the CRA and fair lending laws, and failure to comply with these laws could lead to material penalties.***

The CRA, the Equal Credit Opportunity Act, the Fair Housing Act and other fair lending laws and regulations impose nondiscriminatory lending requirements on financial institutions. The Department of Justice and other federal agencies are responsible for enforcing these laws and regulations. A successful challenge to an institution's performance under the CRA or fair lending laws and regulations could result in a wide variety of sanctions, including the required payment of damages and civil money penalties, injunctive relief, imposition of restrictions on mergers and acquisitions activity, and restrictions on expansion activity. Private parties may also have the ability to challenge an institution's performance under fair lending laws in private class action litigation.

***The FDIC's restoration plan and the related increased assessment rate could adversely affect our earnings.***

As a result of economic conditions and the enactment of the Dodd-Frank Act, the FDIC has increased the deposit insurance assessment rates and thus raised deposit premiums for insured depository institutions. If these increases are insufficient for the DIF to meet its funding requirements, further special assessments or increases in deposit insurance premiums may be required. We are generally unable to control the amount of premiums that we are required to pay for FDIC insurance. If there are additional bank or financial institution failures, we may be required to pay FDIC premiums higher than current levels. Any future additional assessments, increases or required prepayments in FDIC insurance premiums may materially adversely affect results of operations.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

At December 31, 2012, BankUnited leased 120,672 square feet of office and operations space in Miami Lakes, Florida. This space includes our principal executive offices, operations center and a retail branch. At December 31, 2012, we provided banking services at 98 branch locations in 15 Florida counties. Of the 98 branch properties, we leased 90 locations and owned 8 locations. We also leased 78,354 square feet of property in Florida for future branch operations and 5,580 square feet of warehouse space. Additionally, we leased 29,561 square feet of office and future branch space in New York City, New York, and 20,858 square feet of office, operations and future branch space in Melville, New York.

At December 31, 2012, Herald leased 24,496 square feet of office and operations space in New York City, New York, and 10,048 square feet of office space in Melville, New York. We also leased 10,619 square feet of office and operations space in Hunt Valley, Maryland to house United Business Capital Lending, and 5,488 square feet of office and operations space in Scottsdale, Arizona to house Pinnacle Public Finance.

We believe that our facilities are in good condition and are adequate to meet our operating needs for the foreseeable future.

**Item 3. Legal Proceedings**

The Company is involved as plaintiff or defendant in various legal actions arising in the normal course of business. In the opinion of management, based upon advice of legal counsel, the likelihood is remote that the impact of these proceedings, either individually or in the aggregate, would be material to the Company's consolidated financial position, results of operations or cash flows.

**Item 4. Mine Safety Disclosures**

None.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

#### Market Information and Holders of Record

Shares of our common stock began trading on the NYSE under the symbol "BKU" on January 28, 2011. The last sale price of our common stock on the NYSE on February 20, 2013 was $27.68 per share.

The following table shows the high and low sales prices for our common stock for the periods indicated, as reported by the NYSE:

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | High | Low | High | Low |
| 1st Quarter | $26.33 | $21.66 | $29.90 | $27.25 |
| 2nd Quarter | 25.26 | 22.23 | 29.54 | 26.10 |
| 3rd Quarter | 26.22 | 22.85 | 27.60 | 19.41 |
| 4th Quarter | 25.10 | 22.01 | 23.49 | 18.92 |

As of February 20, 2013, there were 577 stockholders of record of our common stock.

#### Equity Compensation Plan Information

The information set forth under the caption "Equity Compensation Plan Information" in our definitive proxy statement for the Company's 2013 annual meeting of stockholders (the "Proxy Statement") is incorporated herein by reference.

#### Dividend Policy

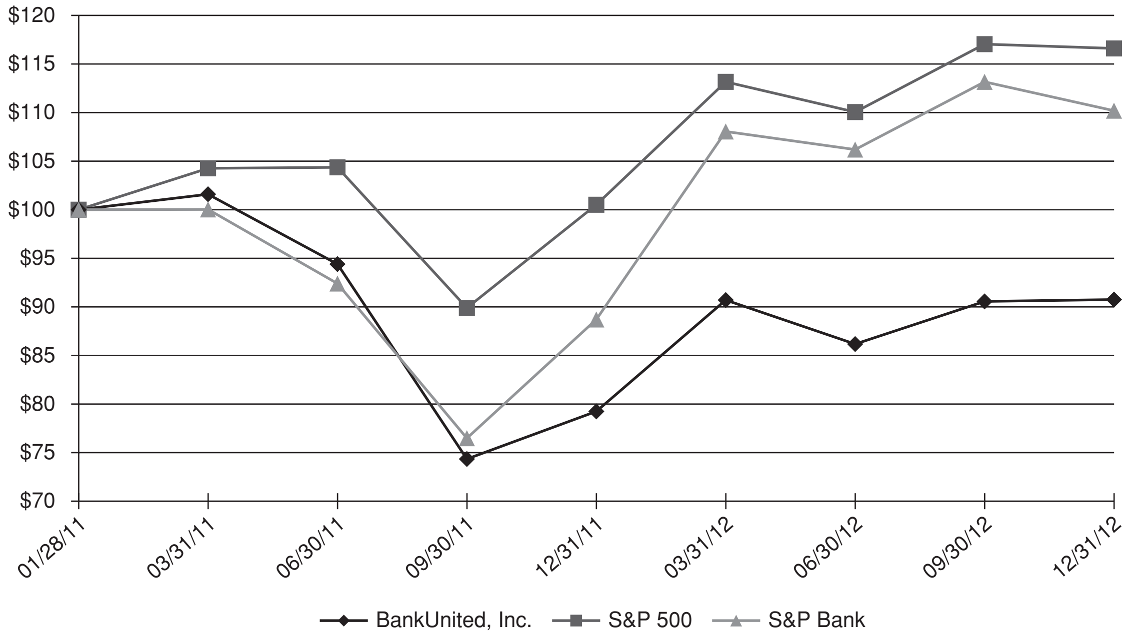
The Company declared a quarterly dividend of $0.17 per share on its common stock for each of the first three quarters of 2012, and increased its dividend to $0.21 per share on its common stock for the fourth quarter of 2012, resulting in total dividends for 2012 of $74.1 million, or $0.72 per share for the year ended December 31, 2012. The Company declared quarterly dividends of $0.14 per share on its common stock in 2011, resulting in total dividends for 2011 of $56.7 million, or $0.56 per share for the year ended December 31, 2011. Dividends from the Bank are the principal source of funds for the payment of dividends on our common stock. The Bank is subject to certain restrictions that may limit its ability to pay dividends to us. See "Business—Regulation and Supervision—Regulatory Limits on Dividends and Distributions". The quarterly dividends on our common stock are subject to the discretion of our board of directors and dependent on, among other things, our financial condition, results of operations, capital requirements, restrictions contained in financing instruments and other factors that our board of directors may deem relevant.

#### Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on an initial investment of $100 in our common stock between January 28, 2011 (the day shares of our common stock began trading) and December 31, 2012, with the comparative cumulative total return of such amount on the S&P 500 Index and the S&P 500 Bank Index over the same period. Reinvestment of all dividends is assumed to have been made in our common stock. The graph assumes our closing sales price on January 28, 2011 of $28.40 per share as the initial value of our common stock.

The comparisons shown in the graph below are based upon historical data. We caution that the stock price performance shown in the graph below is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock.

**COMPARISON OF CUMULATIVE TOTAL RETURN**




| Index | 01/28/11 | 03/31/11 | 06/30/11 | 09/30/11 | 12/31/11 | 03/31/12 | 06/30/12 | 09/30/12 | 12/31/12 |
|---|---|---|---|---|---|---|---|---|---|
| BankUnited, Inc. . . . . . . . . . . . | 100.00 | 101.59 | 94.40 | 74.34 | 79.24 | 90.70 | 86.17 | 90.56 | 90.75 |
| S&P 500 . . . . . . . . . . . . . . . . . . | 100.00 | 104.26 | 104.36 | 89.89 | 100.51 | 113.16 | 110.05 | 117.04 | 116.60 |
| S&P Bank . . . . . . . . . . . . . . . . . | 100.00 | 100.03 | 92.40 | 76.48 | 88.70 | 108.05 | 106.19 | 113.16 | 110.19 |

**Recent Sales of Unregistered Securities**

None.

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

None.

**Item 6. Selected Consolidated Financial Data**

You should read the selected consolidated financial data set forth below in conjunction with "Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations," and the audited consolidated financial statements and the related notes thereto included elsewhere in this Form 10-K. The selected consolidated financial data set forth below at December 31, 2012, 2011 and 2010 and for the years then ended and at December 31, 2009 and for the period then ended is derived from our audited consolidated financial statements. The selected consolidated financial data set forth below at September 30, 2008, for the period from October 1, 2008 to May 21, 2009 and for the fiscal year ended September 30, 2008, has been derived from the consolidated financial statements of the Failed Bank.

Although we were incorporated on April 28, 2009, neither we nor the Bank had any substantive operations prior to the FSB Acquisition on May 21, 2009. Results of operations of the Company for the periods after the FSB Acquisition are not comparable to the results of operations of the Failed Bank. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Impact of Acquisition Accounting, ACI Loan Accounting and the Loss Sharing Agreements."

| | BankUnited, Inc. | | | | Failed Bank |
|---|---|---|---|---|---|
| | At December 31, | | | | At September 30, |
| | 2012 | 2011 | 2010 | 2009 | 2008 |
| | (dollars in thousands) | | | | |
| **Consolidated Balance Sheet Data:** | | | | | |
| Cash and cash equivalents | $ 495,353 | $ 303,742 | $ 564,774 | $ 356,215 | $ 1,223,346 |
| Investment securities available for sale, at fair value | 4,172,412 | 4,181,977 | 2,926,602 | 2,243,143 | 755,225 |
| Loans, net | 5,512,618 | 4,088,656 | 3,875,857 | 4,588,898 | 11,249,367 |
| FDIC indemnification asset | 1,457,570 | 2,049,151 | 2,667,401 | 3,279,165 | — |
| Goodwill and other intangible assets | 69,768 | 68,667 | 69,011 | 60,981 | 28,353 |
| Total assets | 12,375,953 | 11,322,038 | 10,869,560 | 11,129,961 | 14,088,591 |
| Deposits | 8,538,073 | 7,364,714 | 7,163,728 | 7,666,775 | 8,176,817 |
| Federal Home Loan Bank advances | 1,916,919 | 2,236,131 | 2,255,200 | 2,079,051 | 5,279,350 |
| Total liabilities | 10,569,273 | 9,786,758 | 9,616,052 | 10,035,701 | 13,689,821 |
| Total stockholder's equity | 1,806,680 | 1,535,280 | 1,253,508 | 1,094,260 | 398,770 |

| | BankUnited, Inc. | | | | Failed Bank | |
|---|---|---|---|---|---|---|
| | Year Ended December 31, 2012 | Year Ended December 31, 2011 | Year Ended December 31, 2010 | Period from April 28, 2009 to December 31, 2009(1) | Period from October 1, 2008 to May 21, 2009(1) | Year Ended September 30, 2008 |
| | (dollars in thousands, except share data) | | | | | |
| **Consolidated Income Statement Data:** | | | | | | |
| Interest income | $720,856 | $638,097 | $557,688 | $335,524 | $ 339,068 | $ 834,460 |
| Interest expense | 123,269 | 138,937 | 168,200 | 83,856 | 333,392 | 555,594 |
| Net interest income | 597,587 | 499,160 | 389,488 | 251,668 | 5,676 | 278,866 |
| Provision for loan losses | 18,896 | 13,828 | 51,407 | 22,621 | 919,139 | 856,374 |
| Net interest income (loss) after provision for loan losses | 578,691 | 485,332 | 338,081 | 229,047 | (913,463) | (577,508) |
| Non-interest income (loss) | 89,247 | 163,217 | 297,779 | 253,636 | (81,431) | (128,859) |
| Non-interest expense | 323,073 | 455,805 | 323,320 | 283,262 | 238,403 | 246,480 |
| Income (loss) before income taxes | 344,865 | 192,744 | 312,540 | 199,421 | (1,233,297) | (952,847) |
| Provision (benefit) for income before taxes | 133,605 | 129,576 | 127,805 | 80,375 | — | (94,462) |
| Net income (loss) | $211,260 | $ 63,168 | $184,735 | $119,046 | $ (1,233,297) | $ (858,385) |

| | BankUnited, Inc. | | | | Failed Bank | |
|---|---|---|---|---|---|---|
| | Year Ended December 31, 2012 | Year Ended December 31, 2011 | Year Ended December 31, 2010 | Period from April 28, 2009 to December 31, 2009(1) | Period from October 1, 2008 to May 21, 2009 | Year Ended September 30, 2008 |
| | (dollars in thousands, except per share data) | | | | | |
| **Share Data:** | | | | | | |
| Earnings (loss) per common share, basic | $ 2.05 | $ 0.63 | $ 1.99 | $ 1.29 | $(12,332,970) | $(8,583,850) |
| Earnings (loss) per common share, diluted | $ 2.05 | $ 0.62 | $ 1.99 | $ 1.29 | $(12,332,970) | $(8,583,850) |
| Cash dividends declared per common share | $ 0.72 | $ 0.56 | $ 0.37 | $ — | N/A | N/A |
| Dividend payout ratio | 35.13% | 90.32% | 18.59% | N/A | N/A | N/A |
| **Other Data (unaudited):** | | | | | | |
| **Financial ratios** | | | | | | |
| Return on average assets(2) | 1.71% | 0.58% | 1.65% | 1.69% | (14.26)% | (5.94)% |
| Return on average common equity(2) | 12.45% | 4.34% | 15.43% | 18.98% | (2041.04)% | (75.43)% |
| Yield on earning assets(2)(7) | 7.27% | 7.92% | 7.26% | 7.42% | 3.91% | 5.91% |
| Cost of interest bearing liabilities(2) | 1.33% | 1.62% | 1.81% | 1.39% | 3.94% | 4.36% |
| Equity to assets ratio | 14.60% | 13.56% | 11.53% | 9.83% | (7.25)% | 2.83% |
| Interest rate spread(2)(7) | 5.94% | 6.30% | 5.45% | 6.03% | (0.03)% | 1.55% |
| Net interest margin(2)(7) | 6.04% | 6.21% | 5.08% | 5.58% | 0.06% | 1.98% |
| Loan to deposit ratio(5) | 65.28% | 56.23% | 54.96% | 60.15% | 128.74% | 146.45% |
| **Asset quality ratios** | | | | | | |
| Non-performing loans to total loans(3)(5) | 0.62% | 0.70% | 0.66% | 0.38% | 24.58% | 11.98% |
| Non-performing assets to total assets(4) | 0.89% | 1.35% | 2.14% | 1.24% | 23.53% | 11.13% |
| Allowance for loan and lease losses to total loans | 1.06% | 1.17% | 1.48% | 0.49% | 11.14% | 5.98% |
| Allowance for loan and lease losses to non-performing loans(3) | 171.21% | 167.59% | 226.35% | 130.22% | 45.33% | 49.96% |
| Net charge-offs to average loans(2) | 0.17% | 0.62% | 0.37% | 0.00% | 5.51% | 1.58% |

| | BankUnited, Inc. | | | | Failed Bank |
|---|---|---|---|---|---|
| | At December 31, | | | | At September 30, |
| | 2012 | 2011 | 2010 | 2009 | 2008 |
| **Capital ratios(6)** | | | | | |
| Tier 1 risk-based capital | 33.60% | 41.62% | 42.97% | 40.42% | 4.90% |
| Total risk-based capital | 34.88% | 42.89% | 43.71% | 40.55% | 6.21% |
| Tier 1 leverage | 13.16% | 13.06% | 10.76% | 8.78% | 2.89% |

(1) The Company was incorporated on April 28, 2009, but neither the Company nor the Bank had any substantive operations prior to the FSB Acquisition on May 21, 2009.

(2) Ratio is annualized for the period from October 1, 2008 to May 21, 2009 and for the period from May 22, 2009 to December 31, 2009. See note 1 above.

(3) We define non-performing loans to include nonaccrual loans, loans, other than ACI loans, that are past due 90 days or more and still accruing and certain loans modified in troubled debt restructurings. Contractually delinquent ACI loans on which interest continues to be accreted are excluded from non-performing loans. The carrying value of ACI loans contractually delinquent by more than 90 days, but not identifed as non-performing was $176.5 million, $361.2 million, $717.7 million and $1.2 billion at December 31, 2012, 2011, 2010 and 2009 respectively.

(4) Non-performing assets include non-performing loans and OREO.

(5) Total loans is net of unearned discounts and deferred fees and costs.

(6) Capital ratios presented as of December 31, 2009 are ratios of the Bank.

(7) On a tax-equivalent basis for the years ended December 31, 2012, 2011 and 2010.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis is intended to assist readers in understanding the consolidated financial condition and results of operations of BankUnited, Inc. and its subsidiaries (the "Company", "we", "us" and "our") and should be read in conjunction with the consolidated financial statements, accompanying footnotes and supplemental financial data included herein. In addition to historical information, this discussion contains forward-looking statements that involve risks, uncertainties and assumptions that could cause actual results to differ materially from management's expectations. Factors that could cause such differences are discussed in the sections entitled "Forward-looking Statements" and "Risk Factors." We assume no obligation to update any of these forward-looking statements.*

### Overview

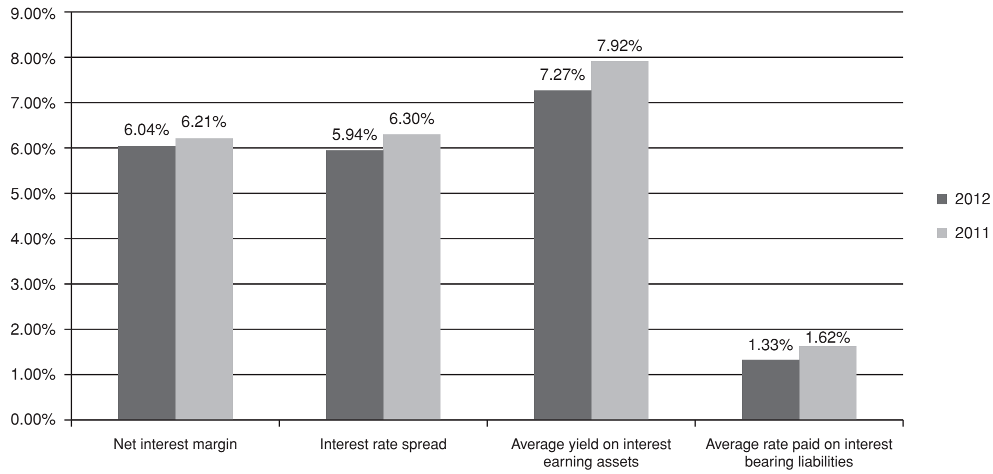
#### *Performance Highlights*

In evaluating our financial performance, we consider the level of and trends in net interest income, the net interest margin and interest rate spread, the allowance and provision for loan losses, performance ratios such as the return on average assets and return on average equity, asset quality ratios including the ratio of non-performing loans to total loans, non-performing assets to total assets, and portfolio delinquency and charge-off trends. We consider growth in the loan portfolio and trends in deposit mix. We analyze these ratios and trends against our own historical performance, our budgeted performance and the financial condition and performance of comparable financial institutions in our region and nationally.

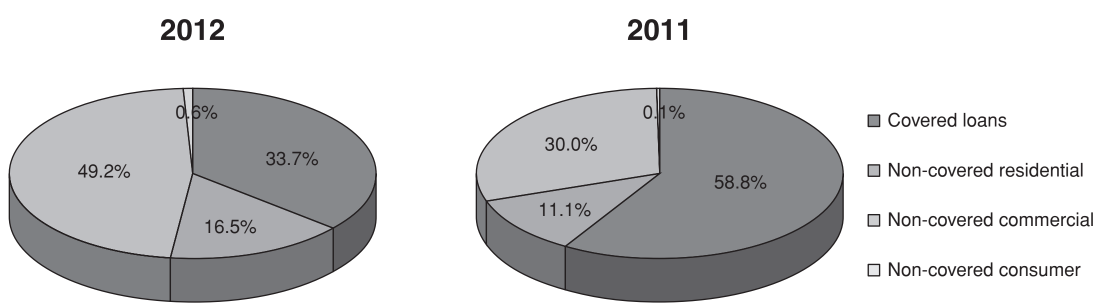
Performance highlights include:

- Net income for the year ended December 31, 2012 was $211.3 million or $2.05 per diluted share, compared to $63.2 million or $0.62 per diluted share for the year ended December 31, 2011. Earnings for 2012 generated a return on average stockholders' equity of 12.45% and a return on average assets of 1.71%. Results for 2011 reflected a one-time charge of $110.4 million recorded in conjunction with the Company's IPO.

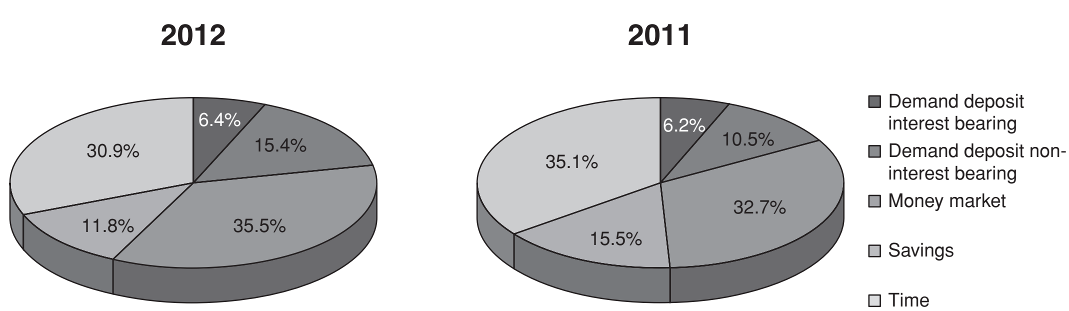
- Net interest income for 2012 was $597.6 million, an increase of $98.4 million over the prior year. The net interest margin, calculated on a tax-equivalent basis, decreased to 6.04% for 2012 from 6.21% for 2011. The decline in the net interest margin resulted from a decrease in the average yield on interest earning assets, partially offset by a decrease in the average rate paid on interest bearing liabilities. The primary driver of the decrease in the average yield on interest earning assets was a shift in the composition of the loan portfolio away from higher yielding covered loans into new loans originated at lower current market rates of interest. The decrease in the average rate paid on interest bearing liabilities resulted from declines in market interest rates and a continued shift in deposit mix into lower cost deposit products. The following chart provides a comparison of net interest margin, the interest rate spread, the average yield on interest earning assets and the average rate paid on interest bearing liabilities for the years ended December 31, 2012 and 2011 (on a tax-equivalent basis):




- We completed the acquisition of Herald on February 29, 2012 for a purchase price of $65.0 million. At the date of acquisition, Herald had total loans of $306.0 million, total investment securities of $161.0 million and total deposits of $435.5 million.
- Strong loan growth continued. New loans increased by $2.0 billion in 2012 to $3.7 billion. New loan growth in 2012 outpaced the resolution of covered loans, resulting in net growth in the total loan portfolio. New loan growth was concentrated in the commercial portfolio segment, commensurate with our core business strategy. The following charts compare the composition of our loan portfolio at December 31, 2012 and 2011:

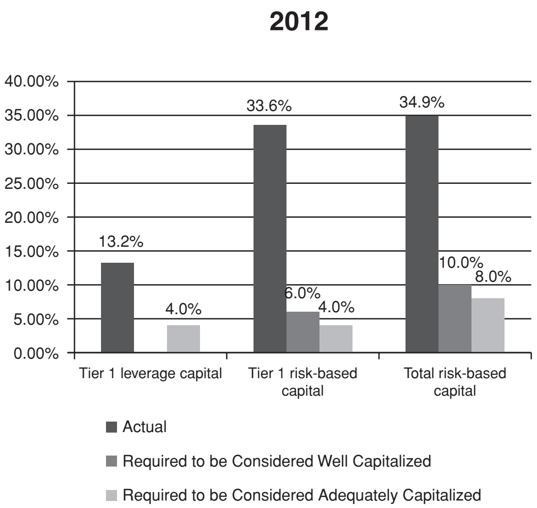


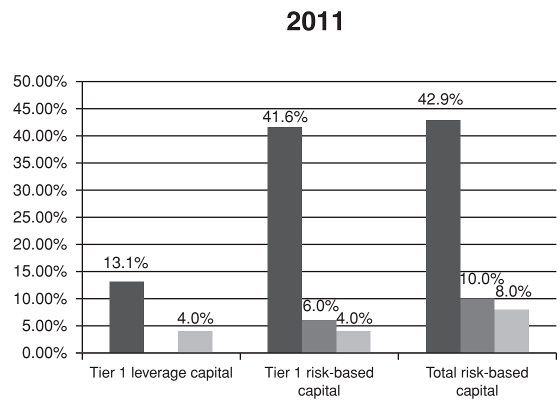

- Total deposits grew by $1.2 billion to $8.5 billion while demand deposits increased to 22% of total deposits at December 31, 2012. The following charts illustrate the composition of deposits at December 31, 2012 and 2011:



• Asset quality remains strong. At December 31, 2012, 97% of the new commercial loan portfolio was rated "pass" and 99% of the new residential portfolio was current. The ratio of non-performing, non-covered loans to total non-covered loans was 0.43% at December 31, 2012. Credit risk related to the covered loans is significantly mitigated by the Loss Sharing Agreements.

• The Company's capital ratios exceed all regulatory "well capitalized" guidelines. The charts below present the Company's regulatory capital ratios compared to regulatory guidelines as of December 31, 2012 and 2011:




***Opportunities and Challenges***

Management has identified significant opportunities for our Company, including:

• Our capital position, market presence and experienced lending team position us well for continued organic growth in Florida and the Tri-State market. In addition to our core commercial banking franchise, we are building an in-house residential origination channel and have entered the indirect auto and taxi medallion lending businesses.

• Planned expansion of our branch footprint, including three branches in Manhattan scheduled to open in the first quarter of 2013.

• Potential growth through strategic acquisitions of financial institutions and complementary businesses.

• The potential to take advantage of lower market interest rates and the ability to shift deposits into lower cost products to further reduce our cost of funds.

• The continued enhancement of our infrastructure and technology platforms will enable us to expand product offerings to our customers and increase operational efficiency.

We have also identified significant challenges confronting the industry and our Company:

• The current low interest rate environment is likely to put pressure on our net interest margin, particularly as higher-yielding covered assets are liquidated or mature and are replaced with assets originated or purchased at current market rates of interest.

- Economic conditions in the Florida market, while improving, remain under stress. Continued economic stress may lead to elevated levels of non-performing assets or impact our ability to sustain the trajectory of new loan growth.
- Management expects that the Company and the banking industry as a whole may be required by market forces and/or regulation to operate with higher capital ratios than in the recent past.
- Uncertainty about the full impact of new regulation may present challenges in the execution of our business strategy and the management of non-interest expense. For additional discussion, see "Regulation and Supervision."

***Impact of Acquisition Accounting, ACI Loan Accounting and the Loss Sharing Agreements***

The application of acquisition accounting, accounting for loans acquired with evidence of deterioration in credit quality since origination ("ACI" or "Acquired Credit Impaired" loans) and the provisions of the Loss Sharing Agreements have had a material impact on our financial condition and results of operations. The more significant ways in which our financial statements have been impacted are summarized below and discussed in more detail throughout this "Management's Discussion and Analysis of Financial Condition and Results of Operations":

- Under the acquisition method of accounting, all of the assets acquired and liabilities assumed in the FSB Acquisition were initially recorded on the consolidated balance sheet at their estimated fair values as of May 21, 2009. These estimated fair values differed materially from the carrying amounts of many of the assets acquired and liabilities assumed as reflected in the financial statements of the Failed Bank immediately prior to the FSB Acquisition. In particular, the carrying amount of investment securities, loans, the FDIC indemnification asset, goodwill and other intangible assets, net deferred tax assets, deposit liabilities, and FHLB advances were materially impacted by these adjustments, which continue to affect the reported amounts of such assets and liabilities;
- Interest income, interest expense and the net interest margin reflect the impact of accretion of the fair value adjustments made to the carrying amounts of interest earning assets and interest bearing liabilities in conjunction with the FSB Acquisition;
- The estimated fair value at which the acquired loans were initially recorded by the Company was significantly less than the unpaid principal balances of the loans. No allowance for loan and lease losses was recorded with respect to acquired loans at the FSB Acquisition date. The write-down of loans to fair value in conjunction with the application of acquisition accounting and credit protection provided by the Loss Sharing Agreements reduces the impact of the provision for loan losses related to the acquired loans on the results of operations;
- Acquired investment securities were recorded at their estimated fair values at the FSB Acquisition date, significantly reducing the potential for other-than-temporary impairment charges in periods subsequent to the FSB Acquisition for the acquired securities. Certain of the acquired investment securities are covered under the Loss Sharing Agreements. The impact on results of operations of any future other-than-temporary impairment charges related to covered securities would be significantly mitigated by indemnification by the FDIC;
- An indemnification asset related to the Loss Sharing Agreements with the FDIC was recorded in conjunction with the FSB Acquisition. The Loss Sharing Agreements afford the Company significant protection against future credit losses related to covered assets;
- Non-interest income includes the effect of accretion of discount on the indemnification asset;
- Non-interest income includes gains and losses associated with the resolution of covered assets and the related effect of indemnification under the terms of the Loss Sharing Agreements. The

impact of gains or losses related to transactions in covered loans and other real estate owned is significantly mitigated by indemnification by the FDIC;

- ACI loans that are contractually delinquent may not be reflected as nonaccrual loans or non-performing assets due to the accounting treatment accorded such loans under Accounting Standards Codification ("ASC") section 310-30, "Loans and Debt Securities Acquired with Deteriorated Credit Quality."

These factors may impact the comparability of our financial performance to that of other financial institutions.

**Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles and follow general practices within the banking industry. Application of these principles requires management to make complex and subjective estimates and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable and appropriate under current circumstances. These assumptions form the basis for our judgments about the carrying values of assets and liabilities that are not readily available from independent, objective sources. We evaluate our estimates on an ongoing basis. Use of alternative assumptions may have resulted in significantly different estimates. Actual results may differ from these estimates.

Accounting policies are an integral part of our financial statements. A thorough understanding of these accounting policies is essential when reviewing our reported results of operations and our financial position. We believe that the critical accounting policies and estimates discussed below involve a heightened level of management judgment due to the complexity, subjectivity and sensitivity involved in their application.

Note 1 to the consolidated financial statements contains a further discussion of our significant accounting policies.

***Allowance for Loan and Lease Losses***

The allowance for loan and lease losses ("ALLL") represents management's estimate of probable loan losses inherent in the Company's loan portfolio. Determining the amount of the ALLL is considered a critical accounting estimate because of its complexity and because it requires significant judgment and estimation. Estimates that are particularly susceptible to change that may have a material impact on the amount of the ALLL include:

- the amount and timing of expected future cash flows from ACI loans and impaired loans;
- the value of underlying collateral, which impacts loss severity and certain cash flow assumptions;
- the selection of peer banks used to calculate loss factors;
- estimated losses based on risk characteristics and risk rating of loans; and
- our assessment of qualitative factors.

Note 1 of the notes to our consolidated financial statements describes the methodology used to determine the ALLL.

***Accounting for Acquired Loans and the FDIC Indemnification Asset***

A significant portion of the covered loans are ACI Loans. The accounting for ACI loans requires the Company to estimate the timing and amount of cash flows to be collected from these loans and to continually update estimates of the cash flows expected to be collected over the lives of the loans. Similarly, the accounting for the FDIC indemnification asset requires the Company to estimate the timing and amount of cash flows to be received from the FDIC in reimbursement for losses and expenses related to the covered loans; these estimates are directly related to estimates of cash flows to be received from the covered loans. Estimated cash flows impact the rate of accretion on covered loans and the FDIC indemnification asset as well as the amount of any ALLL to be established related to the covered loans. These cash flow estimates are considered to be critical accounting estimates because they involve significant judgment and assumptions as to their amount and timing.

Covered 1-4 single family residential and home equity loans were placed into homogenous pools at the time of the FSB Acquisition; the ongoing credit quality and performance of these loans is monitored on a pool basis and expected cash flows are estimated on a pool basis. At acquisition, the fair value of the pools was measured based on the expected cash flows to be derived from each pool. For ACI pools, the difference between total contractual payments due and the cash flows expected to be received at acquisition was recognized as non-accretable difference. The excess of expected cash flows over the recorded fair value of each ACI pool at acquisition was recognized as accretable yield. The accretable yield is recognized as interest income over the life of each pool.

We monitor the pools quarterly by updating our expected cash flows to determine whether any changes have occurred in expected cash flows that would be indicative of impairment or necessitate reclassification between non-accretable difference and accretable yield. Initial and ongoing cash flow expectations incorporate significant assumptions regarding prepayment rates, the timing of resolution of loans, frequency of default, delinquency and loss severity, which is dependent on estimates of underlying collateral values. Changes in these assumptions could have a potentially material impact on the amount of the ALLL related to the covered loans as well as on the rate of accretion on these loans. Prepayment, delinquency and default curves used to forecast pool cash flows are derived from roll rates generated from the historical performance of the ACI residential loan portfolio observed over the immediately preceding four quarters. Generally, improvements in expected cash flows less than 1% of the expected cash flows from a pool are not recorded. This threshold is judgmentally determined.

Generally, commercial loans are monitored and expected cash flows updated at the individual loan level due to the size and other unique characteristics of these loans. The expected cash flows are estimated based on judgments and assumptions which include credit risk grades established in the Bank's ongoing credit review program, likelihood of default based on observations of specific loans during the credit review process as well as applicable industry data, loss severity based on updated evaluations of cash flows from available collateral, and the contractual terms of the underlying loan agreements. Changes in the assumptions that impact forecasted cash flows could result in a potentially material change to the amount of the ALLL or the rate of accretion on these loans.

The estimated cash flows from the FDIC indemnification asset are sensitive to changes in the same assumptions that impact expected cash flows on covered loans. Estimated cash flows impact the rate of accretion on the FDIC indemnification asset.

***Other Real Estate Owned***

Assets acquired through, or in lieu of, loan foreclosure are held for sale and are initially recorded at the fair value of the collateral at the date of foreclosure based on estimates, including some obtained from third parties, less estimated costs to sell, establishing a new cost basis. Subsequent to foreclosure, valuations are periodically performed, and the assets are carried at the lower of cost or fair value less estimated costs to sell. Significant property improvements that enhance the salability of the property are capitalized to the extent that the carrying value does not exceed estimated realizable value. Legal fees, maintenance and other direct costs of foreclosed properties are expensed as incurred. Given the large number of OREO properties and the judgment involved in estimating fair value of the properties, accounting for OREO is regarded as a critical accounting policy. Estimates of value of OREO properties are typically based on real estate appraisals performed by independent appraisers. In some cases, if an appraisal is not available, values may be based on brokers' price opinions. These values are generally updated as appraisals become available.

***Equity Based Compensation***

Prior to the consummation of the IPO, BUFH had issued equity awards in the form of Profits Interest Units ("PIUs") to certain members of management. Compensation expense related to PIUs was based on the fair value of the underlying units on the date of the consolidated financial statements. At the time of the IPO, the PIUs were exchanged for a combination of vested and unvested shares and vested and unvested options. The fair value of PIUs and options issued in exchange for PIUs was estimated using a Black-Scholes option pricing model, which incorporated significant assumptions as to expected volatility, dividends, terms, risk free rates and, prior to the IPO, equity value per share. Changes in these underlying assumptions would have had a potentially material effect on the values assigned to these instruments. Determining the fair value of the PIUs and the options issued in exchange for the PIUs is considered a critical accounting estimate because it requires significant judgments and because of the potential materiality of the amounts involved. See Notes 1 and 17 to our consolidated financial statements for further information about equity based compensation awards and the techniques used to value them.

***Fair Value Measurements***

The Company measures certain of its assets and liabilities at fair value on a recurring or non-recurring basis. Assets and liabilities measured at fair value on a recurring basis include investment securities available for sale, derivative instruments and, for periods prior to the IPO, the liability for PIUs. Assets that may be measured at fair value on a non-recurring basis include OREO, impaired loans, loans held for sale, intangible assets and assets acquired and liabilities assumed in business combinations. The consolidated financial statements also include disclosures about the fair value of financial instruments that are not recorded at fair value.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. Inputs used to determine fair value measurements are prioritized into a three level hierarchy based on observability and transparency of the inputs, summarized as follows:

Level 1—observable inputs that reflect quoted prices in active markets,

Level 2—inputs other than quoted prices in active markets that are based on observable market data, and

Level 3—unobservable inputs requiring significant management judgment or estimation.

When observable market inputs are not available, fair value is estimated using modeling techniques such as discounted cash flow analyses and option pricing models. These modeling techniques utilize assumptions that we believe market participants would use in pricing the asset or the liability.

Particularly for estimated fair values of assets and liabilities categorized within level 3 of the fair value hierarchy, the selection of different valuation techniques or underlying assumptions could result in fair value estimates that are higher or lower than the amounts recorded or disclosed in our consolidated financial statements. Considerable judgment may be involved in determining the amount that is most representative of fair value.

Because of the degree of judgment involved in selecting valuation techniques and underlying assumptions, fair value measurements are considered critical accounting estimates.

Notes 1, 4, and 20 to our consolidated financial statements contain further information about fair value estimates.

**Recent Accounting Pronouncements**

See Note 1 to our consolidated financial statements for a discussion of recent accounting pronouncements.

**Results of Operations**

***Net Interest Income***

Net interest income is the difference between interest earned on interest earning assets and interest incurred on interest bearing liabilities and is the primary driver of core earnings. Net interest income is impacted by the relative mix of interest earning assets and interest bearing liabilities, the ratio of interest earning assets to total assets and of interest bearing liabilities to total funding sources, movements in market interest rates, levels of non-performing assets and pricing pressure from competitors.

The mix of interest earning assets is influenced by loan demand and by management's continual assessment of the rate of return and relative risk associated with various classes of earning assets. The mix of interest bearing liabilities is influenced by management's assessment of the need for lower cost funding sources weighed against relationships with customers and growth requirements and is impacted by competition for deposits in the Company's markets and the availability and pricing of other sources of funds.

Net interest income is also impacted by the accounting for ACI loans and to a declining extent, the accretion of fair value adjustments recorded in conjunction with the FSB Acquisition. ACI loans were initially recorded at fair value, measured based on the present value of expected cash flows. The excess of expected cash flows over carrying value, known as accretable yield, is recognized as interest income over the lives of the underlying loans. Accretion related to ACI loans has a positive impact on our net interest income, net interest margin and interest rate spread. The impact of accretion related to ACI loans on net interest income, the net interest margin and the interest rate spread is expected to continue to decline as ACI loans comprise a declining percentage of total loans. The proportion of total loans represented by ACI loans will decline as the ACI loans are resolved and new loans are added to the portfolio. ACI loans represented 29.1%, 50.8% and 76.3% of total loans, net of premiums, discounts, deferred fees and costs, at December 31, 2012, 2011 and 2010, respectively. As the impact of accretion related to ACI loans declines, we expect our net interest margin and interest rate spread to decrease.

Payments received in excess of expected cash flows may result in a pool of ACI residential loans becoming fully amortized and its carrying value reduced to zero even though outstanding contractual balances remain related to loans in the pool. Once the carrying value of a pool is reduced to zero, any future proceeds from the remaining loans are recognized as interest income upon receipt. The carrying value of one pool was reduced to zero in late 2011. Future expected cash flows from this pool totaled $105.6 million as of December 31, 2012. The UPB of loans remaining in this pool was $213.9 million at December 31, 2012. The timing of receipt of proceeds from loans in this pool may be unpredictable, leading to increased volatility in the yield on the pool.

Fair value adjustments of interest earning assets and interest bearing liabilities recorded at the time of the FSB Acquisition are accreted to interest income or expense over the lives of the related assets or liabilities. Generally, accretion of these fair value adjustments increases interest income and decreases interest expense, and thus has a positive impact on our net interest income, net interest margin and interest rate spread. The impact of accretion of fair value adjustments on interest income and interest expense will continue to decline as these assets and liabilities mature or are repaid and constitute a smaller portion of total interest earning assets and interest bearing liabilities.

The impact of accretion and ACI loan accounting on net interest income makes it difficult to compare our net interest margin and interest rate spread to those reported by other financial institutions.

The following tables present, for the years ended December 31, 2012, 2011 and 2010, information about (i) average balances, the total dollar amount of taxable equivalent interest income from earning assets and the resultant average yields; (ii) average balances, the total dollar amount of interest expense on interest bearing liabilities and the resultant average rates; (iii) net interest income; (iv) the interest rate spread; and (v) the net interest margin. Nonaccrual and restructured loans are included in the average balances presented in this table; however, interest income foregone on nonaccrual loans is not included. Yields have been calculated on a tax equivalent basis (dollars in thousands):

| | 2012 | | | 2011 | | | 2010 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Average Balance | Interest(1) | Yield/ Rate(1) | Average Balance | Interest(1) | Yield/ Rate(1) | Average Balance | Interest(1) | Yield/ Rate(1) |
| **Assets:** | | | | | | | | | |
| **Interest earning assets:** | | | | | | | | | |
| Loans | $ 4,887,209 | $587,571 | 12.02% | $ 3,848,837 | $513,539 | 13.34% | $ 4,181,062 | $431,468 | 10.32% |
| Investment securities available for sale | 4,611,379 | 135,833 | 2.95% | 3,654,137 | 127,630 | 3.49% | 2,891,493 | 126,565 | 4.38% |
| Other interest earning assets | 522,184 | 4,931 | 0.94% | 628,782 | 2,743 | 0.44% | 640,506 | 1,958 | 0.31% |
| Total interest earning assets | 10,020,772 | 728,335 | 7.27% | 8,131,756 | 643,912 | 7.92% | 7,713,061 | 559,991 | 7.26% |
| Allowance for loan and lease losses | (56,463) | | | (57,462) | | | (38,236) | | |
| Non-interest earning assets | 2,387,719 | | | 2,866,486 | | | 3,513,839 | | |
| Total assets | $12,352,028 | | | $10,940,780 | | | $11,188,664 | | |
| **Liabilities and Stockholders' Equity:** | | | | | | | | | |
| **Interest bearing liabilities:** | | | | | | | | | |
| Interest bearing demand deposits | $ 504,614 | 3,155 | 0.63% | $ 382,329 | 2,499 | 0.65% | $ 273,897 | 1,981 | 0.72% |
| Savings and money market deposits | 3,912,444 | 24,093 | 0.62% | 3,366,466 | 29,026 | 0.86% | 2,870,768 | 34,243 | 1.19% |
| Time deposits | 2,632,451 | 38,930 | 1.48% | 2,585,201 | 44,248 | 1.71% | 3,889,961 | 72,120 | 1.85% |
| Total interest bearing deposits | 7,049,509 | 66,178 | 0.94% | 6,333,996 | 75,773 | 1.20% | 7,034,626 | 108,344 | 1.54% |
| Borrowings: | | | | | | | | | |
| FHLB advances | 2,227,910 | 57,040 | 2.56% | 2,246,068 | 63,158 | 2.81% | 2,244,601 | 59,784 | 2.66% |
| Short-term borrowings | 12,435 | 51 | 0.41% | 1,333 | 6 | 0.48% | 7,812 | 72 | 0.92% |
| Total interest bearing liabilities | 9,289,854 | 123,269 | 1.33% | 8,581,397 | 138,937 | 1.62% | 9,287,039 | 168,200 | 1.81% |
| Non-interest bearing demand deposits | 1,099,448 | | | 622,377 | | | 440,673 | | |
| Other non-interest bearing liabilities | 265,399 | | | 282,416 | | | 263,789 | | |
| Total liabilities | 10,654,701 | | | 9,486,190 | | | 9,991,501 | | |
| Stockholders' equity | 1,697,327 | | | 1,454,590 | | | 1,197,163 | | |
| Total liabilities and stockholders' equity | $12,352,028 | | | $10,940,780 | | | $11,188,664 | | |
| Net interest income | | $605,066 | | | $504,975 | | | $391,791 | |
| Interest rate spread | | | 5.94% | | | 6.30% | | | 5.45% |
| Net interest margin | | | 6.04% | | | 6.21% | | | 5.08% |

(1) On a tax-equivalent basis where applicable

Increases and decreases in interest income, calculated on a tax-equivalent basis, and interest expense result from changes in average balances (volume) of interest earning assets and liabilities, as well as changes in average interest rates. The following table shows the effect that these factors had on the interest earned on our interest earning assets and the interest incurred on our interest bearing liabilities for the years indicated. The effect of changes in volume is determined by multiplying the change in volume by the previous year's average rate. Similarly, the effect of rate changes is calculated by multiplying the change in average rate by the previous year's volume. Changes applicable to both volume and rate have been allocated to volume (in thousands):

| | 2012 Compared to 2011 | | | 2011 Compared to 2010 | | |
|---|---|---|---|---|---|---|
| | Change Due to Volume | Change Due to Rate | Increase (Decrease) | Change Due to Volume | Change Due to Rate | Increase (Decrease) |
| **Interest Income Attributable to:** | | | | | | |
| Loans | $124,837 | $(50,805) | $ 74,032 | $(44,197) | $126,268 | $ 82,071 |
| Investment securities available for sale | 27,935 | (19,732) | 8,203 | 26,799 | (25,734) | 1,065 |
| Other interest earning assets | (956) | 3,144 | 2,188 | (51) | 836 | 785 |
| Total interest income | 151,816 | (67,393) | 84,423 | (17,449) | 101,370 | 83,921 |
| **Interest Expense Attributable to:** | | | | | | |
| Interest bearing demand deposits | 732 | (76) | 656 | 709 | (191) | 518 |
| Savings and money market deposits | 3,147 | (8,080) | (4,933) | 4,274 | (9,491) | (5,217) |
| Time deposits | 628 | (5,946) | (5,318) | (22,332) | (5,540) | (27,872) |
| Total interest bearing deposits | 4,507 | (14,102) | (9,595) | (17,349) | (15,222) | (32,571) |
| FHLB advances | (503) | (5,615) | (6,118) | 41 | 3,333 | 3,374 |
| Short-term borrowings | 46 | (1) | 45 | (32) | (34) | (66) |
| Total interest expense | 4,050 | (19,718) | (15,668) | (17,340) | (11,923) | (29,263) |
| Increase (decrease) in net interest income | $147,766 | $(47,675) | $100,091 | $ (109) | $113,293 | $113,184 |

*Year ended December 31, 2012 compared to year ended December 31, 2011*

Net interest income, calculated on a tax-equivalent basis, was $605.1 million for the year ended December 31, 2012 compared to $505.0 million for the year ended December 31, 2011, an increase of $100.1 million. The increase in net interest income was comprised of an increase in interest income of $84.4 million and a decrease in interest expense of $15.7 million.

The increase in tax-equivalent interest income resulted primarily from a $74.0 million increase in interest income from loans and an $8.2 million increase in interest income from investment securities available for sale.

Increased interest income from loans was attributable to a $1.0 billion increase in the average balance outstanding offset by a decrease in the average yield to 12.02% for 2012 from 13.34% for 2011. Offsetting factors contributed to the overall decline in the yield on loans:

- New loans originated at lower market rates of interest comprised a greater percentage of the portfolio in 2012 than in 2011. New loans represented 55.8% of the average balance of loans outstanding in 2012 as compared to 24.0% in 2011. The tax equivalent yield on new loans was 4.32% for the year ended December 31, 2012 as compared to 4.93% for the year ended December 31, 2011. We expect the impact of growth of the new loan portfolio to lead to further declines in the overall yield on loans in future periods.
- The yield on loans acquired in the FSB Acquisition increased to 21.76% for 2012 as compared to 16.00% for 2011. This increase resulted from (i) generally improved default frequency and

severity rates leading to an increase in expected cash flows, (ii) covered loans being resolved at a faster rate than previously expected leading to acceleration of both actual and forecasted cash flows and higher accretion and (iii) recognition of all proceeds from resolution of loans in the residential pool with a carrying value of zero as interest income, as discussed above. Specifically, proceeds of $29.9 million from the sale of loans in this pool were recognized as interest income in the fourth quarter of 2012.

The average balance of investment securities available for sale increased by $1.0 billion for the year ended December 31, 2012 over the year ended December 31, 2011 while the yield declined to 2.95% for 2012 from 3.49% for 2011. The decline in yield was primarily a result of adding securities to the portfolio at lower prevailing rates.

The primary components of the decrease in interest expense for the year ended December 31, 2012 as compared to the year ended December 31, 2011 were a $9.6 million decline in interest expense on deposits and a $6.1 million decline in interest expense on FHLB advances and other borrowings. The most significant factor contributing to the decline in interest expense on deposits was a decline in the average rate paid on interest bearing deposits to 0.94% in 2012 as compared to 1.20% in 2011, partly offset by a $0.7 billion increase in the average balance outstanding. The decrease in average rate resulted primarily from a decline in market rates of interest across deposit products. Specifically, the average rate paid on savings and money market deposits declined to 0.62% for the year ended December 31, 2012 from 0.86% for the year ended December 31, 2011, a decrease of 0.24%. The average rate paid on time deposits, inclusive of accretion of fair value adjustments, declined by 0.23% to 1.48% in 2012 from 1.71% in 2011. Excluding the impact of accretion of fair value adjustments, the average rate paid on time deposits declined by 0.48%, to 1.50% from 1.98%. Accretion of fair value adjustments declined by $6.5 million for the year ended December 31, 2012 as compared to the year ended December 31, 2011. The average rate paid on FHLB advances, inclusive of the impact of cash flow hedges and fair value accretion, declined by 0.25%, to 2.56% in 2012 from 2.81% in 2011. This decline resulted primarily from maturing advances being rolled over at lower market rates, partially offset by a decline of $4.3 million in accretion of fair value adjustments. The impact of accretion of fair value adjustments on interest expense will continue to decline as the related borrowings mature.

The net interest margin, calculated on a tax-equivalent basis, for the year ended December 31, 2012 was 6.04% as compared to 6.21% for the year ended December 31, 2011, a decrease of 17 basis points. The interest rate spread declined to 5.94% for the year ended December 31, 2012 from 6.30% for the year ended December 31, 2011. The declines in net interest margin and interest rate spread resulted primarily from lower yields on loans and investment securities partly offset by a lower cost of deposits and borrowings, as discussed above.

*Year ended December 31, 2011 compared to year ended December 31, 2010*

Net interest income, calculated on a tax-equivalent basis, increased to $505.0 million for the year ended December 31, 2011 from $391.8 million for the year ended December 31, 2010, an increase of $113.2 million. The increase was comprised of an increase in interest income of $83.9 million coupled with a decline in interest expense of $29.3 million.

The increase in tax-equivalent interest income was primarily driven by an $82.1 million increase in interest income from loans. The average yield on loans increased by 302 basis points, to 13.34% for the year ended December 31, 2011 from 10.32% for the year ended December 31, 2010, primarily because of an increase in the yield on loans acquired in the FSB Acquisition to 16.00% for the year ended December 31, 2011 from 10.66% for the year ended December 31, 2010. This increase resulted from (i) covered loans being resolved at a faster rate than expected, resulting in higher accretion, (ii) improved default frequency and severity rates leading to an increase in expected cash flows, (iii) favorable resolutions of commercial ACI loans, and (iv) to a lesser extent, recognition of all proceeds from resolution of loans in one residential pool with a carrying value of zero as interest income, as discussed above. The average yield on new loans declined to 4.93% for the year ended December 31, 2011 from 5.46% for the year ended December 31, 2010, primarily due to continued declines in market interest rates. New loans constituted 41.3% of loans, net of premiums, discounts, deferred fees and costs, at December 31, 2011 as compared to 13.7% at December 31, 2010. The overall increase in the average yield on loans was in part offset by a decrease of $332.2 million in the average balance outstanding. The decrease in the average balance of loans resulted from paydowns and resolutions of covered loans, partially offset by growth in the new loan portfolio. The average balance of loans acquired in the FSB Acquisition declined to $2.9 billion for the year ended December 31, 2011 from $3.9 billion for the year ended December 31, 2010, while the average balance of new loans grew to $923.8 million from $274.6 million for the years ended December 31, 2011 and 2010, respectively.

Interest income from investment securities, calculated on a tax-equivalent basis, increased by $1.1 million as a result of a $762.6 million increase in the average balance, substantially offset by a decline in the average yield to 3.49% from 4.38%. The decline in average yield is indicative of the addition of securities to the portfolio at lower prevailing market rates of interest.

The decline in interest expense for the year ended December 31, 2011 was primarily driven by a decrease of $32.6 million in interest expense on deposits, partially offset by an increase of $3.4 million in interest expense on FHLB advances. The average rate paid on interest bearing deposits declined by 34 basis points, to 1.20% from 1.54%. Three factors contributed to the decline in the average rate paid on deposits. A decrease in market rates of interest across all deposit product groups and continued runoff of higher cost time deposits were partially offset by a reduction in accretion of acquisition date fair value adjustments. Accretion of fair value adjustments on time deposits totaled $7.0 million for the year ended December 31, 2011 as compared to $21.4 million for the year ended December 31, 2010. Accretion continues to decrease as time deposits outstanding at the date of the FSB Acquisition mature. The average rate paid on time deposits, exclusive of fair value accretion, declined to 1.98% for 2011 from 2.41% for 2010. A decline in the overall average balance of deposits also contributed to reduced interest expense. Consistent with our strategy of replacing more costly time deposits with lower cost deposits, the average balance of time deposits declined by $1.3 billion while the average balance of interest bearing demand, savings and money market deposits increased by $604.1 million. The increase in interest expense on FHLB advances was primarily attributable to a decrease of $4.8 million in accretion of acquisition date fair value adjustments.

The net interest margin, calculated on a tax-equivalent basis, increased by 113 basis points to 6.21% for the year ended December 31, 2011 from 5.08% for the year ended December 31, 2010. Similarly, the interest rate spread increased by 85 basis points to 6.30% for 2011 from 5.45% for 2010. Increases in the net interest margin and interest rate spread were driven primarily by the increased yield on loans and the lower cost of interest bearing deposits discussed above.

***Provision for Loan Losses***

The provision for loan losses is the amount of expense that, based on our judgment, is required to maintain the ALLL at an adequate level to absorb probable losses inherent in the loan portfolio at the balance sheet date and that, in management's judgment, is appropriate under U.S. generally accepted accounting principles. The determination of the amount of the ALLL is complex and involves a high degree of judgment and subjectivity. Our determination of the amount of the allowance and corresponding provision for loan losses considers ongoing evaluations of the various segments of the loan portfolio and of individually significant credits, levels of non-performing loans and charge-offs, statistical trends and economic and other relevant factors. See "Analysis of the Allowance for Loan and Lease Losses" below for more information about how we determine the appropriate level of the allowance.

Because the determination of fair value at which the loans acquired in the FSB Acquisition were initially recorded encompassed assumptions about expected future cash flows and credit risk, no ALLL was recorded at the date of acquisition. An allowance related to ACI loans is recorded only when estimates of future cash flows related to these loans are revised downward, indicating further deterioration in credit quality. An allowance for non-ACI loans may be established if factors considered relevant by management indicate that the credit quality of the non-ACI loans has deteriorated.

Since the recognition of a provision for (recovery of) loan losses on covered loans represents an increase (reduction) in the amount of reimbursement we ultimately expect to receive from the FDIC, we also record an increase (decrease) in the FDIC indemnification asset for the present value of the projected increase (reduction) in reimbursement, with a corresponding increase (decrease) in non-interest income, recorded in "Net gain (loss) on indemnification asset" as discussed below in the section entitled "Non-interest income." Therefore, the impact on our results of operations of any provision for (recovery of) loan losses on covered loans is significantly mitigated by the corresponding impact on non-interest income. For the years ended December 31, 2012, 2011 and 2010, we recorded provisions for (recoveries of) losses on covered loans of $(0.5) million, $(7.7) million and $46.5 million and increases (reductions) in related non-interest income of $0.3 million, $(6.3) million and $29.3 million, respectively.

For the years ended December 31, 2012, 2011 and 2010, we recorded provisions for loan losses of $19.4 million, $21.5 million and $4.9 million, respectively, related to new loans. These loans are not protected by the Loss Sharing Agreements and as such, these provisions are not offset by increases in non-interest income. The provision for new loans declined for the year ended December 31, 2012 as compared to the year ended December 31, 2011 in spite of increased loan growth in 2012. The impact of loan growth on the provision for loan losses was partially offset by decreases in the peer group loss factors applied in determining the ALLL for the new commercial portfolio. See the section entitled "Analysis of the Allowance for Loan and Leases" below for further discussion. The increase in the provision for losses on new loans for the year ended December 31, 2011 as compared to the year ended December 31, 2010 resulted primarily from growth in the new loan portfolio.

***Non-Interest Income***

The Company reported non-interest income of $89.2 million, $163.2 million and $297.8 million for the years ended December 31, 2012, 2011 and 2010, respectively. The majority of our non-interest income resulted from the resolution of assets covered by our Loss Sharing Agreements with the FDIC and accretion of discount on the FDIC indemnification asset. Typically, the primary components of non-interest income of financial institutions are service charges and fees and gains or losses related to the sale or valuation of investment securities, loans and other assets. Thus, it is difficult to compare the amount and composition of our non-interest income with that of other financial institutions of our size.

The following table presents a comparison of the categories of non-interest income for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Accretion of discount on FDIC indemnification asset | $ 15,306 | $ 55,901 | $134,703 |
| Income from resolution of covered assets, net | 51,016 | 18,776 | 121,462 |
| Net gain (loss) on indemnification asset | (6,030) | 79,812 | 17,736 |
| FDIC reimbursement of costs of resolution of covered assets | 19,569 | 31,528 | 29,762 |
| Loss on sale of covered loans, net | (29,270) | (70,366) | (76,360) |
| Non-interest income from covered assets | 50,591 | 115,651 | 227,303 |
| Service charges and fees | 12,716 | 11,128 | 10,567 |
| Gain on sale of non-covered loans, net | 613 | 652 | 50 |
| Gain (loss) on sale or exchange of investment securities available for sale, net | 17,039 | 1,136 | (998) |
| Loss on extinguishment of debt | (14,175) | — | — |
| Loss on termination of interest rate swap | (8,701) | — | — |
| Mortgage insurance income | 9,772 | 16,904 | 18,441 |
| Settlement with the FDIC | — | — | 24,055 |
| Other non-interest income | 21,392 | 17,746 | 18,361 |
| | $ 89,247 | $163,217 | $297,779 |

*Non-interest income related to transactions in the covered assets*

Accretion of discount on the FDIC indemnification asset totaled $15.3 million, $55.9 million and $134.7 million for the years ended December 31, 2012, 2011 and 2010, respectively. Accretion is a result of discounting and may also increase or decrease from period to period due to changes in expected cash flows from the ACI loans.

The FDIC indemnification asset was initially recorded at its estimated fair value of $3.4 billion, representing the present value of estimated future cash payments from the FDIC for probable losses on covered assets, up to 90 days of past due interest, excluding interest related to loans on nonaccrual at acquisition, and reimbursement of certain expenses. A discount rate of 7.10%, determined using a risk-free yield curve plus a premium reflecting uncertainty related to the collection, amount and timing of cash flows and liquidity concerns, was used in the initial calculation of fair value. If projected cash flows from the ACI loans increase, the yield on the loans will increase accordingly and the discount rate of accretion on the FDIC indemnification asset will decrease as less cash flow is expected to be recovered from the indemnification asset. For the years ended December 31, 2012, 2011 and 2010, the average rate at which discount was accreted on the FDIC indemnification asset was 0.89%, 2.48% and 4.69%, respectively.

The decrease in total accretion for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and for the year ended December 31, 2011 as compared to the year ended December 31, 2010 related both to the decrease in the average discount rate resulting from increases in projected cash flows from the ACI loans and to the decrease in the average balance of the indemnification asset. The average balance of the indemnification asset decreased primarily as a result of the submission of claims and receipt of cash from the FDIC under the terms of the Loss Sharing Agreements. We expect the accretion rate to be negative, and to begin recording amortization of, rather than accretion on, the indemnification asset beginning in the first quarter of 2013. Additionally, as we continue to submit claims under the Loss Sharing Agreements, the balance of the indemnification asset will continue to decline.

The balance of the FDIC indemnification asset is also reduced or increased as a result of decreases or increases in estimated cash flows to be received from the FDIC related to the gains or losses recorded in our consolidated financial statements from transactions in the covered assets. When these transaction gains or losses are recorded, we also record an offsetting amount in the statement of income line item "Net gain (loss) on indemnification asset." This line item includes the significantly mitigating impact of FDIC indemnification related to the following types of transactions in covered assets:

- gains or losses from the resolution of covered assets;
- provisions for (recoveries of) losses on covered loans;
- gains or losses on the sale of covered loans;
- gains or losses on the sale of OREO; and
- impairment of OREO.

Each of these types of transactions is discussed further below.

A rollforward of the FDIC indemnification asset from December 31, 2009 to December 31, 2012 follows (in thousands):

| | |
|---|---|
| Balance, December 31, 2009 | $3,279,165 |
| Accretion | 134,703 |
| Reduction for claims filed | (764,203) |
| Net gain on indemnification asset | 17,736 |
| Balance, December 31, 2010 | 2,667,401 |
| Accretion | 55,901 |
| Reduction for claims filed | (753,963) |
| Net gain on indemnification asset | 79,812 |
| Balance, December 31, 2011 | 2,049,151 |
| Accretion | 15,306 |
| Reduction for claims filed | (600,857) |
| Net loss on indemnification asset | (6,030) |
| Balance, December 31, 2012 | $1,457,570 |

Covered loans may be resolved through prepayment, short sale of the underlying collateral, foreclosure, sale of the loans or charge-off. For loans resolved through prepayment, short sale or foreclosure, the difference between consideration received in resolution of the loans and the carrying value of the loans is recorded in the consolidated statement of income line item "Income from resolution of covered assets, net." Both gains and losses on individual resolutions are included in this line item. Losses from the resolution of covered loans increase the amount recoverable from the FDIC under the Loss Sharing Agreements. Gains from the resolution of covered loans reduce the amount recoverable from the FDIC under the Loss Sharing Agreements. These additions to or reductions in amounts recoverable from the FDIC related to the resolution of covered loans are recorded in non-interest income in the line item "Net gain (loss) on indemnification asset" and reflected as corresponding increases or decreases in the FDIC indemnification asset. The amount of income recorded in any period will be impacted by the number and UPB of ACI loans resolved, the amount of consideration received, and our ability to accurately project cash flows from ACI loans in future periods.

As history of the performance and resolution of ACI loans has grown and we have updated our projections of cash flows from the ACI loans, gains or losses recorded on resolution of covered loans have declined in absolute terms. As our projections of cash flows from the ACI loans have been updated, these cash flows have increasingly been reflected in interest income, through increased yields and higher accretion, rather than in income from resolution of covered assets. For the years ended December 31, 2012, 2011 and 2010, ACI loans with a UPB of $1.0 billion, $1.7 billion and $1.9 billion were resolved by payment in full, foreclosure or short sale.

The following table provides further detail of the components of income from resolution of covered assets, net for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Payments in full | $ 70,562 | $ 90,773 | $142,172 |
| Foreclosures | (19,326) | (46,726) | (15,691) |
| Short sales | (5,046) | (25,185) | 7,801 |
| Modifications | — | — | (2,424) |
| Charge-offs | (2,918) | (6,917) | (14,303) |
| Recoveries | 7,744 | 6,831 | 3,907 |
| Income from resolution of covered assets, net | $ 51,016 | $ 18,776 | $121,462 |

As expected, the impact of payments in full on the results of operations declined for the year ended December 31, 2012 as compared to the year ended December 31, 2011 as well as for the year ended December 31, 2011 as compared to the year ended December 31, 2010. This is a result of additional history with the performance of covered loans being reflected in our updated cash flow forecasts and a decline in the number of paid in full resolutions. We expect the impact on non-interest income of resolutions from payments in full to decline further in the future as we continue to update our cash flow forecasts and the number of loans in the portfolio likely to be resolved in this manner decreases.

A decline in the level of foreclosure and short sale activity coupled with improving home prices led to a decrease in losses on resolutions from foreclosures and short sales for the year ended December 31, 2012 as compared to the year ended December 31, 2011. In contrast, home price depreciation in our primary market areas led to increased losses, or declines in net gains, from short sales and foreclosures for the year ended December 31, 2011 as compared to the year ended December 31, 2010.

The impact of charge-offs has declined year over year due primarily to reductions in the number and dollar amount of charge-offs of home equity lines of credit.

Under the Purchase and Assumption Agreement, we are permitted to sell on an annual basis up to 2.5% of the covered loans, based upon the UPB at the time of the FSB Acquisition, or approximately $280.0 million, without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements. The significantly mitigating amounts recoverable from the FDIC related to these losses are recorded as increases in the FDIC indemnification asset and corresponding increases in the non-interest income line item “Net gain (loss) on indemnification asset.”

Sales of covered loans for the years ended December 31, 2012, 2011 and 2010 are summarized as follows (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Unpaid principal balance of loans sold | $239,135 | $268,588 | $272,178 |
| Gross cash proceeds | $104,543 | $ 76,422 | $ 68,099 |
| Carrying value of loans sold | 103,127 | 146,148 | 143,526 |
| Transaction costs incurred | (747) | (640) | (933) |
| Net pre-tax impact on earnings, excluding gain on indemnification asset | $ 669 | $(70,366) | $(76,360) |
| Loss on sale of covered loans | $(29,270) | $(70,366) | $(76,360) |
| Proceeds recorded in interest income | 29,939 | — | — |
| | $ 669 | $(70,366) | $(76,360) |
| Gain on indemnification asset | $ 30,725 | $ 56,053 | $ 57,747 |

Loans were sold on a non-recourse basis to third parties. The decline in loss on sale of covered loans for the year ended December 31, 2012 as compared to the year ended December 31, 2011 resulted from (i) improved pricing on the sale and (ii) the impact of sale of loans from the pool of residential ACI loans with a carrying value of zero. Loans with an aggregate UPB of $73.1 million were sold from this pool in 2012 and the proceeds of $29.9 million were recorded in interest income. No loss was recorded in the consolidated financial statements on the sale of loans from this pool. Since reimbursements from the FDIC under the Loss Sharing Agreements are calculated based on UPB of the loans rather than on their financial statement carrying amounts, the gain on indemnification asset recorded related to the sale of covered loans for 2012 includes a component related to the sale of loans from the zero carrying value pool. Historically, we have sold covered loans in the fourth quarter of each fiscal year. We anticipate that we will continue to exercise our right to sell covered loans in future periods, and depending on market conditions, expect to sell loans on a quarterly, rather than an annual basis.

Additional impairment arising since the FSB Acquisition related to covered loans is recorded in earnings through the provision for losses on covered loans. Under the terms of the Loss Sharing Agreements, the Company is entitled to recover from the FDIC a portion of losses on these loans; therefore, the discounted amount of additional expected cash flows from the FDIC related to these losses is recorded in non-interest income in the line item “Net gain (loss) on indemnification asset” and reflected as a corresponding increase in the FDIC indemnification asset. Alternatively, a recovery of the provision for loan losses related to covered loans results in a reduction in the amounts the Company expects to recover from the FDIC and a corresponding reduction in the FDIC indemnification asset and in non-interest income, reflected in the line item “Net gain (loss) on indemnification asset.”

The Company records impairment charges related to declines in the net realizable value of OREO properties subject to the Loss Sharing Agreements and recognizes additional gains or losses upon the eventual sale of such OREO properties. These amounts are included in non-interest expense in the consolidated financial statements. The estimated increase or reduction in amounts recoverable from the FDIC with respect to these gains and losses is reflected as an increase or decrease in the FDIC indemnification asset and in non-interest income in the line item “Net gain (loss) on indemnification asset.”

Net gain (loss) on indemnification asset of $(6.0) million, $79.8 million and $17.7 million was recorded for the years ended December 31, 2012, 2011 and 2010, respectively, representing the net change in the FDIC indemnification asset from increases or decreases in cash flows estimated to be received from the FDIC related to gains and losses from covered assets as discussed in the preceding paragraphs. The net impact on earnings before taxes of transactions related to covered assets for the years ended December 31, 2012, 2011 and 2010 was $10.5 million, $(12.2) million and $(1.9) million, respectively, as detailed in the following tables (in thousands):

| | 2012 | | |
|---|---|---|---|
| | **Transaction Income (Loss)** | **Net Gain (Loss) on Indemnification Asset** | **Net Impact on Pre-tax Earnings** |
| Recovery of losses on covered loans | $ 503 | $ 344 | $ 847 |
| Income from resolution of covered assets, net | 51,016 | (41,962) | 9,054 |
| Net loss on sale of covered loans | (29,270) | 30,725 | 1,455 |
| Gain on sale of OREO | 4,164 | (3,078) | 1,086 |
| Impairment of OREO | (9,926) | 7,941 | (1,985) |
| | $ 16,487 | $ (6,030) | $10,457 |

| | 2011 | | |
|---|---|---|---|
| | **Transaction Income (Loss)** | **Net Gain (Loss) on Indemnification Asset** | **Net Impact on Pre-tax Earnings** |
| Recovery of losses on covered loans | $ 7,692 | $ (6,327) | $ 1,365 |
| Income from resolution of covered assets, net | 18,776 | (6,871) | 11,905 |
| Net loss on sale of covered loans | (70,366) | 56,053 | (14,313) |
| Loss on sale of OREO | (23,576) | 17,272 | (6,304) |
| Impairment of OREO | (24,569) | 19,685 | (4,884) |
| | $(92,043) | $79,812 | $(12,231) |

| | 2010 | | |
|---|---|---|---|
| | **Transaction Income (Loss)** | **Net Gain (Loss) on Indemnification Asset** | **Net Impact on Pre-tax Earnings** |
| Provision for losses on covered loans | $ (46,481) | $ 29,291 | $(17,190) |
| Income from resolution of covered assets, net | 121,462 | (84,138) | 37,324 |
| Net loss on sale of covered loans | (76,360) | 57,747 | (18,613) |
| Loss on sale of OREO | (2,174) | 1,932 | (242) |
| Impairment of OREO | (16,131) | 12,904 | (3,227) |
| | $ (19,684) | $ 17,736 | $ (1,948) |

Certain OREO and foreclosure related expenses, including fees paid to attorneys and other service providers, property preservation costs, maintenance and repair costs, advances for taxes and insurance, appraisal costs and inspection costs are also reimbursed under the terms of the Loss Sharing Agreements. Such expenses are recorded in non-interest expense when incurred, and the reimbursement is recorded as “FDIC reimbursement of costs of resolution of covered assets” in non-interest income when submitted to the FDIC, generally upon ultimate resolution of the underlying covered assets. This may result in the expense and the related income from reimbursements being recorded in different periods. For the years ended December 31, 2012, 2011, and 2010 non-interest expense included approximately $20.3 million, $32.0 million and $49.7 million, respectively, of such expenses. During the years ended December 31, 2012, 2011, and 2010, claims of $19.6 million, $31.5 million, and $29.8 million, respectively, were submitted to the FDIC. As of December 31, 2012, $16.9 million of expenses incurred to date remained to be submitted for reimbursement from the FDIC in future periods.

We expect the impact on non-interest income of transactions in the covered assets to decline in future periods as these assets comprise a smaller percentage of our total assets.

*Other components of non-interest income*

Gains on the sale of investment securities available for sale during the year ended December 31, 2012 related primarily to the following:

- We sold agency mortgage-backed securities with an aggregate fair value of $526.7 million and a combined effective yield of 1.22%, utilizing the proceeds to extinguish $520.0 million of FHLB advances and terminate a cash flow hedge with a combined cost of borrowing of 3.46%. We realized a gain on sale of these securities of $10.0 million, a loss on extinguishment of the FHLB advances of $14.2 million and a loss on termination of the cash flow hedge of $8.7 million. This transaction is expected to have a positive impact on our net interest margin in 2013.
- Gains of $6.4 million on the sale of financial institution preferred stocks resulted from a decision to reduce our level of exposure to this asset class.
- We realized net gains of $0.6 million from the liquidation of certain positions in asset-backed securities, primarily student loan backed securities, in response to market developments.

Mortgage insurance income represents mortgage insurance proceeds received with respect to covered loans in excess of the portion of losses on those loans that is recoverable from the FDIC. Mortgage insurance proceeds up to the amount of losses on covered loans recoverable from the FDIC offsets amounts otherwise reimbursable by the FDIC. Decreases in mortgage insurance income for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and for the year ended December 31, 2011 as compared to the year ended December 31, 2010 resulted primarily from declines in the volume of claims being processed.

Non-interest income for the year ended December 31, 2010 included approximately $24.1 million representing the settlement of a dispute with the FDIC associated with the valuation established on certain investment securities at the time of the FSB Acquisition.

Other non-interest income for the year ended December 31, 2012 included a gain of $5.3 million on the acquisition of Herald. For further discussion, see Note 3 to the consolidated financial statements.

***Non-Interest Expense***

The following table presents the components of non-interest expense for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Employee compensation and benefits | $173,261 | $272,991 | $144,486 |
| Occupancy and equipment | 54,465 | 36,680 | 28,692 |
| Impairment of other real estate owned | 9,926 | 24,569 | 16,131 |
| (Gain) loss on sale of other real estate owned | (4,164) | 23,576 | 2,174 |
| Other real estate owned expense | 7,624 | 13,001 | 19,003 |
| Foreclosure expense | 12,644 | 18,976 | 30,669 |
| Change in value of FDIC warrant | — | — | 21,832 |
| Deposit insurance expense | 7,248 | 8,480 | 13,899 |
| Professional fees | 15,468 | 17,330 | 14,677 |
| Telecommunications and data processing | 12,462 | 12,041 | 12,321 |
| Other non-interest expense | 34,139 | 28,161 | 19,436 |
| | $323,073 | $455,805 | $323,320 |

Non-interest expense as a percentage of average assets, excluding a $110.4 million equity based compensation charge recorded in conjunction with the IPO in 2011, was 2.6%, 3.2% and 2.9% for the years ended December 31, 2012, 2011 and 2010, respectively. The more significant components of non-interest expense are discussed below.

*Employee compensation and benefits*

As is typical for financial institutions, employee compensation and benefits represents the single largest component of recurring non-interest expense. Excluding the impact of the $110.4 million equity based compensation charge recorded in conjunction with the IPO as discussed further below, employee compensation and benefits increased by $10.7 million or 6.6% for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $18.1 million, or 12.5% for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These increases in employee compensation and benefits costs reflected growth and expansion of our operations and continued enhancement of our management team and supporting personnel. We expect compensation and benefits costs to increase in 2013 as we expand our operations in the Tri-State area.

Prior to the consummation of the IPO, our employee compensation and benefits expense included expense related to PIUs issued to certain members of executive management. The PIUs were divided into two equal types of profits interests. Half of the PIUs, referred to as time-based PIUs, vested with the passage of time following the grant date. Compensation expense related to time-based PIUs was recorded on a straight line basis over the vesting period based on their fair value. Fair value of the time-based PIUs was estimated using a Black-Scholes option pricing model incorporating estimates of the per share value of our common stock and assumptions as to expected volatility, dividends, expected term, and risk-free rates. The remaining half of the PIUs, referred to as IRR-based PIUs, vested immediately prior to the consummation of the IPO and compensation expense related to the IRR-based PIUs was recorded at that time. In conjunction with the IPO, the PIUs were exchanged for a combination of vested and unvested common shares and vested and unvested stock options. The equity instruments issued in exchange for PIUs included:

- 3,863,491 vested common shares
- 1,931,745 unvested common shares

• 3,023,314 vested stock options

• 1,511,656 unvested stock options

The unvested instruments corresponded to the unvested time-based PIUs and continued to vest according to the original vesting schedule of such time-based PIUs. The remainder of these instruments vested in 2012. At the time of the IPO, we recorded additional compensation expense of approximately $110.4 million related to the vesting of the IRR-based PIUs and the adjustment of the fair value of the vested portion of time-based PIUs. This charge to compensation expense was offset by a credit to paid-in capital and therefore did not impact the Company's capital position. Fair value of the PIUs at the date of the IPO was measured based on the fair value of the common shares and options for which they were exchanged. The common shares were valued at the IPO price of $27. Fair value of the options was estimated using a Black-Scholes option pricing model. See Note 17 to the consolidated financial statements for more information about the valuation of these instruments. Employee compensation and benefits expense included $13.2 million, $141.0 million, inclusive of the $110.4 million charge recorded in conjunction with the IPO, and $36.2 million for the years ended December 31, 2012, 2011 and 2010, respectively, related to PIUs and instruments issued in exchange for PIUs.

*Occupancy and equipment*

Occupancy and equipment expense increased by $17.8 million or 48.5% for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $8.0 million, or 27.8% for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These increases related primarily to the expansion and refurbishment of our branch network and enhancements to our technology platforms including, for 2012, certain costs related to three branches that we plan to open in Manhattan in 2013. We expect occupancy and equipment costs to increase in 2013 as we expand our operations in the Tri-State area.

*OREO and foreclosure related components of non-interest expense*

At December 31, 2012 as well as during the years ended December 31, 2012, 2011 and 2010, all of our OREO properties were covered by the Loss Sharing Agreements. Therefore, any losses from sale or impairment of OREO were substantially offset by non-interest income related to indemnification by the FDIC. Generally, OREO and foreclosure related expenses are also reimbursed under the terms of the Loss Sharing Agreements.

Impairment of OREO declined by $14.7 million to $9.9 million for the year ended December 31, 2012 from $24.6 million for the year ended December 31, 2011. This decline resulted from a reduction in the level of OREO inventory and recovery in home prices during 2012. In contrast, deterioration in home prices led to an increase in impairment of OREO of $8.5 million to $24.6 million for the year ended December 31, 2011 as compared to $16.1 million for the year ended December 31, 2010.

Net gains on the sale of OREO totaled $4.2 million for the year ended December 31, 2012, as compared to net losses on the sale of OREO of $23.6 million for the year ended December 31, 2011. The impact of gains and losses on OREO sales declined in part because of a decline in the level of OREO sale activity. As illustrated in the tables below, the percentage of total residential units sold at a gain increased in 2012 as compared to 2011, the average gain on units sold at a gain increased, and the average loss on units sold at a loss declined, reflecting improvements in real estate values.

The following tables summarize OREO sale activity for the years ended December 31, 2012 and 2011 (dollars in thousands):

| | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|
| | Units sold | Percent of Total Units | Total Gain (Loss) | Units sold | Percent of Total Units | Total Gain (Loss) |
| Residential OREO sales | 1,326 | 96.9% | $2,798 | 2,785 | 98.6% | $(24,068) |
| Commercial OREO sales | 42 | 3.1% | 1,366 | 40 | 1.4% | 492 |
| | 1,368 | 100.0% | $4,164 | 2,825 | 100.0% | $(23,576) |

| | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|
| | Units sold | Percent of Total Units | Average Gain or (Loss) | Units sold | Percent of Total Units | Average Gain or (Loss) |
| Residential OREO sales: | | | | | | |
| Units sold at a gain | 659 | 49.7% | $ 22 | 870 | 31.2% | $ 16 |
| Units sold at a loss | 667 | 50.3% | $(17) | 1,915 | 68.8% | $(20) |
| | 1,326 | 100.0% | $ 2 | 2,785 | 100.0% | $ (9) |

The increase in net losses on sales of OREO for the year ended December 31, 2011 compared to the year ended December 31, 2010 resulted from deterioration in home prices and the high level of OREO sale activity in 2011.

In total, foreclosure and OREO related expenses decreased by $11.7 million for the year ended December 31, 2012 as compared to the year ended December 31, 2011 and by $17.7 million for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These declines were primarily attributable to decreases in the levels of foreclosure activity and OREO inventory. There were 1,027, 2,214 and 4,774 residential units in the foreclosure pipeline and 402, 778 and 1,318 residential units in OREO inventory at December 31, 2012, 2011 and 2010, respectively.

Loans are deemed eligible for foreclosure referral based on state specific guidelines, which is generally at 90-120 days delinquency. Prior to referral, extensive reviews are performed to ensure that all collection and loss mitigation efforts have been exhausted. We have performed an internal assessment of our foreclosure practices and procedures and of our vendor management processes related to outside vendors that assist us in the foreclosure process. This assessment did not reveal any deficiencies in processes and procedures that we believe to be of significance.

*Other components of non-interest expense*

Other non-interest expense for the year ended December 31, 2010 included the increase in value of a warrant issued to the FDIC in conjunction with the FSB Acquisition. Based on its initial terms, the value of the warrant, as defined, was based on the value the Company realized in an IPO or exit event. During 2010, the Company and the FDIC amended the warrant to guarantee a minimum value to the FDIC of $25.0 million and recorded $21.8 million of non-interest expense to adjust the value of the warrant to the guaranteed minimum value. In February, 2011 the Company redeemed the FDIC warrant for its agreed upon value of $25.0 million in cash.

Deposit insurance expense declined by $5.4 million for the year ended December 31, 2011 as compared to the year ended December 31, 2010. In 2011, the FDIC revised the assessment base for deposit insurance premiums. The change in the assessment base coupled with the relatively low risk rating assigned to the Bank resulted in a reduction of the Bank's premiums.

Professional fees increased by $2.7 million for the year ended December 31, 2011 as compared to the year ended December 31, 2010 primarily due to legal and other professional fees incurred in conjunction with the acquisition of Herald.

The primary components of other non-interest expense are advertising and promotion, the cost of regulatory examinations, insurance, travel and general office expense. Period over period increases in other non-interest expense related primarily to general organic growth of our business.

***Income Taxes***

The provision for income taxes for the years ended December 31, 2012, 2011 and 2010 was $133.6 million, $129.6 million and $127.8 million, respectively. The Company's effective tax rate was 38.7%, 67.2% and 40.9% for the years ended December 31, 2012, 2011 and 2010, respectively. The Company's effective tax rate differed from the statutory federal tax rate of 35.0% primarily due to the effect of state income taxes, non-deductible equity based compensation expense, and particularly for the year ended December 31, 2011, the provision for uncertain state tax positions. Non-deductible equity based compensation totaled $10.4 million, $134.4 million and $36.2 million for the years ended December 31, 2012, 2011 and 2010, respectively. Non-deductible equity based compensation related primarily to PIUs and the equity instruments for which PIUs were exchanged at the time of the IPO. Based on the nature of equity instruments currently outstanding, we expect the impact of non-deductible compensation expense on the effective tax rate to be immaterial in future periods.

At December 31, 2012 and 2011, the Company had net deferred tax assets of $62.3 million and $19.5 million, respectively. At December 31, 2010, the Company had net deferred tax liabilities of $4.6 million. Based on an evaluation of both positive and negative evidence related to ultimate realization of deferred tax assets, we have concluded it is more likely than not that the deferred tax assets will be realized. Persuasive positive evidence leading to this conclusion as of December 31, 2012 includes the availability of sufficient tax loss carrybacks and future taxable income resulting from reversal of existing taxable temporary differences to assure realization of the deferred tax assets. Realization of deferred tax assets as of December 31, 2012 is not dependent, to any significant extent, on the generation of additional future taxable income.

For more information, see Note 14 to the consolidated financial statements.

**Analysis of Financial Condition**

Average interest-earning assets increased $1.9 billion to $10.0 billion for the year ended December 31, 2012 from $8.1 billion for the year ended December 31, 2011. This increase was driven by a $1.0 billion increase in the average balance of outstanding loans and a $1.0 billion increase in average investment securities available for sale. The increase in average loans reflected growth of $1.8 billion in average new loans outstanding, partially offset by a $(0.8) billion decrease in the average balance of loans acquired in the FSB Acquisition. Average non-interest earning assets declined by $478.8 million. The most significant component of this decline was the decrease in the FDIC indemnification asset from claims paid. Growth of the new loan portfolio, resolution of covered loans and declines in the amount of the FDIC indemnification asset related to the payment of claims are trends that are expected to continue.

Average interest bearing liabilities increased by $708.5 million to $9.3 billion for the year ended December 31, 2012 from $8.6 billion for the year ended December 31, 2011, due primarily to an increase of $715.5 million in average interest-bearing deposits. Average non-interest bearing deposits increased by $477.1 million.

Average stockholders' equity increased by $242.7 million, due largely to the retention of earnings. To a lesser extent, the increase in average stockholders' equity was impacted by the issuance of equity consideration in the acquisition of Herald and an increase in unrealized gains on investment securities available for sale, offset by dividends paid.

*Investment Securities Available for Sale*

The following table shows the amortized cost and fair value of investment securities at December 31, 2012, 2011 and 2010. All of our investment securities are classified as available for sale (in thousands):

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| | Amortized Cost | Fair Value | Amortized Cost | Fair Value | Amortized Cost | Fair Value |
| U.S. Treasury and Government agency securities | $ 34,998 | $ 35,154 | $ — | $ — | $ — | $ — |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | 1,520,047 | 1,584,523 | 1,952,095 | 1,985,713 | 1,282,757 | 1,290,910 |
| U.S. Government agency and sponsored enterprise commercial mortgage-backed securities | 58,518 | 60,416 | — | — | — | — |
| Resecuritized real estate mortgage investment conduits ("Re-Remics") | 575,069 | 585,042 | 544,924 | 546,310 | 599,682 | 612,631 |
| Private label residential mortgage-backed securities and CMOs | 386,768 | 448,085 | 342,999 | 387,687 | 320,096 | 382,920 |
| Private label commercial mortgage-backed securities | 413,110 | 433,092 | 255,868 | 262,562 | — | — |
| Collateralized loan obligations | 252,280 | 253,188 | — | — | — | — |
| Non-mortgage asset-backed securities | 233,791 | 241,346 | 414,274 | 410,885 | 407,158 | 408,994 |
| Mutual funds and preferred stocks | 141,509 | 149,653 | 252,087 | 253,817 | 136,489 | 138,535 |
| State and municipal obligations | 25,127 | 25,353 | 24,994 | 25,270 | 22,898 | 22,960 |
| Small Business Administration securities | 333,423 | 339,610 | 301,109 | 303,677 | 62,831 | 62,891 |
| Other debt securities | 12,887 | 16,950 | 3,868 | 6,056 | 3,695 | 6,761 |
| | $3,987,527 | $4,172,412 | $4,092,218 | $4,181,977 | $2,835,606 | $2,926,602 |

Investment securities available for sale totaled $4.2 billion at December 31, 2012 and December 31, 2011 compared to $2.9 billion at December 31, 2010. Growth of the investment portfolio during 2011 reflected continued deployment of cash generated by deposit growth, loan resolution activity and submission of claims to the FDIC under the Loss Sharing Agreements. We were able to deploy more of these resources toward loan growth in 2012. Our investment strategy has focused on providing liquidity necessary for day-to-day operations, adding a suitable balance of high credit quality, diversifying assets to the consolidated balance sheet, managing interest rate risk, and generating acceptable returns given our established risk parameters. We have sought to maintain liquidity and manage interest rate risk by investing a significant portion of the portfolio in high quality liquid securities consisting primarily of U.S. Government agency floating rate mortgage-backed securities. We have also invested in highly rated structured products including private label residential and commercial mortgage-backed securities, Re-Remics, collateralized loan obligations and non-mortgage asset-backed securities collateralized by small balance commercial loans, auto loans, servicer advances and student loans as well as bank preferred stocks and U.S. Small Business Administration securities that, while somewhat less liquid, provide us with higher yields. Relatively short effective portfolio duration helps mitigate interest rate risk arising from the currently low level of market interest rates. The weighted average expected life of the investment portfolio as of December 31, 2012 was 4.2 years and the effective duration was 1.7 years.

A summary of activity in the investment portfolio for the year ended December 31, 2012 follows (in thousands):

| | |
|---|---|
| Balance, beginning of period | $4,181,977 |
| Purchases | 1,300,485 |
| Proceeds from repayments | (659,044) |
| Sales, maturities and calls | (897,329) |
| Herald acquisition | 160,971 |
| Amortization of discounts and premiums, net | (9,774) |
| Change in unrealized gains | 95,126 |
| Balance, end of period | $4,172,412 |

The following tables show, as of December 31, 2012, 2011 and 2010, the breakdown of covered and non-covered securities in the Company's investment portfolio (in thousands):

| | 2012 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Covered Securities | | | | Non-Covered Securities | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Treasury and Government agency securities | $ — | $ — | $ — | $ — | $ 34,998 | $ 157 | $ (1) | $ 35,154 |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | — | — | — | — | 1,520,047 | 64,476 | — | 1,584,523 |
| U.S. Government agency and sponsored enterprise commercial mortgage-backed securities | — | — | — | — | 58,518 | 1,898 | — | 60,416 |
| Re-Remics | — | — | — | — | 575,069 | 10,063 | (90) | 585,042 |
| Private label residential mortgage-backed securities and CMOs | 143,739 | 58,266 | (185) | 201,820 | 243,029 | 3,437 | (201) | 246,265 |
| Private label commercial mortgage-backed securities | — | — | — | — | 413,110 | 19,982 | — | 433,092 |
| Collateralized loan obligations | — | — | — | — | 252,280 | 908 | — | 253,188 |
| Non-mortgage asset-backed securities | — | — | — | — | 233,791 | 7,672 | (117) | 241,346 |
| Mutual funds and preferred stocks | 16,382 | 1,439 | (361) | 17,460 | 125,127 | 7,066 | — | 132,193 |
| State and municipal obligations | — | — | — | — | 25,127 | 249 | (23) | 25,353 |
| Small Business Administration securities | — | — | — | — | 333,423 | 6,187 | — | 339,610 |
| Other debt securities | 3,723 | 3,502 | — | 7,225 | 9,164 | 561 | — | 9,725 |
| | $163,844 | $63,207 | $(546) | $226,505 | $3,823,683 | $122,656 | $(432) | $3,945,907 |

| | 2011 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Covered Securities | | | | Non-Covered Securities | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | $ — | $ — | $ — | $ — | $1,952,095 | $34,823 | $ (1,205) | $1,985,713 |
| Re-Remics | — | — | — | — | 544,924 | 4,972 | (3,586) | 546,310 |
| Private label residential mortgage-backed securities and CMOs | 165,385 | 44,746 | (310) | 209,821 | 177,614 | 1,235 | (983) | 177,866 |
| Private label commercial mortgage-backed securities | — | — | — | — | 255,868 | 6,694 | — | 262,562 |
| Non-mortgage asset-backed securities | — | — | — | — | 414,274 | 2,246 | (5,635) | 410,885 |
| Mutual funds and preferred stocks | 16,382 | 491 | (556) | 16,317 | 235,705 | 3,071 | (1,276) | 237,500 |
| State and municipal obligations | — | — | — | — | 24,994 | 278 | (2) | 25,270 |
| Small Business Administration securities | — | — | — | — | 301,109 | 2,664 | (96) | 303,677 |
| Other debt securities | 3,868 | 2,188 | — | 6,056 | — | — | — | — |
| | $185,635 | $47,425 | $(866) | $232,194 | $3,906,583 | $55,983 | $(12,783) | $3,949,783 |

| | 2010 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Covered Securities | | | | Non-Covered Securities | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | $ — | $ — | $ — | $ — | $1,282,757 | $11,411 | $(3,258) | $1,290,910 |
| Re-Remics | — | — | — | — | 599,682 | 14,054 | (1,105) | 612,631 |
| Private label residential mortgage-backed securities and CMOs | 181,337 | 61,679 | (1,726) | 241,290 | 138,759 | 2,906 | (35) | 141,630 |
| Non-mortgage asset-backed securities | — | — | — | — | 407,158 | 1,908 | (72) | 408,994 |
| Mutual funds and preferred stocks | 16,382 | 57 | (922) | 15,517 | 120,107 | 3,402 | (491) | 123,018 |
| State and municipal obligations | — | — | — | — | 22,898 | 101 | (39) | 22,960 |
| Small Business Administration securities | — | — | — | — | 62,831 | 191 | (131) | 62,891 |
| Other debt securities | 3,695 | 3,066 | — | 6,761 | — | — | — | — |
| | $201,414 | $64,802 | $(2,648) | $263,568 | $2,634,192 | $33,973 | $(5,131) | $2,663,034 |

Covered securities include private label residential mortgage-backed securities, mortgage-backed security mutual funds, trust preferred collateralized debt obligations, U.S. government sponsored enterprise preferred stocks and corporate debt securities covered under the commercial shared loss agreement. BankUnited will be reimbursed 80%, or 95% if cumulative losses exceed the $4.0 billion stated threshold, of realized losses, other-than-temporary impairments, and reimbursable expenses associated with the covered securities. BankUnited must pay the FDIC 80%, or 95% if cumulative losses are greater than the stated threshold, of realized gains and other-than-temporary impairment recoveries. Unrealized losses recognized in accumulated other comprehensive income do not qualify for loss sharing. BankUnited cannot sell securities covered under the Loss Sharing Agreements without prior approval of the FDIC. To date, the Company has not submitted any claims for reimbursement related to the covered securities. As the investment portfolio has grown, covered securities have represented a declining percentage of the total portfolio. Covered securities represented 5.4%, 5.6% and 9.0% of the fair value of the investment portfolio at December 31, 2012, 2011 and 2010, respectively.

The following table shows the scheduled maturities, carrying values and current yields for our investment portfolio as of December 31, 2012. Scheduled maturities have been adjusted for anticipated prepayments of mortgage-backed and other pass through securities. Yields on tax-exempt securities have been calculated on a pre-tax basis (dollars in thousands):

| | Within One Year | | After One Year Through Five Years | | After Five Years Through Ten Years | | After Ten Years | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Carrying Value | Weighted Average Yield | Carrying Value | Weighted Average Yield | Carrying Value | Weighted Average Yield | Carrying Value | Weighted Average Yield | Carrying Value | Weighted Average Yield |
| U.S. Treasury and Government agency securities | $ 15,074 | 0.28% | $ 20,080 | 0.54% | $ — | — | $ — | — | $ 35,154 | 0.43% |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | 253,188 | 2.00% | 786,013 | 2.53% | 381,554 | 2.34% | 163,768 | 1.71% | 1,584,523 | 2.31% |
| U.S. Government agency and sponsored enterprise commercial mortgage-backed securities | 563 | 2.13% | 2,458 | 2.11% | 49,407 | 1.80% | 7,988 | 2.25% | 60,416 | 1.88% |
| Re-Remics | 93,884 | 3.55% | 255,209 | 3.27% | 155,415 | 3.12% | 80,534 | 2.98% | 585,042 | 3.24% |
| Private label residential mortgage-backed securities and CMOs | 115,547 | 5.00% | 225,962 | 5.63% | 73,456 | 7.34% | 33,120 | 8.76% | 448,085 | 5.98% |
| Private label commercial mortgage-backed securities | 99,252 | 2.20% | 109,398 | 4.35% | 224,442 | 2.69% | — | — | 433,092 | 2.99% |
| Collateralized loan obligations | — | — | 147,000 | 1.87% | 106,188 | 1.77% | — | — | 253,188 | 1.83% |
| Non-mortgage asset-backed securities | 57,589 | 3.20% | 147,088 | 3.44% | 36,512 | 4.23% | 157 | 3.01% | 241,346 | 3.50% |
| State and municipal obligations | 6,858 | 1.40% | 16,567 | 1.68% | 1,625 | 2.24% | 303 | 0.12% | 25,353 | 1.62% |
| Small Business Administration securities | 71,318 | 1.67% | 163,792 | 1.67% | 76,252 | 1.72% | 28,248 | 1.55% | 339,610 | 1.67% |
| Other debt securities | — | — | 7,232 | 3.59% | 4,821 | 7.78% | 4,897 | 7.10% | 16,950 | 5.80% |
| | $713,273 | 2.70% | $1,880,799 | 2.99% | $1,109,672 | 2.77% | $319,015 | 2.77% | 4,022,759 | 2.86% |
| Mutual funds and preferred stocks with no scheduled maturity | | | | | | | | | 149,653 | 4.97% |
| Total investment securities available for sale | | | | | | | | | $4,172,412 | 2.94% |

As of December 31, 2012, 90.0% of the non-covered securities were backed by the U.S. government, U.S. government agencies or sponsored enterprises or were rated AAA. All remaining non-covered securities were investment grade. The investment portfolio was in a net unrealized gain position of $184.9 million at December 31, 2012 with aggregate fair value equal to 105% of amortized cost. Net unrealized gains included $185.9 million of gross unrealized gains and $1.0 million of gross unrealized losses. Securities in unrealized loss positions for 12 months or more had an aggregate fair value of $40.6 million representing less than 1% of the fair value of the portfolio, with total unrealized losses of $0.8 million at December 31, 2012.

We evaluate the credit quality of individual securities in the portfolio quarterly to determine whether any of the investments in unrealized loss positions are other-than-temporarily impaired. This evaluation considers, but is not necessarily limited to, the following factors, the relative significance of which varies depending on the circumstances pertinent to each individual security:

- our intent to hold the security until maturity or for a period of time sufficient for a recovery in value;
- whether it is more likely than not that we will be required to sell the security prior to recovery of its amortized cost basis;
- the length of time and extent to which fair value has been less than amortized cost;
- adverse changes in expected cash flows;
- collateral values and performance;
- the payment structure of the security, including levels of subordination or over-collateralization;
- changes in the economic or regulatory environment;
- the general market condition of the geographic area or industry of the issuer;
- the issuer's financial condition, performance and business prospects; and
- changes in credit ratings.

No securities were determined to be other-than-temporarily impaired during the years ended December 31, 2012, 2011 or 2010.

The majority of the debt securities in unrealized loss positions at December 31, 2012 were characterized by low loan counts, odd lots, heightened prepayment speeds or low coupons; all factors which can put downward pressure on pricing. We believe these characteristics to be consistent with temporary impairment.

We do not intend to sell securities in significant unrealized loss positions. Based on an assessment of our liquidity position and internal and regulatory guidelines for permissible investments and concentrations, it is not more likely than not that we will be required to sell securities in significant unrealized loss positions prior to recovery of amortized cost basis. The severity and duration of impairment of individual securities in the portfolio is generally not material. Management either engaged a third party to perform, or performed internally, projected cash flow analyses of the private label mortgage-backed securities, Re-Remics and non-mortgage asset-backed securities, incorporating CUSIP level collateral default rate, voluntary prepayment rate, severity and delinquency assumptions. Based on the results of this analysis, no credit losses were projected. Given the expectation of timely repayment of principal and interest and the limited duration and severity of impairment, we concluded that none of the debt securities were other-than-temporarily impaired. One equity security was in an unrealized loss position at December 31, 2012; given the limited severity of impairment, we considered the impairment of the equity security to be temporary.

For further discussion of our analysis of investment securities for other-than-temporary impairment, see Note 4 to the consolidated financial statements.

We use third-party pricing services to assist us in estimating the fair value of investment securities. We perform a variety of procedures to ensure that we have a thorough understanding of the methodologies and assumptions used by the pricing services including obtaining and reviewing written documentation of the methods and assumptions employed, conducting interviews with valuation desk personnel, performing on-site walkthroughs and reviewing model results and detailed assumptions used to value selected securities as considered necessary. Our classification of prices within the fair value hierarchy is based on an evaluation of the nature of the significant assumptions impacting the valuation of each type of security in the portfolio. We have established a robust price challenge process that includes a review by our treasury front office of all prices provided on a monthly basis. Any price evidencing unexpected month over month fluctuations or deviations from our expectations based on recent observed trading activity and other information available in the marketplace that would impact the value of the security is challenged. Responses to the price challenges, which generally include specific information about inputs and assumptions incorporated in the valuation and their sources, are reviewed in detail. If considered necessary to resolve any discrepancies, a price will be obtained from an additional independent valuation specialist. We do not typically adjust the prices provided, other than through this established challenge process. Our primary pricing services utilize observable inputs when available, and employ unobservable inputs and proprietary models only when observable inputs are not available. As a matter of course, the services validate prices by comparison to recent trading activity whenever such activity exists. Quotes obtained from the pricing services are typically non-binding.

We have also established a quarterly price validation process whereby we verify the prices provided by our primary pricing service for a sample of securities in the portfolio. Sample sizes vary based on the type of security being priced, with higher sample sizes applied to more difficult to value security types. Verification procedures may consist of obtaining prices from an additional outside source or internal modeling, generally based on Intex. We have established acceptable percentage deviations from the price provided by the initial pricing source. If deviations fall outside the established parameters, we will obtain and evaluate more detailed information about the assumptions and inputs used by each pricing source or, if considered necessary, employ an additional valuation specialist to price the security in question. When there are price discrepancies, the final determination of fair value is based on careful consideration of the assumptions and inputs employed by each of the pricing sources given our knowledge of the market for each individual security and may include interviews with the outside pricing sources utilized. Depending on the results of the validation process, sample sizes may be extended for particular classes of securities. Results of the validation process are reviewed by the treasury front office and by senior management.

The majority of our investment securities are classified within level 2 of the fair value hierarchy. Certain preferred stocks and U.S. Treasury securities are classified within level 1 of the hierarchy. At December 31, 2012 and December 31, 2011, 5.9% and 11.3%, respectively, of our investment securities were classified within level 3 of the fair value hierarchy. Securities classified within level 3 of the hierarchy at December 31, 2012 included certain private label residential mortgage-backed securities and trust preferred securities. Substantially all of the private label residential mortgage-backed securities and all of the trust preferred securities were covered securities. These securities were classified within level 3 of the hierarchy because proprietary assumptions related to voluntary prepayment rates, default probabilities and loss severities were considered significant to the valuation. During 2012, certain private label residential mortgage-backed securities and non-mortgage asset-backed securities were transferred from level 3 to level 2 of the fair value hierarchy. Activity in the market for these securities had increased such that unobservable inputs were no longer significant to the valuation process.

For additional discussion of the fair values of investment securities, see Note 20 to the consolidated financial statements.

***Loans***

The loan portfolio comprises the Company's primary interest-earning asset. The following tables show the composition of the loan portfolio and the breakdown of the portfolio among covered ACI loans, covered non-ACI loans, non-covered ACI loans and new loans at December 31 of the years indicated (dollars in thousands):

| | 2012 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $1,300,109 | $ 93,438 | $ — | $ 920,713 | $2,314,260 | 41.5% |
| Home equity loans and lines of credit | 52,499 | 157,691 | — | 1,954 | 212,144 | 3.8% |
| | 1,352,608 | 251,129 | — | 922,667 | 2,526,404 | 45.3% |
| Commercial: | | | | | | |
| Multi-family | 56,148 | 716 | — | 307,183 | 364,047 | 6.5% |
| Commercial real estate | 173,732 | 910 | 4,087 | 794,706 | 973,435 | 17.5% |
| Construction and land | 18,064 | 829 | — | 72,361 | 91,254 | 1.6% |
| Commercial and industrial | 14,608 | 11,627 | — | 1,334,991 | 1,361,226 | 24.4% |
| Lease financing | — | — | — | 225,980 | 225,980 | 4.1% |
| | 262,552 | 14,082 | 4,087 | 2,735,221 | 3,015,942 | 54.1% |
| Consumer | 2,239 | — | — | 33,526 | 35,765 | 0.6% |
| Total loans | 1,617,399 | 265,211 | 4,087 | 3,691,414 | 5,578,111 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (18,235) | — | 11,863 | (6,372) | |
| Loans net of premiums, discounts, deferred fees and costs | 1,617,399 | 246,976 | 4,087 | 3,703,277 | 5,571,739 | |
| Allowance for loan and lease losses | (8,019) | (9,874) | — | (41,228) | (59,121) | |
| Loans, net | $1,609,380 | $237,102 | $4,087 | $3,662,049 | $5,512,618 | |

| | 2011 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $1,681,866 | $117,992 | $ — | $ 461,431 | $2,261,289 | 54.1% |
| Home equity loans and lines of credit | 71,565 | 182,745 | — | 2,037 | 256,347 | 6.1% |
| | 1,753,431 | 300,737 | — | 463,468 | 2,517,636 | 60.2% |
| Commercial: | | | | | | |
| Multi-family | 61,710 | 791 | — | 108,178 | 170,679 | 4.1% |
| Commercial real estate | 219,136 | 32,678 | 4,220 | 311,434 | 567,468 | 13.6% |
| Construction and land | 37,120 | 163 | — | 30,721 | 68,004 | 1.7% |
| Commercial and industrial | 24,007 | 20,382 | — | 699,798 | 744,187 | 17.8% |
| Lease financing | — | — | — | 100,180 | 100,180 | 2.4% |
| | 341,973 | 54,014 | 4,220 | 1,250,311 | 1,650,518 | 39.6% |
| Consumer | 2,937 | — | — | 3,372 | 6,309 | 0.2% |
| Total loans | 2,098,341 | 354,751 | 4,220 | 1,717,151 | 4,174,463 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (30,281) | — | (7,124) | (37,405) | |
| Loans net of premiums, discounts, deferred fees and costs | 2,098,341 | 324,470 | 4,220 | 1,710,027 | 4,137,058 | |
| Allowance for loan and lease losses | (16,332) | (7,742) | — | (24,328) | (48,402) | |
| Loans, net | $2,082,009 | $316,728 | $4,220 | $1,685,699 | $4,088,656 | |

| | 2010 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $2,421,016 | $151,945 | $— | $113,439 | $2,686,400 | 67.5% |
| Home equity loans and lines of credit | 98,599 | 206,797 | — | 2,255 | 307,651 | 7.7% |
| | 2,519,615 | 358,742 | — | 115,694 | 2,994,051 | 75.2% |
| Commercial: | | | | | | |
| Multi-family | 73,015 | 5,548 | — | 34,271 | 112,834 | 2.8% |
| Commercial real estate | 299,068 | 33,938 | — | 118,857 | 451,863 | 11.4% |
| Construction and land | 56,518 | 170 | — | 10,455 | 67,143 | 1.7% |
| Commercial loans and leases | 49,731 | 30,139 | — | 266,586 | 346,456 | 8.7% |
| | 478,332 | 69,795 | — | 430,169 | 978,296 | 24.6% |
| Consumer | 4,403 | — | — | 3,056 | 7,459 | 0.2% |
| Total loans | 3,002,350 | 428,537 | — | 548,919 | 3,979,806 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (34,840) | — | (10,749) | (45,589) | |
| Loans net of premiums, discounts, deferred fees and costs | 3,002,350 | 393,697 | — | 538,170 | 3,934,217 | |
| Allowance for loan and lease losses | (39,925) | (12,284) | — | (6,151) | (58,360) | |
| Loans, net | $2,962,425 | $381,413 | $— | $532,019 | $3,875,857 | |

| | 2009 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $3,306,306 | $184,669 | $— | $ 43,110 | $3,534,085 | 76.0% |
| Home equity loans and lines of credit | 113,578 | 215,591 | — | 1,615 | 330,784 | 7.1% |
| | 3,419,884 | 400,260 | — | 44,725 | 3,864,869 | 83.1% |
| Commercial: | | | | | | |
| Multi-family | 71,321 | 4,971 | — | 700 | 76,992 | 1.7% |
| Commercial real estate | 363,965 | 39,733 | — | 24,460 | 428,158 | 9.2% |
| Construction and land | 88,715 | 550 | — | — | 89,265 | 1.9% |
| Commercial and industrial | 81,765 | 48,635 | — | 51,565 | 181,965 | 3.9% |
| | 605,766 | 93,889 | — | 76,725 | 776,380 | 16.7% |
| Consumer | 7,065 | — | — | 3,151 | 10,216 | 0.2% |
| Total loans | 4,032,715 | 494,149 | — | 124,601 | 4,651,465 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (39,986) | — | 40 | (39,946) | |
| Loans net of premiums, discounts, deferred fees and costs | 4,032,715 | 454,163 | — | 124,641 | 4,611,519 | |
| Allowance for loan and lease losses | (20,021) | (1,266) | — | (1,334) | (22,621) | |
| Loans, net | $4,012,694 | $452,897 | $— | $123,307 | $4,588,898 | |

Total loans, before premiums, discounts, and deferred fees and costs, increased by $1.4 billion to $5.6 billion at December 31, 2012, from $4.2 billion at December 31, 2011. New loans grew by $2.0 billion while loans acquired in the FSB Acquisition declined by $570.6 million from December 31, 2011 to December 31, 2012. New residential loans grew by $459.2 million and new commercial loans grew by $1.5 billion during the year ended December 31, 2012. Residential loan growth was attributable primarily to purchases of residential mortgages.

At December 31, 2012, 2011, 2010 and 2009 respectively, 33%, 59%, 86% and 97% of loans, net of premiums, discounts, deferred fees and costs, were covered loans. Covered loans are declining and new loans increasing as a percentage of the total portfolio as covered loans are repaid or resolved and new loan originations and purchases increase. This trend is expected to continue.

***Residential Mortgages***

Historically, residential mortgages, including 1-4 single family residential mortgages and home equity loans and lines of credit, represented the majority of the total loan portfolio. Consistent with our strategy of emphasizing commercial loan production, this portfolio segment has declined as a percentage of total loans. Residential mortgages totaled $2.5 billion, or 45.3% of total loans and $2.5 billion, or 60.2% of total loans at December 31, 2012 and 2011, respectively. The decline in this portfolio segment as a percentage of loans is a result of the resolution of covered loans, including transfers to OREO, partially offset by residential loan purchases and an emphasis on commercial loan origination.

The new residential loan portfolio includes both originated and purchased loans. At December 31, 2012 and 2011, $93.0 million or 10.1% and $58.2 million or 12.6%, respectively, of our new 1-4 single family residential loans were originated loans; $827.7 million or 89.9% and $403.2 million or 87.4% of our new 1-4 single family residential loans were purchased loans. We currently originate 1-4 single family residential mortgage loans with terms ranging from 10 to 40 years, with either fixed or adjustable interest rates, primarily to customers in the state of Florida. New residential mortgage loans are primarily closed-end first lien loans for the purchase or re-finance of owner occupied property. We have purchased loans to supplement our mortgage origination platform and to geographically diversify our loan portfolio. The purchased residential portfolio consists primarily of jumbo mortgages on owner-occupied properties. At December 31, 2012, the purchased loan portfolio included $178.0 million of interest-only loans, substantially all of which begin amortizing 10 years after origination. We intend to expand and enhance our residential origination channel in 2013. The number of newly originated residential mortgage loans that are re-financings of covered loans is not significant.

Home equity loans and lines of credit are not significant to the new loan portfolio.

We do not originate option adjustable rate mortgages ("ARMs"), "no-doc" or "reduced-doc" mortgages and do not utilize wholesale mortgage origination channels although the covered loan portfolio contains loans with these characteristics. All of these loans are covered loans; therefore, the Company's exposure to future losses on these mortgage loans is mitigated by the Loss Sharing Agreements. The following table presents a breakdown of the 1-4 single family residential mortgage portfolio categorized between fixed rate and adjustable rate mortgages at December 31, 2012 and 2011 (dollars in thousands):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI | Non-ACI | New Loans | Total | Percent of Total |
| 1-4 single family residential loans:(1) | | | | | |
| Fixed rate loans | $ 463,471 | $37,865 | $438,589 | $ 939,925 | 40.6% |
| ARM Loans | 836,638 | 55,573 | 482,124 | 1,374,335 | 59.4% |
| | $1,300,109 | $93,438 | $920,713 | $2,314,260 | 100.0% |

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI | Non-ACI | New Loans | Total | Percent of Total |
| 1-4 single family residential loans:(1) | | | | | |
| Fixed rate loans | $ 487,898 | $ 46,654 | $311,131 | $ 845,683 | 37.4% |
| ARM Loans | 1,193,968 | 71,338 | 150,300 | 1,415,606 | 62.6% |
| | $1,681,866 | $117,992 | $461,431 | $2,261,289 | 100.0% |

(1) Before premiums, discounts and deferred fees and costs.

Included in ARM loans above are payment option ARMs representing 37.7% and 37.2% of total ARM loans outstanding as of December 31, 2012 and 2011, respectively. All of the option ARMs are covered loans and the substantial majority are ACI loans. The ACI loans are accounted for in accordance with ASC 310-30; therefore, the optionality embedded in these loans does not impact the carrying value of the loans or the amount of interest income recognized on them. These features are taken into account in quarterly updates of expected cash flows from these loans.

At December 31, 2012 and 2011, based on UPB, the majority of the 1-4 single family residential loans outstanding were to customers domiciled in the following states (dollars in thousands):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI | Non-ACI | New Loans | Total | Percent of Total |
| Florida | $2,096,159 | $35,540 | $123,931 | $2,255,630 | 48.2% |
| California | 259,255 | 5,763 | 431,384 | 696,402 | 14.9% |
| Illinois | 222,649 | 10,214 | 26,626 | 259,489 | 5.5% |
| New Jersey | 192,324 | 2,317 | 8,858 | 203,499 | 4.3% |
| Virginia | 177,303 | 4,476 | 14,278 | 196,057 | 4.2% |
| Others | 722,554 | 35,128 | 315,636 | 1,073,318 | 22.9% |
| | $3,670,244 | $93,438 | $920,713 | $4,684,395 | 100.0% |

| | 2011 | |
|---|---|---|
| | Amount | % |
| Florida | $2,819,813 | 53.9% |
| California | 496,165 | 9.5% |
| Illinois | 300,500 | 5.7% |
| New Jersey | 241,455 | 4.6% |
| Others | 1,372,000 | 26.3% |
| | $5,229,933 | 100.0% |

No state other than those detailed above represented borrowers with more than 4% of total 1-4 single family residential loans outstanding at December 31, 2012 and 2011.

***Commercial loans***

The commercial portfolio segment includes loans secured by multi-family properties, loans secured by both owner-occupied and non-owner occupied commercial real estate, construction, land, commercial and industrial loans and direct financing leases.

Commercial real estate loans include term loans secured by owner and non-owner occupied income producing properties including rental apartments, industrial properties, retail shopping centers, office buildings, warehouses and hotels as well as real estate secured lines of credit. Loans secured by commercial real estate typically have shorter repayment periods and re-price more frequently than 1-4 single family residential loans. The Company's underwriting standards generally provide for loan terms of five years, with amortization schedules of no more than twenty-five years. Loan to value ("LTV") ratios are typically limited to no more than 80%. In addition, the Company usually obtains personal guarantees of the principals as additional security for commercial real estate loans. At December 31, 2012, the UPB of construction loans with available interest reserves totaled $36.1 million; the amount of available interest reserves totaled $2.1 million. All of these loans were rated "pass" at December 31, 2012.

Commercial loans are typically made to growing companies and middle market businesses and include equipment loans, working capital lines of credit, asset-backed loans, acquisition finance credit facilities, lease financing and Small Business Administration product offerings. These loans may be structured as term loans, typically with maturities of five years or less, or revolving lines of credit which typically mature annually. Lease financing consists of municipal and business equipment financing leases.

Management's loan origination strategy is heavily focused on the commercial portfolio segment, which comprised 74.1% and 72.8% of new loans as of December 31, 2012 and 2011, respectively. New commercial loans that represent re-financings of covered loans are not significant.

***Consumer Loans***

Consumer loans include loans secured by certificates of deposit, direct and indirect auto financing, demand deposit account overdrafts and unsecured personal lines of credit.

***Loan Maturities***

The following table sets forth, as of December 31, 2012, the maturity distribution of our loan portfolio by category, based on UPB. Commercial loans are presented by contractual maturity. Contractual maturities of 1-4 single family residential loans have been adjusted for an estimated rate of prepayments and defaults based on historical trends, current interest rates, types of loans and refinance patterns (in thousands):

| | One Year or Less | After One Through Five Years | After Five Years | Total |
|---|---|---|---|---|
| Residential: | | | | |
| 1-4 single family residential | $ 878,278 | $2,294,064 | $1,512,053 | $4,684,395 |
| Home equity loans and lines of credit | 42,583 | 170,159 | 85,786 | 298,528 |
| | 920,861 | 2,464,223 | 1,597,839 | 4,982,923 |
| Commercial: | | | | |
| Multi-family | 48,161 | 164,540 | 169,846 | 382,547 |
| Commercial real estate | 147,829 | 482,092 | 411,675 | 1,041,596 |
| Construction and land | 25,158 | 64,844 | 8,344 | 98,346 |
| Commercial and industrial | 368,597 | 822,427 | 171,832 | 1,362,856 |
| Lease financing | 66,693 | 133,041 | 26,246 | 225,980 |
| | 656,438 | 1,666,944 | 787,943 | 3,111,325 |
| Consumer | 5,739 | 9,640 | 21,018 | 36,397 |
| | $1,583,038 | $4,140,807 | $2,406,800 | $8,130,645 |

The following table shows the distribution of UPB of those loans that mature in more than one year between fixed and adjustable interest rate loans as of December 31, 2012 (in thousands):

| | Interest Rate Type | | |
|---|---|---|---|
| | Fixed | Adjustable | Total |
| Residential: | | | |
| 1-4 single family residential | $1,424,843 | $2,381,274 | $3,806,117 |
| Home equity loans and lines of credit | 22,913 | 233,032 | 255,945 |
| | 1,447,756 | 2,614,306 | 4,062,062 |
| Commercial: | | | |
| Multi-family | 195,142 | 139,244 | 334,386 |
| Commercial real estate | 433,366 | 460,401 | 893,767 |
| Construction and land | 2,557 | 70,631 | 73,188 |
| Commercial and industrial | 343,865 | 650,394 | 994,259 |
| Lease financing | 158,067 | 1,220 | 159,287 |
| | 1,132,997 | 1,321,890 | 2,454,887 |
| Consumer | 24,237 | 6,421 | 30,658 |
| | $2,604,990 | $3,942,617 | $6,547,607 |

**Asset Quality**

In discussing asset quality, a distinction must be made between covered loans and new loans. New loans were underwritten under significantly different and generally more conservative standards than the covered loans. In particular, credit approval policies have been strengthened, wholesale mortgage origination channels have been eliminated, "no-doc" and option ARM loan products have been eliminated, and real estate appraisal policies have been improved. Although the risk profile of covered loans is higher than that of new loans, our exposure to loss related to the covered loans is significantly mitigated by the Loss Sharing Agreements and by the fair value basis recorded in these loans resulting from the application of acquisition accounting.

We have established a robust credit risk management framework and put in place an experienced team to lead the workout and recovery process for the commercial and commercial real estate portfolios. We have also implemented a dedicated internal loan review function that reports directly to our Audit Committee. We have an experienced resolution team in place for covered residential mortgage loans, and have implemented outsourcing arrangements with industry leading firms in certain areas such as OREO resolution.

Loan performance is monitored by our credit administration, workout and recovery and loan review departments. Commercial loans are regularly reviewed by our internal loan review department. Relationships with committed balances greater than $250,000 are reviewed at least annually. The Company utilizes a 13 grade internal asset risk classification system as part of its efforts to monitor and improve commercial asset quality. Loans exhibiting potential credit weaknesses that deserve management's close attention and that if left uncorrected may result in deterioration of the repayment capacity of the borrower are categorized as special mention. These borrowers may exhibit negative financial trends or erratic financial performance, strained liquidity, marginal collateral coverage, declining industry trends or weak management. Loans with well-defined credit weaknesses that may result in a loss if the deficiencies are not corrected are assigned a risk rating of substandard. These borrowers may exhibit payment defaults, insufficient cash flows, operating losses, increasing balance sheet leverage, project cost overruns, unreasonable construction delays, exhausted interest reserves, or declining collateral values. Loans with weaknesses so severe that collection in full is highly questionable or improbable, but because of certain reasonably specific pending factors have not been charged off, are assigned risk ratings of doubtful.

Residential mortgage loans and consumer loans are not individually risk rated. Delinquency status is the primary measure we use to monitor the credit quality of these loans. We also consider original LTV and FICO score to be significant indicators of credit quality for the new 1-4 single family residential portfolio.

***New Loans***

*Commercial*

The ongoing asset quality of significant commercial loans is monitored on an individual basis through our regular credit review and risk rating process. We believe internal risk rating is the best indicator of the credit quality of commercial loans. Homogenous groups of smaller balance commercial loans may be monitored collectively.

At December 31, 2012, new commercial loans with aggregate balances of $21.4 million, $48.9 million and $1.2 million were rated special mention, substandard and doubtful, respectively. At December 31, 2011, new commercial loans aggregating $7.7 million were rated special mention and new commercial loans aggregating $13.7 million were classified substandard or doubtful.

*Residential*

At December 31, 2012, new 1-4 single family residential loans totaling $0.2 million were 90 days or more past due. All of these loans were acquired in partial satisfaction of a commercial debt previously contracted. New 1-4 single family residential loans past due less than 90 days totaled $7.6 million at December 31, 2012. At December 31, 2011, no new 1-4 single family residential loans were 90 days or more past due. New 1-4 single family residential loans past due less than 90 days totaled $15.9 million at December 31, 2011. Past due home equity loans and lines of credit in the new portfolio were not significant at December 31, 2012 or 2011. At December 31, 2012, 41.1% of the new home equity portfolio were first liens, and 58.9% were second or third liens.

The majority of our new residential mortgage portfolio consists of purchased loans. The credit parameters for purchasing loans are similar to the underwriting guidelines in place for our mortgage origination platform. For purchasing seasoned loans, good payment history is required. In general, we purchase performing jumbo mortgage pools which have average FICO scores above 700, primarily are owner-occupied and full documentation, and have a current LTV of less than 80%. We perform due diligence on the purchased loans for credit, compliance, counterparty, payment history and property valuation.

The following table shows the distribution of new 1-4 single family residential loans by original FICO and LTV as of December 31, 2012 and 2011 (in thousands):

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | FICO | | | | FICO | | | |
| LTV | 740 or less | 741-760 | 761 or greater | Total | 740 or less | 741-760 | 761 or greater | Total |
| 60% or less | $ 62,433 | $ 35,761 | $217,249 | $315,443 | $ 31,676 | $17,759 | $101,342 | $150,777 |
| 60%-70% | 29,138 | 41,863 | 159,068 | 230,069 | 27,524 | 15,371 | 72,763 | 115,658 |
| 70%-80% | 55,319 | 54,367 | 256,605 | 366,291 | 26,471 | 26,676 | 112,961 | 166,108 |
| 80% or more | 18,327 | 1,200 | 4,341 | 23,868 | 15,794 | 5,666 | 12,590 | 34,050 |
| | $165,217 | $133,191 | $637,263 | $935,671 | $101,465 | $65,472 | $299,656 | $466,593 |

At December 31, 2012, the purchased loan portfolio had the following characteristics: 44.3% were fixed rate loans; substantially all were full documentation with an average FICO score of 765 and average LTV of 64.6%. The majority of this portfolio was owner-occupied, with 96.9% primary residence, 2.9% second homes and 0.2% investment properties. In terms of vintage, 3.1% of the portfolio was originated pre-2008, 1.3% in 2008, 0.7% in 2009, 3.1% in 2010, 47.0% in 2011 and 44.8% in 2012.

Similarly, the originated loan portfolio had the following characteristics at December 31, 2012: 73.6% were fixed rate loans, 100% were full documentation with an average FICO score of 767 and average LTV of 63.1%. The majority of this portfolio was owner-occupied, with 95.2% primary residence and 4.8% second home. In terms of vintage, 3.3% of the portfolio was originated in 2009, 19.2% in 2010, 32.4% in 2011 and 45.1% in 2012.

*Consumer*

The largest segment of the new consumer portfolio at December 31, 2012 was indirect auto loans. Delinquent consumer loans in the new portfolio were insignificant as of December 31, 2012 and 2011.

***Covered Loans***

Covered loans consist of both ACI loans and non-ACI loans. At December 31, 2012, covered ACI loans totaled $1.6 billion and covered non-ACI loans totaled $247.0 million, net of premiums, discounts, deferred fees and costs.

*Residential*

Covered residential loans were placed into homogenous pools at the time of the FSB Acquisition and the ongoing credit quality and performance of these loans is monitored on a pool basis. The fair value of the pools was initially measured based on the expected cash flows from each pool. Initial cash flow expectations incorporated significant assumptions regarding prepayment rates, frequency of default and loss severity. For ACI pools, the difference between total contractual payments due and the cash flows expected to be received at acquisition was recognized as non-accretable difference. The excess of expected cash flows over the recorded fair value of each ACI pool at acquisition, known as the accretable yield, is being recognized as interest income over the life of each pool. We monitor the pools quarterly to determine whether any significant changes have occurred in expected cash flows that would be indicative of impairment or necessitate reclassification between non-accretable difference and accretable yield. Generally, improvements in expected cash flows less than 1% of the expected cash flows from a pool are not recorded. This materiality threshold may be revised in the future based on management's judgment.

Residential mortgage loans, including home equity loans, comprised 87.8% of the UPB of the acquired loan portfolio at the FSB Acquisition date. We performed a detailed analysis of the portfolio to determine the key loan characteristics influencing performance. Key characteristics influencing the performance of the residential mortgage portfolio, including home equity loans, were determined to be delinquency status; product type, in particular, amortizing as opposed to option ARM products; current indexed LTV ratio; and original FICO score. The ACI loans in the residential mortgage portfolio were grouped into ten homogenous static pools based on these characteristics, and the non-ACI residential loans were grouped into two homogenous static pools. There were other variables which we initially expected to have a significant influence on performance and which were considered in our analysis; however, the results of our analysis demonstrated that their impact was less significant after controlling for current indexed LTV, product type, and FICO score. Therefore, these additional factors were not used in grouping the covered residential loans into pools and are not used in monitoring ongoing asset quality of the pools. The factors we considered but determined not to be significant included the level and type of documentation required at origination, i.e., whether a loan was originated under full documentation, reduced documentation, or no documentation programs; occupancy, defined as owner occupied vs. non-owner occupied collateral properties; geography; and vintage, i.e., year of origination.

At December 31, 2012, the carrying value of 1-4 single family residential non-ACI loans was $78.6 million; $7.5 million or 9.5% of these loans were 30 days or more past due and $2.4 million or 3.1% were 90 days or more past due. At December 31, 2012, ACI 1-4 single family residential loans totaled $1.3 billion; $206.7 million or 15.9% of these loans were delinquent by 30 days or more and $143.3 million or 11.0% were delinquent by 90 days or more.

At December 31, 2012, non-ACI home equity loans and lines of credit had an aggregate carrying value of $154.7 million; $13.8 million or 8.9% of these loans were 30 days or more past due and $9.8 million or 6.3% were 90 days or more past due. ACI home equity loans and lines of credit had a carrying amount of $52.5 million at December 31, 2012. At December 31, 2012, $9.3 million or 17.7% of ACI home equity loans and lines of credit were 30 days or more contractually delinquent and $7.5 million or 14.2% were delinquent by 90 days or more. At December 31, 2012, 5.0% and 8.0%, respectively, of the non-ACI and ACI home equity loans and lines of credit were first liens while 95.0% and 92.0%, respectively, of the non-ACI and ACI home equity loans and lines of credit were second or third liens. Expected loss severity given default is significantly higher for home equity loans that are not first liens.

Although delinquencies in the covered residential portfolio are high, potential future losses to the Company related to these loans are significantly mitigated by the Loss Sharing Agreements.

*Commercial*

Generally, commercial and commercial real estate loans are monitored individually due to their size and other unique characteristics.

At December 31, 2012, non-ACI commercial loans had an aggregate UPB of $14.1 million and a carrying value of $13.6 million; 66.0% of these loans were rated "pass" and this portfolio segment has limited delinquency history. At December 31, 2012, non-ACI commercial loans with aggregate carrying values of $4.0 million and $0.7 million were rated substandard and doubtful, respectively. At December 31, 2012, there were no non-ACI commercial loans rated special mention.

At December 31, 2012, ACI commercial loans had a carrying value of $266.6 million, of which $262.6 million are covered under the Loss Sharing Agreements. At December 31, 2012, loans with aggregate carrying values of $5.0 million, $93.8 million and $0.2 million were internally risk rated special mention, substandard and doubtful, respectively.

Potential future losses to the Company related to the covered loans are significantly mitigated by the Loss Sharing Agreements.

***Impaired Loans and Non-Performing Assets***

Non-performing assets consist of (i) non-accrual loans, including loans that have been restructured in a troubled-debt restructuring ("TDR") and placed on nonaccrual status or that have not yet exhibited a consistent six month payment history, (ii) accruing loans that are more than 90 days contractually past due as to interest or principal, excluding ACI loans, and (iii) OREO. Impaired loans also include loans modified in TDRs that are performing according to their modified terms, ACI loans for which expected cash flows have been revised downward since acquisition, and one accruing loan identified as impaired due to a potential collateral shortfall. Because of accretable yield, impaired ACI loans have not been classified as nonaccrual loans and we do not consider them to be non-performing assets. Historically and as of December 31, 2012, the substantial majority of non-performing assets were covered assets. The Company's exposure to loss related to covered assets is significantly mitigated by the Loss Sharing Agreements and by the fair value basis recorded in these assets resulting from the application of acquisition accounting.

The following table summarizes the Company's impaired loans and non-performing assets at December 31 of the years indicated (in thousands):

| | 2012 | | | 2011 | | | 2010 | | | 2009 |
|---|---|---|---|---|---|---|---|---|---|---|
| | Covered Assets | Non-Covered Assets | Total | Covered Assets | Non-Covered Assets | Total | Covered Assets | Non-Covered Assets | Total | Total(3) |
| Nonaccrual loans | | | | | | | | | | |
| Residential: | | | | | | | | | | |
| 1-4 single family residential | $ 2,678 | $ 155 | $ 2,833 | $ 7,410 | $ — | $ 7,410 | $ 9,585 | $ — | $ 9,585 | $ 14,495 |
| Home equity loans and lines of credit | 9,767 | — | 9,767 | 10,451 | 27 | 10,478 | 10,817 | — | 10,817 | 2,726 |
| Total residential loans | 12,445 | 155 | 12,600 | 17,861 | 27 | 17,888 | 20,402 | — | 20,402 | 17,221 |
| Commercial: | | | | | | | | | | |
| Multi-family | — | — | — | — | — | — | 200 | — | 200 | — |
| Commercial real estate | 59 | 1,619 | 1,678 | 295 | — | 295 | 75 | — | 75 | — |
| Construction and land | — | 278 | 278 | — | 335 | 335 | — | — | — | — |
| Commercial and industrial | 4,530 | 11,907 | 16,437 | 6,695 | 2,469 | 9,164 | 1,886 | 3,211 | 5,097 | 150 |
| Lease financing | — | 1,719 | 1,719 | — | — | — | — | — | — | — |
| Total commercial loans | 4,589 | 15,523 | 20,112 | 6,990 | 2,804 | 9,794 | 2,161 | 3,211 | 5,372 | 150 |
| Total nonaccrual loans | 17,034 | 15,678 | 32,712 | 24,851 | 2,831 | 27,682 | 22,563 | 3,211 | 25,774 | 17,371 |
| Non-ACI and new loans past due 90 days and still accruing | 140 | 38 | 178 | 375 | — | 375 | — | — | — | — |
| TDRs | 1,293 | 348 | 1,641 | 824 | — | 824 | — | — | — | — |
| Total non-performing loans | 18,467 | 16,064 | 34,531 | 26,050 | 2,831 | 28,881 | 22,563 | 3,211 | 25,774 | 17,371 |
| Other real estate owned | 76,022 | — | 76,022 | 123,737 | — | 123,737 | 206,680 | — | 206,680 | 120,110 |
| Total non-performing assets | 94,489 | 16,064 | 110,553 | 149,787 | 2,831 | 152,618 | 229,243 | 3,211 | 232,454 | 137,481 |
| Impaired ACI loans on accrual status(1) | 43,580 | — | 43,580 | 94,536 | — | 94,536 | 262,130 | — | 262,130 | 567,253 |
| Other impaired loans on accrual status | — | 2,721 | 2,721 | — | — | — | — | — | — | — |
| Non-ACI and new TDRs in compliance with their modified terms | 2,650 | 4,689 | 7,339 | 583 | — | 583 | — | — | — | — |
| Total impaired loans and non-performing assets | $140,719 | $23,474 | $ 164,193 | $244,906 | $ 2,831 | $247,737 | $ 491,373 | $ 3,211 | $ 494,584 | $704,734 |
| Non-performing loans to total loans(2) | | 0.43% | 0.62% | | 0.17% | 0.70% | | 0.60% | 0.66% | 0.38% |
| Non-performing assets to total assets | | N/A | 0.89% | | N/A | 1.35% | | N/A | 2.14% | 1.24% |
| ALLL to total loans(2) | | 1.11% | 1.06% | | 1.42% | 1.17% | | 1.14% | 1.48% | 0.49% |
| ALLL to non-performing loans | | 256.65% | 171.21% | | 859.34% | 167.59% | | 191.56% | 226.35% | 130.22% |
| Net charge-offs to average loans | | 0.09% | 0.17% | | 0.36% | 0.62% | | 0.04% | 0.37% | 0.00% |

(1) Includes $804 thousand of TDRs on accrual status.

(2) Total loans for purposes of calculating these ratios is net of premiums, discounts, deferred fees and costs.

(3) All impaired loans and non-performing assets were covered assets at December 31, 2009.

Contractually delinquent ACI loans are not reflected as nonaccrual loans because accretable yield continues to be accreted into income. Accretable yield continues to be recorded as there continues to be an expectation of future cash flows in excess of carrying amount from these loans. The carrying value of ACI loans contractually delinquent by more than 90 days but on which income was still being recognized was $176.5 million and $361.2 million at December 31, 2012 and 2011, respectively.

The decline in the ratio of the ALLL to total loans, particularly for the new portfolio, at December 31, 2012 as compared to December 31, 2011 is primarily a result of a decrease in the peer group loss factors used in calculating the ALLL for the commercial portfolio. See the section entitled "Analysis of the Allowance for Loan and Lease Losses" below for a further discussion of the methodology we use to determine the amount of the ALLL. The ratio of non-performing new loans to total new loans was a low 0.43% at December 31, 2012, but increased from 0.17% at December 31, 2011. This increase is not unexpected as the new portfolio begins to season. The decline in the ratio of non-performing assets to total assets at December 31, 2012 as compared to December 31, 2011 was primarily attributable to the decrease in OREO.

New and non-ACI commercial loans are placed on non-accrual status when (i) management has determined that full repayment of all contractual principal and interest is in doubt, or (ii) the loan is past due 90 days or more as to principal or interest unless the loan is well secured and in the process of collection. New and non-ACI residential and consumer loans are generally placed on non-accrual status when 90 days of interest is due and unpaid. When a loan is placed on non-accrual status, uncollected interest accrued is reversed and charged to interest income. Commercial loans are returned to accrual status only after all past due principal and interest has been collected and full repayment of remaining contractual principal and interest is reasonably assured. Residential loans are returned to accrual status when less than 90 days of interest is due and unpaid. Past due status of loans is determined based on the contractual next payment due date. Loans less than 30 days past due are reported as current. Except for ACI loans accounted for in pools, loans that are the subject of troubled debt restructurings are generally placed on nonaccrual status at the time of the modification unless the borrower has no history of missed payments for six months prior to the restructuring. If borrowers perform pursuant to the modified loan terms for at least six months and the remaining loan balances are considered collectable, the loans are returned to accrual status.

A loan modification is considered a TDR if the Company, for economic or legal reasons related to the borrower's financial difficulties, grants a concession to the borrower that the Company would not otherwise grant. These concessions may take the form of temporarily or permanently reduced interest rates, payment abatement periods, restructuring of payment terms, extensions of maturity at below market terms, or in some cases, partial forgiveness of principal. Under generally accepted accounting principles, modified ACI loans accounted for in pools are not accounted for as troubled debt restructurings and are not separated from their respective pools when modified. Included in TDRs are loans to consumer borrowers who have not reaffirmed their debt discharged in Chapter 7 bankruptcy. The total amount of such loans is not significant. To date, TDRs have not had a material impact on our financial condition or results of operations.

As of December 31, 2012 impaired loans included 20 commercial relationships with an aggregate carrying value of $7.3 million and 18 residential loans with an aggregate carrying value of $4.5 million that had been modified in TDRs. Substantially all of the residential TDRs were modified under the U.S. Treasury Department's Home Affordable Modification Program ("HAMP"). Because of the immateriality of the amount of loans modified in TDRs and nature of the modifications, the modifications did not have a material impact on the Company's consolidated financial statements for the years ended December 31, 2012, 2011 or 2010. For additional information about TDRs, see Note 5 to the consolidated financial statements.

Additional interest income that would have been recognized on nonaccrual loans and TDRs had they performed in accordance with their original contractual terms is not material for any period presented.

### *Potential Problem Loans*

Potential problem loans have been identified by management as those loans included in the "substandard accruing" risk rating category. These loans are typically performing, but possess specifically identified credit weaknesses that, if not remedied, may lead to a downgrade to non-accrual status and identification as impaired in the near-term. Substandard accruing loans totaled $34.6 million at December 31, 2012. The majority of these loans were current as to principal and interest at December 31, 2012.

### *Loss Mitigation Strategies*

We evaluate each loan in default to determine the most effective loss mitigation strategy, which may be modification, short sale, or foreclosure. We offer loan modifications under HAMP to eligible borrowers in the residential portfolio. HAMP is a uniform loan modification process that provides eligible borrowers with sustainable monthly mortgage payments equal to a target 31% of their gross monthly income. As of December 31, 2012, 11,970 borrowers had been counseled regarding their participation in HAMP; 8,670 of those borrowers were initially determined to be potentially eligible for loan modifications under the program. As of December 31, 2012, 1,405 borrowers who did not elect to participate in the program had been sent termination letters and 2,971 borrowers had been denied due to ineligibility. At December 31, 2012, there were 3,638 permanent loan modifications. Substantially all of these modified loans were ACI loans accounted for in pools.

## Analysis of the Allowance for Loan and Lease Losses

The ALLL relates to (i) new loans, (ii) estimated additional losses arising on non-ACI loans subsequent to the FSB Acquisition, and (iii) additional impairment recognized as a result of decreases in expected cash flows on ACI loans due to further credit deterioration. The impact of any additional provision for losses on covered loans is significantly mitigated by an increase in the FDIC indemnification asset. The determination of the amount of the ALLL is, by nature, highly complex and subjective. Future events that are inherently uncertain could result in material changes to the level of the ALLL. General economic conditions such as unemployment rates, real estate values in our primary market areas and the level of interest rates, as well as a variety of other factors that affect the ability of borrowers' businesses to generate cash flows sufficient to service their debts will impact the future performance of the portfolio.

### *New and non-ACI Loans*

Based on an analysis of historical performance of the non-ACI residential mortgage and home equity portfolio, OREO and short sale losses and recent trending data, we have concluded that LTV ratio is the leading predictive indicator of loss severity for this portfolio. The non-ACI residential mortgage and home equity portfolios have therefore been divided into homogenous groups and stratified based on LTV for purposes of calculating the ALLL. Calculated frequency of roll to loss and severity percentages are applied to the dollar value of loans in each group to calculate an overall loss allowance. LTV ratios at the individual loan level are updated quarterly using the appropriate Case-Shiller quarterly MSA Home Price Index to adjust the original appraised value of the underlying collateral. Frequency is calculated for each group using a four month roll to loss percentage, based on the assumption that if an event has occurred with a borrower that will ultimately result in a loss, this will manifest itself as a loan in default and in process of foreclosure within four months. Loss severity given default is estimated based on internal data about OREO sales and short sales from the portfolio. The ALLL calculation incorporates a 100% loss severity assumption for home equity loans that are projected to roll to default. Although the population remains insignificant, management continues to analyze the impact of senior lien delinquency on the allowance estimates of performing subordinate liens. At December 31, 2012, the non-ACI home equity loss factor reflects elevated default probabilities as a result of delinquent, related senior liens.

Due to the lack of similarity between the risk characteristics of new loans and covered loans in the residential and home equity portfolios, management does not believe it is appropriate to use the historical performance of the covered residential mortgage portfolio as a basis for calculating the ALLL applicable to new loans. The new loan portfolio is not seasoned and has not yet developed an observable loss trend. Therefore, the ALLL for new residential loans is based primarily on peer group average historical loss rates as discussed further below.

Since the new commercial loan portfolio is not yet seasoned enough to exhibit a loss trend and the non-ACI commercial portfolio has limited delinquency history, the ALLL for new and non-ACI commercial loans is based primarily on the Company's internal credit risk rating system and peer group average historical loss rates by loan class. The allowance is comprised of specific reserves for significant classified loans that are individually evaluated and determined to be impaired as well as general reserves for individually evaluated loans determined not to be impaired and loans that do not meet our established threshold for individual evaluation. Commercial relationships graded substandard or doubtful and on nonaccrual status with committed credit facilities greater than or equal to $500,000 are individually evaluated for impairment. A net realizable value analysis is prepared quarterly for each of these relationships. This analysis forms the basis for establishing specific reserves. Loans modified in TDRs are also evaluated individually for impairment. We believe that loans rated substandard or doubtful that are not individually evaluated for impairment exhibit characteristics indicative of a heightened level of credit risk. We group these loans by product type and risk rating and establish general reserve percentages based on estimated probability of default and loss severity. These estimates are based on available industry data.

The peer group used to calculate the average historical loss rates that form the basis for our general reserve calculations is a group of 20 banks in the U.S. Southeast region determined by management to be the most comparable to BankUnited. Factors that impacted the selection of the peer group included asset size, composition of the loan portfolio and credit quality ratios, including net charge-offs to average loans, ALLL to total loans, ALLL to noncurrent loans and noncurrent loans to total loans. Peer bank data is obtained from the Statistics on Depository Institutions Report published by the FDIC for the most recent quarter available. For new loans, a six quarter average of peer group historical loss rates is used as this period corresponds to the vintage of the majority of loans in this portfolio segment. For the non-ACI portfolio, a twelve quarter average of peer group historical loss rates is used as this period is considered more representative of expected loss experience for the more seasoned loans in this segment.

Our internal risk rating system comprises 13 credit grades; grades 1 through 8 are "pass" grades. The risk ratings are driven largely by debt service coverage. Peer group average historical loss rates are adjusted upward for loans rated special mention or assigned a lower "pass" rating. Peer group average historical loss rates are adjusted downward for loans assigned the highest "pass" grades.

Qualitative adjustments are made to the ALLL when, based on management's judgment and experience, there are internal or external factors impacting loss frequency and severity not taken into account by the quantitative calculations. Management has categorized potential qualitative adjustments into the following categories:

- Portfolio trends, including levels of delinquencies and non-performing loans;
- Portfolio growth rates;
- Policy and credit guidelines, including changes in credit administration management and staff and the level of policy and procedural exceptions;

- Economic factors, including changes in and levels of real estate price indices, unemployment rates and GDP; and
- Credit concentrations.

At December 31, 2012, qualitative adjustments were made to historical loss percentages related to:

- economic factors, including unemployment rates, levels of real estate prices and GDP;
- portfolio trends, in particular the portfolio growth rate; and
- policy and credit guidelines, related to procedural exceptions.

Qualitative adjustments represented approximately 5% of the total new and non-ACI ALLL at December 31, 2012.

For non-ACI loans, the allowance is initially calculated based on UPB. The total of UPB, less the calculated allowance, is then compared to the carrying amount of the loans, net of unamortized credit related fair value adjustments established at acquisition. If the calculated balance net of the allowance is less than the carrying amount, an additional allowance is established. Any such increase in the allowance for non-ACI loans will result in a corresponding increase in the FDIC indemnification asset.

The Herald portfolio was acquired on February 29, 2012 and recorded at estimated fair value at that date. An ALLL is provided for loans originated since acquisition using a methodology substantially consistent with that discussed above. An ALLL is provided for acquired loans if, in management's judgment, there are indications that credit quality has deteriorated since acquisition. As of December 31, 2012, the Herald loan portfolio has not had a material impact on our analysis of the ALLL.

***ACI Loans***

For ACI loans, a valuation allowance is established when periodic evaluations of expected cash flows reflect a decrease resulting from credit related factors from the level of cash flows that were estimated to be collected at acquisition plus any additional expected cash flows arising from revisions in those estimates. We perform a quarterly analysis of expected cash flows for ACI loans.

Expected cash flows are estimated on a pool basis for ACI 1-4 single family residential and home equity loans. The analysis of expected pool cash flows incorporates updated pool level expected prepayment rate, default rate, delinquency level and loss severity given default assumptions. Prepayment, delinquency and default curves are derived primarily from roll rates generated from the historical performance of the portfolio over the immediately preceding four quarters. Estimates of default probability and loss severity given default also incorporate updated LTV ratios, at the loan level, based on Case-Shiller Home Price Indices for the relevant MSA. Costs and fees represent an additional component of loss on default and are projected using the "Making Home Affordable" cost factors provided by the Federal government. The ACI home equity roll rates reflect elevated default probabilities as a result of delinquent, related senior liens and loans to borrowers who have not reaffirmed their debt discharged in Chapter 7 bankruptcy.

Based on our projected cash flow analysis, no ALLL related to 1-4 single family residential and home equity ACI pools was recorded at December 31, 2012 or 2011. During the year ended December 31, 2010, we recorded a reversal of a $20.0 million allowance established at December 31, 2009 related to ACI residential pools, along with a reversal of the related increase in the FDIC indemnification asset of $14.4 million and a provision for loan losses of $18.5 million, along with a corresponding increase in the FDIC indemnification asset of $14.0 million, related to pooled home equity ACI loans. Due to improved performance of and projected cash flows from the home equity

ACI pool during 2011, the allowance established related to this pool in 2010, along with the corresponding increase in the FDIC indemnification asset, were reversed in 2011.

The primary assumptions underlying estimates of expected cash flows for ACI commercial loans are default probability and severity of loss given default. Updated assumptions for large balance and delinquent loans in the commercial ACI portfolio are based on net realizable value analyses prepared at the individual loan level by the Company's workout and recovery department. Updated assumptions for smaller balance commercial loans are based on a combination of the Company's own historical delinquency and severity data and industry level data. Delinquency data is used as a proxy for defaults as the Company's experience has been that few of these loans return to performing status after being delinquent greater than 60 days. An additional multiplier is applied to the portfolio level default probability in developing assumptions for loans rated special mention, substandard, or doubtful based on the Company's historical delinquency experience.

Based on our loan level analysis, we recorded provisions for (recoveries of) loan losses on ACI commercial loans of $(4.3) million, $7.2 million and $35.5 million respectively, for the years ended December 31, 2012, 2011 and 2010. Related increases (decreases) in the FDIC indemnification asset of $(2.7) million, $6.2 million and $19.9 million were recorded for the years ended December 31, 2012, 2011 and 2010, respectively.

The following table provides an analysis of the ALLL, provision for loan losses and net charge-offs for the period from May 21, 2009 (inception of operations) through December 31, 2012 (in thousands):

| | Covered Loans | | | |
|---|---|---|---|---|
| | ACI Loans | Non-ACI Loans | New Loans | Total |
| Balance at May 21, 2009 | $ — | $ — | $ — | $ — |
| Provision for loan losses | 20,021 | 1,266 | 1,334 | 22,621 |
| Charge-offs | — | — | — | — |
| Recoveries | — | — | — | — |
| Balance at December 31, 2009 | 20,021 | 1,266 | 1,334 | 22,621 |
| Provision for loan losses | 33,928 | 12,553 | 4,926 | 51,407 |
| Charge-offs: | | | | |
| Home equity loans and lines of credit | — | (1,125) | — | (1,125) |
| Multi-family | (1,414) | (166) | — | (1,580) |
| Commercial real estate | (3,274) | — | — | (3,274) |
| Construction and land | (8,398) | — | — | (8,398) |
| Commercial loans and leases | (938) | (29) | (109) | (1,076) |
| Consumer | — | (215) | — | (215) |
| Total Charge-offs | (14,024) | (1,535) | (109) | (15,668) |
| Recoveries | — | — | — | — |
| Net Charge-offs | (14,024) | (1,535) | (109) | (15,668) |
| Balance at December 31, 2010 | 39,925 | 12,284 | 6,151 | 58,360 |
| Provision for loan losses | (11,278) | 3,586 | 21,520 | 13,828 |
| Charge-offs: | | | | |
| 1-4 single family residential | — | (459) | — | (459) |
| Home equity loans and lines of credit | — | (1,918) | — | (1,918) |
| Multi-family | (461) | — | — | (461) |
| Commercial real estate | (2,845) | (674) | — | (3,519) |
| Construction and land | (7,348) | — | — | (7,348) |
| Commercial loans and leases | (2,873) | (5,438) | (3,367) | (11,678) |
| Total Charge-offs | (13,527) | (8,489) | (3,367) | (25,383) |
| Recoveries: | | | | |
| Home equity loans and lines of credit | — | 20 | — | 20 |
| Multi-family | 565 | 27 | — | 592 |
| Commercial real estate | 16 | 131 | — | 147 |
| Construction and land | 625 | — | — | 625 |
| Commercial loans and leases | 6 | 183 | 24 | 213 |
| Total Recoveries | 1,212 | 361 | 24 | 1,597 |
| Net Charge-offs | (12,315) | (8,128) | (3,343) | (23,786) |
| Balance at December 31, 2011 | 16,332 | 7,742 | 24,328 | 48,402 |

| (continued) | Covered Loans: ACI Loans | Covered Loans: Non-ACI Loans | New Loans | Total |
|---|---|---|---|---|
| Provision for loan losses | (4,347) | 3,844 | 19,399 | 18,896 |
| Charge-offs: | | | | |
| 1-4 single family residential | — | (245) | — | (245) |
| Home equity loans and lines of credit | — | (3,030) | — | (3,030) |
| Multi-family | (563) | — | (87) | (650) |
| Commercial real estate | (1,482) | — | — | (1,482) |
| Construction and land | (1,183) | — | (3) | (1,186) |
| Commercial loans and leases | (738) | (316) | (2,839) | (3,893) |
| Total Charge-offs | (3,966) | (3,591) | (2,929) | (10,486) |
| Recoveries: | | | | |
| Home equity loans and lines of credit | — | 29 | — | 29 |
| Multi-family | — | 24 | — | 24 |
| Commercial real estate | — | 347 | — | 347 |
| Commercial loans and leases | — | 1,479 | 427 | 1,906 |
| Consumer | — | — | 3 | 3 |
| Total Recoveries | — | 1,879 | 430 | 2,309 |
| Net Charge-offs | (3,966) | (1,712) | (2,499) | (8,177) |
| Balance at December 31, 2012 | $ 8,019 | $ 9,874 | $41,228 | $ 59,121 |

The following tables show the distribution of the ALLL, broken out between covered and non-covered loans, as of December 31 of the years indicated (dollars in thousands):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI Loans | Non-ACI Loans | New Loans | Total | %(1) |
| Residential: | | | | | |
| 1-4 single family residential | $ — | $ 984 | $10,074 | $11,058 | 41.5% |
| Home equity loans and lines of credit | — | 8,087 | 19 | 8,106 | 3.8% |
| | — | 9,071 | 10,093 | 19,164 | 45.3% |
| Commercial: | | | | | |
| Multi-family | 504 | 5 | 2,212 | 2,721 | 6.5% |
| Commercial real estate | 5,400 | 31 | 7,790 | 13,221 | 17.5% |
| Construction and land | 350 | 9 | 672 | 1,031 | 1.6% |
| Commercial loans and leases | 1,765 | 758 | 20,047 | 22,570 | 28.5% |
| | 8,019 | 803 | 30,721 | 39,543 | 54.1% |
| Consumer | — | — | 414 | 414 | 0.6% |
| | $8,019 | $9,874 | $41,228 | $59,121 | 100% |

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI Loans | Non-ACI Loans | New Loans | Total | %(1) |
| Residential: | | | | | |
| 1-4 single family residential | $ — | $ 593 | $ 4,015 | $ 4,608 | 54.1% |
| Home equity loans and lines of credit | — | 5,549 | 18 | 5,567 | 6.1% |
| | — | 6,142 | 4,033 | 10,175 | 60.2% |
| Commercial: | | | | | |
| Multi-family | 1,063 | 5 | 929 | 1,997 | 4.1% |
| Commercial real estate | 10,672 | 284 | 4,529 | 15,485 | 13.6% |
| Construction and land | 2,310 | 62 | 337 | 2,709 | 1.7% |
| Commercial loans and leases | 2,287 | 1,249 | 14,449 | 17,985 | 20.2% |
| | 16,332 | 1,600 | 20,244 | 38,176 | 39.6% |
| Consumer | — | — | 51 | 51 | 0.2% |
| | $16,332 | $7,742 | $24,328 | $48,402 | 100% |

| | 2010 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI Loans | Non-ACI Loans | New Loans | Total | %(1) |
| Residential: | | | | | |
| 1-4 single family residential | $ — | $ 761 | $ 168 | $ 929 | 67.5% |
| Home equity loans and lines of credit | 18,488 | 9,229 | 3 | 27,720 | 7.7% |
| | 18,488 | 9,990 | 171 | 28,649 | 75.2% |
| Commercial: | | | | | |
| Multi-family | 5,701 | 633 | 772 | 7,106 | 2.8% |
| Commercial real estate | 5,795 | 418 | 1,189 | 7,402 | 11.4% |
| Construction and land | 4,891 | 27 | 220 | 5,138 | 1.7% |
| Commercial loans and leases | 5,050 | 1,216 | 3,744 | 10,010 | 8.7% |
| | 21,437 | 2,294 | 5,925 | 29,656 | 24.6% |
| Consumer | — | — | 55 | 55 | 0.2% |
| | $39,925 | $12,284 | $6,151 | $58,360 | 100% |

| | 2009 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI Loans | Non-ACI Loans | New Loans | Total | %(1) |
| Residential: | | | | | |
| 1-4 single family residential | $20,021 | $ 119 | $ 65 | $20,205 | 76.0% |
| Home equity loans and lines of credit | — | 11 | 4 | 15 | 7.1% |
| | 20,021 | 130 | 69 | 20,220 | 83.1% |
| Commercial: | | | | | |
| Multi-family | — | 60 | 11 | 71 | 1.7% |
| Commercial real estate | — | 465 | 303 | 768 | 9.2% |
| Construction and land | — | 7 | — | 7 | 1.9% |
| Commercial and industrial | — | 604 | 905 | 1,509 | 3.9% |
| | — | 1,136 | 1,219 | 2,355 | 16.7% |
| Consumer | — | — | 46 | 46 | 0.2% |
| | $20,021 | $1,266 | $1,334 | $22,621 | 100% |

(1) Represents percentage of loans receivable in each category to total loans receivable.

Significant components of the change in the ALLL at December 31, 2012 as compared to December 31, 2011, include:

- Increases in the allowance for all loan classes in the new portfolio, including increases of $6.1 million for 1-4 single family residential loans, $3.3 million for commercial real estate loans and $5.6 million for commercial loans and leases, all primarily attributable to portfolio growth;
- An increase of $2.5 million in the allowance for non-ACI home equity loans, resulting from an increase in projected default probabilities; and
- A $(8.3) million decrease in the allowance for ACI commercial loans resulting from continued resolutions of impaired loans in this portfolio class and improvements in expected cash flows.

For additional information about the ALLL, see Note 5 to the consolidated financial statements.

***Other Real Estate Owned***

All of the OREO properties owned by the Company are covered assets. The following table presents the changes in OREO for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Balance, beginning of period | $ 123,737 | $ 206,680 | $ 120,110 |
| Transfers from loan portfolio | 151,302 | 312,958 | 392,233 |
| Sales | (189,091) | (371,332) | (289,532) |
| Impairment | (9,926) | (24,569) | (16,131) |
| Balance, end of period | $ 76,022 | $ 123,737 | $ 206,680 |

At December 31, 2012 and 2011, OREO consisted of the following types of properties (in thousands):

| | 2012 | | 2011 | |
|---|---|---|---|---|
| 1-4 single family residential | $58,848 | 77.4% | $ 91,675 | 74.1% |
| Condominium | 12,887 | 17.0% | 25,051 | 20.2% |
| Multi-family | 257 | 0.3% | 288 | 0.2% |
| Commercial real estate | 1,512 | 2.0% | 4,550 | 3.7% |
| Land | 2,518 | 3.3% | 2,173 | 1.8% |
| | $76,022 | 100.0% | $123,737 | 100.0% |

The majority of our OREO properties are located in the State of Florida. At December 31, 2012, 60.6% of properties were located in Florida, 7.3%, in Illinois, 6.6% in California, 6.1% in Maryland and 3.8% in Arizona. The decrease in OREO reflects continued efforts to resolve non-performing covered assets. Residential OREO inventory declined to 402 units at December 31, 2012 from 778 units at December 31, 2011.

Full appraisals, prepared in accordance with prevailing industry standards, are ordered for all OREO properties at the time of transfer to OREO and upon obtaining physical possession. Full appraisals are generally considered stale after 180 days. Broker Price Opinions, used for foreclosure bids, short sales, and modifications, are considered stale after 90 days from the effective date of the report.

**Goodwill and Other Intangible Assets**

Goodwill consists of $59.4 million recorded in conjunction with the FSB Acquisition and an additional $7.9 million recorded in conjunction with the acquisition of a small business lending company and a municipal leasing company in 2010. Other intangible assets consist of core deposit intangible assets and customer relationship intangible assets with an aggregate carrying amount of $2.5 million at December 31, 2012.

The Company has a single reporting unit. We perform goodwill impairment testing in the third quarter of each fiscal year or more frequently if events or circumstances indicate that impairment may exist. As of the 2012 impairment testing date, the estimated fair value of the reporting unit substantially exceeded its carrying amount; therefore, no impairment was indicated. Estimated fair value was based on the market capitalization of the Company's common stock.

***Deposits***

The following table presents information about our deposits for the years ended December 31, 2012, 2011 and 2010 (dollars in thousands):

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| | Average Balance | Average Rate Paid | Average Balance | Average Rate Paid | Average Balance | Average Rate Paid |
| Demand deposits: | | | | | | |
| Non-interest bearing | $1,099,448 | 0.00% | $ 622,377 | 0.00% | $ 440,673 | 0.00% |
| Interest bearing | 504,614 | 0.63% | 382,329 | 0.65% | 273,897 | 0.72% |
| Money market | 2,838,735 | 0.63% | 2,165,230 | 0.88% | 1,667,277 | 1.20% |
| Savings | 1,073,709 | 0.58% | 1,201,236 | 0.83% | 1,203,491 | 1.18% |
| Time | 2,632,451 | 1.48% | 2,585,201 | 1.71% | 3,889,961 | 1.85% |
| | $8,148,957 | 0.81% | $6,956,373 | 1.09% | $7,475,299 | 1.45% |

Total deposits increased by $1.1 billion to $8.5 billion at December 31, 2012 from $7.4 billion at December 31, 2011. Deposits from Herald accounted for a portion of this increase, totaling $386.7 million at December 31, 2012. The distribution of deposits reflected in the table above reflects growth in lower rate deposit products, including non-interest bearing demand deposits, consistent with management's business strategy.

The following table shows scheduled maturities of certificates of deposit with denominations greater than or equal to $100,000 as of December 31, 2012 (in thousands):

| | |
|---|---|
| Three months or less | $ 330,871 |
| Over three through six months | 281,258 |
| Over six through twelve months | 536,000 |
| Over twelve months | 383,791 |
| | $1,531,920 |

***Borrowed Funds***

The following table sets forth information regarding our short-term borrowings, consisting of securities sold under agreements to repurchase, overnight FHLB advances and Federal funds purchased, as of and for the years ended December 31, 2012, 2011 and 2010 (dollars in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Maximum outstanding at any month-end | $52,126 | $2,165 | $17,459 |
| Balance outstanding at end of period | $ 8,175 | $ 206 | $ 492 |
| Average outstanding during the period | $12,435 | $1,333 | $ 7,812 |
| Average interest rate during the period | 0.41% | 0.48% | 0.92% |
| Average interest rate at end of period | 0.49% | 0.50% | 0.43% |

The Company also utilizes FHLB advances to finance its operations. FHLB advances are secured by FHLB stock and qualifying first mortgage, commercial real estate, and home equity loans and mortgage-backed securities. The following table provides information about outstanding FHLB advances at December 31, 2012 (in thousands):

| | |
|---|---|
| Maturing in: | |
| 2013 | $1,285,000 |
| 2014 | 405,000 |
| 2015 | 125,350 |
| 2017 | 105,000 |
| Total contractual balance outstanding | 1,920,350 |
| Acquisition accounting fair value adjustment and unamortized modification costs | (3,431) |
| Carrying value | $1,916,919 |

The change in carrying value of outstanding FHLB advances from December 31, 2011 to December 31, 2012 was primary attributable to the extinguishment of advances. See further discussion of this transaction in the section entitled "Results of Operations—Non-Interest Income—Other Components of Non-interest Income."

### Capital Resources

Since inception, the Company's stockholders' equity has been impacted primarily by the retention of earnings, and to a lesser extent, proceeds from the issuance of common shares in the IPO and the acquisition of Herald, changes in unrealized gains and losses, net of taxes, on investment securities available for sale and cash flow hedges, and the payment of dividends. Stockholders' equity increased $271.4 million, or 17.7%, from $1.5 billion at December 31, 2011 to $1.8 billion at December 31, 2012.

The Federal Reserve Board and OCC regulate all capital distributions by BankUnited and Herald to the parent. All quarterly applications to regulatory authorities for the payment of dividends to date have been approved.

Pursuant to the FDIA, the federal banking agencies have adopted regulations setting forth a five-tier system for measuring the capital adequacy of the financial institutions they supervise. At December 31, 2012 and December 31, 2011, BankUnited, Herald and the Company had capital levels that exceeded the well-capitalized guidelines. See Note 19 to the consolidated financial statements for more information about the Company's regulatory capital ratios and requirements.

### Liquidity

Liquidity involves our ability to generate adequate funds to support asset growth, meet deposit withdrawal and other contractual obligations, maintain reserve requirements and otherwise conduct ongoing operations. BankUnited's liquidity needs are primarily met by growth in transaction deposit accounts, its cash position, cash flow from its amortizing investment and loan portfolios and reimbursements under the Loss Sharing Agreements. If necessary, BankUnited has the ability to raise liquidity through collateralized borrowings, FHLB advances or the sale of available for sale securities. The asset/liability committee ("ALCO") policy has established several measures of liquidity which are monitored monthly by ALCO and quarterly by the Board of Directors. The primary measure of liquidity monitored by management is liquid assets (defined as cash and cash equivalents and pledgeable securities) to total assets. BankUnited's liquidity is considered acceptable if liquid assets divided by total assets exceeds 2.5%. At December 31, 2012, BankUnited's liquid assets divided by total assets was 13.0%. Management monitors a one year liquidity ratio, defined as cash and cash equivalents, pledgeable securities, unused borrowing capacity at the FHLB, and loans and non-agency securities maturing within one year divided by deposits and borrowings maturing within one year. The maturity of deposits, excluding certificate of deposits, is based on retention rates derived from the most recent external core deposit analysis obtained by the Company. This ratio allows management to monitor liquidity over a longer time horizon. At December 31, 2012, BankUnited exceeded the acceptable limit established by ALCO for this ratio. Additional measures of liquidity regularly monitored by ALCO include the ratio of FHLB advances to Tier 1 capital plus the ALLL, the ratio of FHLB advances to total assets and a measure of available liquidity to volatile liabilities. At December 31, 2012, BankUnited was within acceptable limits established by ALCO for each of these measures.

As a holding company, BankUnited, Inc. is a corporation separate and apart from our banking subsidiaries, and therefore, provides for its own liquidity. BankUnited, Inc.'s main sources of funds include management fees and dividends from its subsidiaries and access to capital markets. There are regulatory limitations that affect the ability of bank subsidiaries to pay dividends to BankUnited, Inc. Management believes that such limitations will not impact our ability to meet our ongoing short-term cash obligations.

We expect that our liquidity requirements will continue to be met by operations and we intend to satisfy our liquidity requirements over the next 12 months through these sources of funds.

**Interest Rate Risk**

The principal component of the Company's risk of loss arising from adverse changes in the fair value of financial instruments, or market risk, is interest rate risk, including the risk that assets and liabilities with similar re-pricing characteristics may not reprice at the same time or to the same degree. The primary objective of the Company's asset/liability management activities is to maximize net interest income, while maintaining acceptable levels of interest rate risk. The ALCO is responsible for establishing policies to limit exposure to interest rate risk, and to ensure procedures are established to monitor compliance with these policies. The guidelines established by ALCO are reviewed and approved by the Board of Directors.

Management believes that the simulation of net interest income in different interest rate environments provides the most meaningful measure of interest rate risk. Income simulation analysis is designed to capture not only the potential of all assets and liabilities to mature or reprice, but also the probability that they will do so. Income simulation also attends to the relative interest rate sensitivities of these items, and projects their behavior over an extended period of time. Finally, income simulation permits management to assess the probable effects on the balance sheet not only of changes in interest rates, but also of proposed strategies for responding to them.

The income simulation model analyzes interest rate sensitivity by projecting net interest income over the next twenty-four months in a most likely rate scenario based on forward interest rate curves versus net interest income in alternative rate scenarios. Management continually reviews and refines its interest rate risk management process in response to the changing economic climate. Currently, our model projects a plus 100, plus 200 and plus 300 basis point change with rates increasing 25 basis points per month until the applicable limit is reached as well as a modified flat scenario incorporating a more flattened yield curve. We did not simulate a decrease in interest rates at December 31, 2012 due to the extremely low rate environment.

The Company's ALCO policy has established that interest income sensitivity will be considered acceptable if forecast net interest income in the plus 200 basis point scenario is within 5% of forecast net interest income in the most likely rate scenario over the next twelve months and within 10% in the second year. The following table illustrates the impact on forecasted net interest income of a plus 200 basis points scenario at December 31, 2012 and 2011:

| | Plus 200 |
|---|---|
| December 31, 2012: | |
| Twelve Months | 1.3% |
| Twenty Four Months | 9.7% |
| December 31, 2011: | |
| Twelve Months | 2.0% |
| Twenty Four Months | 9.3% |

Management also simulates changes in the economic value of equity ("EVE") in various interest rate environments. The ALCO policy has established parameters of acceptable risk that are defined in terms of the percentage change in EVE from a base scenario under six rate scenarios, derived by implementing immediate parallel movements of plus and minus 100, 200 and 300 basis points from current rates. We did not simulate decreases in interest rates at December 31, 2012 due to the current low rate environment. The parameters established by ALCO stipulate that the change in EVE is considered acceptable if the change is less than 6%, 10% and 14% in plus 100, 200 and 300 basis point scenarios, respectively. As of December 31, 2012, our simulation indicated percentage changes from base EVE of (3.0%), (6.6%) and (10.8%) in plus 100, 200, and 300 basis point scenarios, respectively.

These measures fall within an acceptable level of interest rate risk per the policies established by ALCO. In the event the models indicate an unacceptable level of risk, the Company could undertake a number of actions that would reduce this risk, including the sale of a portion of its available for sale investment portfolio or the use of risk management strategies such as interest rate swaps and caps.

Many assumptions were used by the Company to calculate the impact of changes in interest rates, including the change in rates. Actual results may not be similar to the Company's projections due to several factors including the timing and frequency of rate changes, market conditions and the shape of the yield curve. Actual results may also differ due to the Company's actions, if any, in response to the changing rates.

***Derivative Financial Instruments***

Interest rate swaps are one of the tools we use to manage interest rate risk. These derivative instruments are used to mitigate exposure to changes in interest rates on FHLB advances and time deposits. These interest rate swaps are designated as cash flow hedging instruments. The fair value of these instruments is included in other liabilities in our consolidated balance sheets and changes in fair value are reported in accumulated other comprehensive income. At December 31, 2012, outstanding interest rate swaps designated as cash flow hedges had an aggregate notional amount of $510.0 million. The aggregate fair value of interest rate swaps designated as cash flow hedges included in other liabilities at December 31, 2012 was $50.8 million.

Interest rate swaps not designated as cash flow hedges had an aggregate notional amount of $205.4 million at December 31, 2012. The aggregate fair value of these interest rate swaps included in other assets was $4.9 million and the aggregate fair value included in other liabilities was $4.9 million.

See Note 15 to the consolidated financial statements for further discussion of derivative instruments.

## Off-Balance Sheet Arrangements

***Commitments***

We routinely enter into commitments to extend credit to our customers, including commitments to fund loans or lines of credit and commercial and standby letters of credit. The credit risk associated with these commitments is essentially the same as that involved in extending loans to customers and they are subject to our normal credit policies and approval processes. While these commitments represent contractual cash requirements, a significant portion of commitments to extend credit may expire without being drawn upon. The following table details our outstanding commitments to extend credit as of December 31, 2012 (in thousands):

| | Covered | Non-Covered | Total |
|---|---|---|---|
| Commitments to fund loans | $ — | $199,165 | $199,165 |
| Commitments to purchase loans | — | 18,723 | 18,723 |
| Unfunded commitments under lines of credit | 63,797 | 435,855 | 499,652 |
| Commercial and standby letters of credit | — | 37,395 | 37,395 |
| | $63,797 | $691,138 | $754,935 |

**Contractual Obligations**

The following table contains supplemental information regarding our outstanding contractual obligations as of December 31, 2012 (in thousands):

| | Total | Less than 1 year | 1-3 years | 3-5 years | More than 5 years |
|---|---|---|---|---|---|
| Long-term debt obligations | $1,941,292 | $1,299,491 | $ 535,027 | $106,774 | $ — |
| Operating lease obligations | 179,815 | 20,612 | 36,378 | 32,042 | 90,783 |
| Certificates of deposits | 2,682,274 | 1,982,065 | 645,789 | 52,490 | 1,930 |
| | $4,803,381 | $3,302,168 | $1,217,194 | $191,306 | $92,713 |

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

See the section entitled "Interest Rate Risk" included in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

**Item 8. Financial Statements and Supplementary Data**

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

## MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined under Rule 13a-15(f) in the Securities Exchange Act of 1934. The Company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements prepared for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of management, including the Company's principal executive officer and principal financial officer, the Company conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the Company's evaluation under the framework in Internal Control—Integrated Framework, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2012.

BankUnited, Inc. acquired Herald National Bank (Herald) during 2012, and management excluded from its assessment of the effectiveness of BankUnited, Inc.'s internal control over financial reporting as of December 31, 2012, Herald's internal control over financial reporting associated with total assets of $490.5 million and total net interest income of $13.5 million included in the consolidated financial statements of BankUnited, Inc. as of and for the year ended December 31, 2012.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2012 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included herein.

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders
BankUnited, Inc.:

We have audited the accompanying consolidated balance sheets of BankUnited, Inc. and subsidiaries (the Company) as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, cash flows, and stockholders' equity for each of the years in the three-year period ended December 31, 2012. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of BankUnited, Inc. and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2012, in conformity with U.S. generally accepted accounting principles.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 25, 2013 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Miami, Florida
February 25, 2013
Certified Public Accountants

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders
BankUnited, Inc.:

We have audited BankUnited, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, BankUnited, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

The Company acquired Herald National Bank (Herald) during 2012, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2012, Herald's internal control over financial reporting associated with total assets of $490.5 million and total net interest income of $13.5 million included in the consolidated financial statements of the Company as of and for the year ended December 31, 2012. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of Herald.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, cash flows, and stockholders' equity for each of the years in the three-year period ended December 31, 2012, and our report dated February 25, 2013 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Miami, Florida
February 25, 2013
Certified Public Accountants

**BANKUNITED, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

**(In thousands, except share and per share data)**

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| **ASSETS** | | |
| Cash and due from banks: | | |
| Non-interest bearing | $ 61,088 | $ 39,894 |
| Interest bearing | 21,507 | 13,160 |
| Interest bearing deposits at Federal Reserve Bank | 408,827 | 247,488 |
| Federal funds sold | 3,931 | 3,200 |
| Cash and cash equivalents | 495,353 | 303,742 |
| Investment securities available for sale, at fair value (including covered securities of $226,505 and $232,194) | 4,172,412 | 4,181,977 |
| Non-marketable equity securities | 133,060 | 147,055 |
| Loans held for sale | 2,129 | 3,952 |
| Loans (including covered loans of $1,864,375 and $2,422,811) | 5,571,739 | 4,137,058 |
| Allowance for loan and lease losses | (59,121) | (48,402) |
| Loans, net | 5,512,618 | 4,088,656 |
| FDIC indemnification asset | 1,457,570 | 2,049,151 |
| Bank owned life insurance | 207,069 | 204,077 |
| Other real estate owned, covered by loss sharing agreements | 76,022 | 123,737 |
| Deferred tax asset, net | 62,274 | 19,485 |
| Goodwill and other intangible assets | 69,768 | 68,667 |
| Other assets | 187,678 | 131,539 |
| Total assets | $12,375,953 | $11,322,038 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| **Liabilities:** | | |
| Demand deposits: | | |
| Non-interest bearing | $ 1,312,779 | $ 770,846 |
| Interest bearing | 542,561 | 453,666 |
| Savings and money market | 4,042,022 | 3,553,018 |
| Time | 2,640,711 | 2,587,184 |
| Total deposits | 8,538,073 | 7,364,714 |
| Short-term borrowings | 8,175 | 206 |
| Federal Home Loan Bank advances | 1,916,919 | 2,236,131 |
| Income taxes payable | — | 53,171 |
| Other liabilities | 106,106 | 132,536 |
| Total liabilities | 10,569,273 | 9,786,758 |
| **Commitments and contingencies** | | |
| **Stockholders' equity:** | | |
| Common stock, par value $0.01 per share, 400,000,000 shares authorized; 95,006,729 and 97,700,829 shares issued and outstanding | 950 | 977 |
| Preferred stock, par value $0.01 per share, 100,000,000 shares authorized; 5,415,794 shares of Series A issued and outstanding at December 31, 2012 | 54 | — |
| Paid-in capital | 1,308,315 | 1,240,068 |
| Retained earnings | 413,385 | 276,216 |
| Accumulated other comprehensive income | 83,976 | 18,019 |
| Total stockholders' equity | 1,806,680 | 1,535,280 |
| Total liabilities and stockholders' equity | $12,375,953 | $11,322,038 |

The accompanying notes are an integral part of these consolidated financial statements.

## BANKUNITED, INC. AND SUBSIDIARIES
## CONSOLIDATED STATEMENTS OF INCOME
### (In thousands, except per share data)

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Interest income:** | | | |
| Loans | $584,727 | $512,728 | $431,468 |
| Investment securities available for sale | 131,198 | 122,626 | 124,262 |
| Other | 4,931 | 2,743 | 1,958 |
| Total interest income | 720,856 | 638,097 | 557,688 |
| **Interest expense:** | | | |
| Deposits | 66,178 | 75,773 | 108,344 |
| Borrowings | 57,091 | 63,164 | 59,856 |
| Total interest expense | 123,269 | 138,937 | 168,200 |
| Net interest income before provision for (recovery of) loan losses | 597,587 | 499,160 | 389,488 |
| Provision for (recovery of) loan losses (including $(503), $(7,692) and $46,481 for covered loans) | 18,896 | 13,828 | 51,407 |
| Net interest income after provision for (recovery of) loan losses | 578,691 | 485,332 | 338,081 |
| **Non-interest income:** | | | |
| Accretion of discount on FDIC indemnification asset | 15,306 | 55,901 | 134,703 |
| Income from resolution of covered assets, net | 51,016 | 18,776 | 121,462 |
| Net gain (loss) on indemnification asset | (6,030) | 79,812 | 17,736 |
| FDIC reimbursement of costs of resolution of covered assets | 19,569 | 31,528 | 29,762 |
| Service charges and fees | 12,716 | 11,128 | 10,567 |
| Loss on sale of loans, net (including loss related to covered loans of $29,270, $70,366 and $76,360) | (28,657) | (69,714) | (76,310) |
| Gain (loss) on sale or exchange of investment securities available for sale, net | 17,039 | 1,136 | (998) |
| Loss on extinguishment of debt | (14,175) | — | — |
| Loss on termination of interest rate swap | (8,701) | — | — |
| Mortgage insurance income | 9,772 | 16,904 | 18,441 |
| Settlement with the FDIC | — | — | 24,055 |
| Other non-interest income | 21,392 | 17,746 | 18,361 |
| Total non-interest income | 89,247 | 163,217 | 297,779 |
| **Non-interest expense:** | | | |
| Employee compensation and benefits (including $110.4 million in equity based compensation recorded in conjunction with the IPO for 2011; see Note 17) | 173,261 | 272,991 | 144,486 |
| Occupancy and equipment | 54,465 | 36,680 | 28,692 |
| Impairment of other real estate owned | 9,926 | 24,569 | 16,131 |
| (Gain) loss on sale of other real estate owned | (4,164) | 23,576 | 2,174 |
| Other real estate owned expense | 7,624 | 13,001 | 19,003 |
| Foreclosure expense | 12,644 | 18,976 | 30,669 |
| Change in value of FDIC warrant | — | — | 21,832 |
| Deposit insurance expense | 7,248 | 8,480 | 13,899 |
| Professional fees | 15,468 | 17,330 | 14,677 |
| Telecommunications and data processing | 12,462 | 12,041 | 12,321 |
| Other non-interest expense | 34,139 | 28,161 | 19,436 |
| Total non-interest expense | 323,073 | 455,805 | 323,320 |
| Income before income taxes | 344,865 | 192,744 | 312,540 |
| Provision for income taxes | 133,605 | 129,576 | 127,805 |
| Net income | 211,260 | 63,168 | 184,735 |
| Preferred stock dividends | 3,899 | — | — |
| Net income available to common stockholders | $207,361 | $ 63,168 | $184,735 |
| Earnings per common share, basic (see Note 2) | $ 2.05 | $ 0.63 | $ 1.99 |
| Earnings per common share, diluted (see Note 2) | $ 2.05 | $ 0.62 | $ 1.99 |
| Cash dividends declared per common share | $ 0.72 | $ 0.56 | $ 0.37 |

The accompanying notes are an integral part of these consolidated financial statements.

**BANKUNITED, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

**(In thousands)**

| | Years Ended December 31, | | |
|---|---|---|---|
| | **2012** | **2011** | **2010** |
| Net income | $211,260 | $ 63,168 | $184,735 |
| Other comprehensive income (loss), net of tax: | | | |
| Unrealized gains on investment securities available for sale: | | | |
| Net unrealized holding gains (losses) arising during the year | 68,893 | (27) | 26,738 |
| Reclassification adjustment for net securities (gains) losses realized in income | (10,466) | (698) | 613 |
| Net change in unrealized gains on securities available for sale | 58,427 | (725) | 27,351 |
| Unrealized losses on derivative instruments: | | | |
| Net unrealized holding loss arising during the year | (8,848) | (24,882) | (30,943) |
| Reclassification adjustment for net losses realized in income | 16,378 | 11,660 | 8,304 |
| Net change in unrealized losses on derivative instruments | 7,530 | (13,222) | (22,639) |
| Other comprehensive income (loss) | 65,957 | (13,947) | 4,712 |
| Comprehensive income | $277,217 | $ 49,221 | $189,447 |

The accompanying notes are an integral part of these consolidated financial statements.

## BANKUNITED, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CASH FLOWS

## (In thousands)

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Cash flows from operating activities:** | | | |
| Net income | $ 211,260 | $ 63,168 | $ 184,735 |
| Adjustments to reconcile net income to net cash used in operating activities: | | | |
| Accretion of fair values of assets acquired and liabilities assumed | (474,574) | (476,104) | (443,012) |
| Amortization of fees, discounts and premiums, net | 13,695 | (1,250) | (31,611) |
| Provision for loan losses | 18,896 | 13,828 | 51,407 |
| Accretion of discount on FDIC indemnification asset | (15,306) | (55,901) | (134,703) |
| Income from resolution of covered assets, net | (51,016) | (18,776) | (121,462) |
| Net (gain) loss on indemnification asset | 6,030 | (79,812) | (17,736) |
| Net loss on sale of loans | 28,657 | 69,714 | 76,310 |
| Settlement with the FDIC | — | — | (24,055) |
| Increase in cash surrender value of bank owned life insurance | (3,288) | (3,891) | (5,259) |
| Income from life insurance proceeds | (244) | — | (544) |
| (Gain) loss on sale or exchange of investment securities available for sale | (17,039) | (1,136) | 998 |
| Loss on extinguishment of debt | 14,175 | — | — |
| (Gain) loss on sale of other real estate owned | (4,164) | 23,576 | 2,174 |
| Equity based compensation | 23,204 | 144,769 | 1,301 |
| Change in fair value of equity instruments classified as liabilities | — | — | 58,002 |
| Depreciation and amortization | 15,056 | 7,987 | 3,399 |
| Impairment of other real estate owned | 9,926 | 24,569 | 16,131 |
| Deferred income taxes | (72,228) | (15,109) | 24,088 |
| Proceeds from sale of loans held for sale | 42,920 | 34,895 | 3,849 |
| Loans originated for sale, net of repayments | (39,735) | (35,536) | (6,459) |
| Realized tax benefits from dividend equivalents and equity based compensation | (1,612) | (606) | — |
| Gain on acquisition | (5,288) | — | — |
| Other: | | | |
| (Increase) decrease in other assets | 3,100 | 15,101 | (3,523) |
| Increase (decrease) in other liabilities | (54,031) | 41,926 | (82,087) |
| Net cash used in operating activities | (351,606) | (248,588) | (448,057) |
| **Cash flows from investing activities:** | | | |
| Net cash paid in business combination | (1,626) | — | (50,489) |
| Decrease in due to FDIC | — | — | (89,951) |
| Purchase of investment securities available for sale | (1,300,485) | (2,074,483) | (1,496,002) |
| Proceeds from repayments of investment securities available for sale | 659,044 | 541,016 | 655,517 |
| Proceeds from sale of investment securities available for sale | 835,745 | 217,069 | 222,014 |
| Maturities and calls of investment securities available for sale | 78,623 | 61,565 | 10,250 |
| Purchase of non-marketable equity securities | (45,389) | — | — |
| Proceeds from redemption of non-marketable equity securities | 61,670 | 70,353 | 25,926 |
| Purchases of loans | (709,388) | (384,171) | (74,970) |
| Loan originations, repayments and resolutions, net | (204,530) | 170,147 | 762,085 |
| Proceeds from sale of loans, net | 103,796 | 75,782 | 67,166 |
| Decrease in FDIC indemnification asset for claims filed | 600,857 | 753,963 | 764,203 |
| Purchase of bank owned life insurance | — | (50,000) | (150,000) |
| Bank owned life insurance proceeds | 540 | 77,721 | 60,226 |
| Purchase of office properties and equipment, net | (31,958) | (42,595) | (27,540) |
| Acquisition of equipment on operating lease | (39,154) | — | — |
| Proceeds from sale of other real estate owned | 193,255 | 347,756 | 287,358 |
| Net cash provided by (used in) investing activities | 201,000 | (235,877) | 965,793 |

The accompanying notes are an integral part of these consolidated financial statements.

## BANKUNITED, INC. AND SUBSIDIARIES
## CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
## (In thousands)

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Cash flows from financing activities:** | | | |
| Net increase (decrease) in deposits | 738,332 | 207,972 | (481,696) |
| Additions to Federal Home Loan Bank advances and other borrowings | 2,605,000 | — | 605,000 |
| Repayments of Federal Home Loan Bank advances and other borrowings | (2,923,607) | — | (405,000) |
| Increase (decrease) in short-term borrowings | 7,969 | (286) | (2,480) |
| Settlement of FDIC warrant liability | — | (25,000) | — |
| Decrease in advances from borrowers for taxes and insurance | (1,665) | (3,001) | (7,501) |
| Issuance of common stock | — | 98,620 | 2,500 |
| Dividends paid | (89,021) | (55,803) | (20,000) |
| Realized tax benefits from dividend equivalents and equity based compensation | 1,612 | 606 | — |
| Exercise of stock options | 3,597 | 325 | — |
| Net cash provided by (used in) financing activities | 342,217 | 223,433 | (309,177) |
| Net increase (decrease) in cash and cash equivalents | 191,611 | (261,032) | 208,559 |
| Cash and cash equivalents, beginning of period | 303,742 | 564,774 | 356,215 |
| Cash and cash equivalents, end of period | $ 495,353 | $ 303,742 | $ 564,774 |
| **Supplemental disclosure of cash flow information:** | | | |
| Interest paid | $ 143,161 | $ 164,960 | $ 217,947 |
| Income taxes paid | $ 257,960 | $ 80,224 | $ 197,224 |
| **Supplemental schedule of non-cash investing and financing activities:** | | | |
| Transfers from loans to other real estate owned | $ 151,302 | $ 312,958 | $ 392,233 |
| Transfers from loans held for sale to portfolio | $ 4,023 | $ — | $ — |
| Assets received in satisfaction of loans | $ 4,772 | $ — | $ — |
| Dividends declared, not paid | $ — | $ 14,930 | $ 14,000 |
| Reclassification of PIU liability to equity | $ — | $ 44,964 | $ — |
| Rescission of surrender of bank owned life insurance | $ — | $ 20,846 | $ — |
| Exchange of common stock for Series A preferred stock | $ 54 | $ — | $ — |
| Equity consideration issued in business combination | $ 39,861 | $ — | $ — |

The accompanying notes are an integral part of these consolidated financial statements.

## BANKUNITED, INC. AND SUBSIDIARIES
## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
## (In thousands, except share data)

| | Common Shares Outstanding | Common Stock | Preferred Shares Outstanding | Preferred Stock | Paid-in Capital | Retained Earnings | Accumulated Other Comprehensive Income | Total Stockholders' Equity |
|---|---|---|---|---|---|---|---|---|
| Balance at December 31, 2009 | 92,767,310 | $928 | — | $— | $ 947,032 | $119,046 | $ 27,254 | $1,094,260 |
| Comprehensive income | — | — | — | — | — | 184,735 | 4,712 | 189,447 |
| Capital contribution | 204,540 | 2 | — | — | 2,498 | — | — | 2,500 |
| Dividends | — | — | — | — | — | (34,000) | — | (34,000) |
| Equity based compensation | | — | — | — | 1,301 | — | — | 1,301 |
| Balance at December 31, 2010 | 92,971,850 | 930 | — | — | 950,831 | 269,781 | 31,966 | 1,253,508 |
| Comprehensive income | — | — | — | — | — | 63,168 | (13,947) | 49,221 |
| Proceeds from issuance of common stock net of direct costs of $3,979 | 4,000,000 | 42 | — | — | 98,578 | — | — | 98,620 |
| Dividends | — | — | — | — | — | (56,733) | — | (56,733) |
| Reclassification of PIU liability to equity | — | — | — | — | 44,964 | — | — | 44,964 |
| Equity based compensation | 697,950 | 5 | — | — | 144,764 | — | — | 144,769 |
| Exercise of stock options | 31,029 | — | — | — | 325 | — | — | 325 |
| Tax benefits from dividend equivalents and equity based compensation | — | — | — | — | 606 | — | — | 606 |
| Balance at December 31, 2011 | 97,700,829 | 977 | — | — | 1,240,068 | 276,216 | 18,019 | 1,535,280 |
| Comprehensive income | — | — | — | — | — | 211,260 | 65,957 | 277,217 |
| Exchange of common shares for preferred shares | (5,415,794) | (54) | 5,415,794 | 54 | — | — | — | — |
| Equity consideration issued in acquisition | 1,676,060 | 17 | — | — | 39,844 | — | — | 39,861 |
| Dividends | — | — | — | — | — | (74,091) | — | (74,091) |
| Equity based compensation | 794,514 | 7 | — | — | 23,197 | — | — | 23,204 |
| Exercise of stock options | 251,120 | 3 | — | — | 3,594 | — | — | 3,597 |
| Tax benefits from dividend equivalents and equity based compensation | — | — | — | — | 1,612 | — | — | 1,612 |
| Balance at December 31, 2012 | 95,006,729 | $950 | 5,415,794 | $54 | $1,308,315 | $413,385 | $ 83,976 | $1,806,680 |

The accompanying notes are an integral part of these consolidated financial statements.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies**

BankUnited, Inc. ("BankUnited, Inc." or "BKU") is a national bank holding company with three wholly-owned subsidiaries: BankUnited, National Association ("BankUnited" or the "Bank"), Herald National Bank ("Herald"), and BankUnited Investment Services, Inc. ("BUIS"), collectively, the Company. BankUnited, a national banking association headquartered in Miami Lakes, Florida, provides a full range of banking and related services to individual and corporate customers through 98 branches located in 15 Florida counties. Herald is a national banking association with 2 branch locations in the New York metropolitan area. BUIS is a Florida insurance agency providing wealth management and financial planning services. The operations of BUIS have not historically been significant to the consolidated results of operations or financial position of the Company. We intend to discontinue the operations of BUIS in 2013.

On May 21, 2009, BankUnited acquired substantially all of the assets and assumed all of the non-brokered deposits and substantially all of the other liabilities of BankUnited, FSB from the Federal Deposit Insurance Corporation ("FDIC") in a transaction referred to as the "FSB Acquisition." Neither the Company nor the Bank had any substantive operations prior to May 21, 2009. In connection with the FSB Acquisition, BankUnited entered into Loss Sharing Agreements with the FDIC ("Loss Sharing Agreements") that cover single family residential mortgage loans, commercial real estate, commercial and industrial and consumer loans, certain investment securities and other real estate owned ("OREO"), collectively referred to as the "covered assets." Pursuant to the terms of the Loss Sharing Agreements, the covered assets are subject to a stated loss threshold whereby the FDIC will reimburse BankUnited for 80% of losses related to the covered assets up to $4.0 billion and 95% of losses in excess of this amount, beginning with the first dollar of loss incurred.

Prior to the initial public offering ("IPO") of the Company's common stock in February 2011, BankUnited, Inc. was a wholly-owned subsidiary of BU Financial Holdings, LLC ("BUFH"). Immediately prior to the completion of the IPO, a reorganization was effected in accordance with BUFH's LLC agreement, pursuant to which all equity interests in BankUnited, Inc. were distributed to the members of BUFH and BUFH was liquidated.

The consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and prevailing practices in the banking industry.

The Company has a single reportable segment, community banking.

***Accounting Estimates***

In preparing the consolidated financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses and disclosures of contingent assets and liabilities. Actual results could differ significantly from these estimates.

Significant estimates include the allowance for loan and lease losses, the amount and timing of expected cash flows from covered assets and the FDIC indemnification asset, the fair values of investment securities and other financial instruments, the valuation of OREO and the value of equity based compensation. Management has used information provided by third party valuation specialists to assist in the determination of the fair values of investment securities, other real estate owned, and certain equity based compensation.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

Significant estimates were also made in the determination of the fair values of assets acquired and liabilities assumed in the FSB Acquisition, including loans acquired with evidence of deterioration in credit quality since origination, the FDIC indemnification asset, investment securities, other real estate owned and goodwill.

***Principles of Consolidation***

The consolidated financial statements include the accounts of BankUnited, Inc., and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

***Fair Value Measurements***

Certain of the Company's assets and liabilities are reflected in the financial statements at fair value on either a recurring or non-recurring basis. Investment securities available for sale and derivative instruments are measured at fair value on a recurring basis. Assets measured at fair value or fair value less cost to sell on a non-recurring basis may include collateral dependent impaired loans, OREO, loans held for sale, goodwill and assets acquired and liabilities assumed in business combinations. These nonrecurring fair value measurements typically involve the application of acquisition accounting, lower-of-cost-or-market accounting or the measurement of impairment of certain assets.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. GAAP establishes a hierarchy that prioritizes inputs used to determine fair value measurements into three levels based on the observability and transparency of the inputs:

Level 1 inputs are unadjusted quoted prices in active markets that are accessible at the measurement date for identical assets or liabilities. Estimated fair values of U. S. Treasury securities, certain preferred stocks and mutual fund investments are generally based on level 1 inputs.

Level 2 inputs are observable inputs other than level 1 inputs, including quoted prices for similar assets and liabilities, quoted prices for identical assets and liabilities in less active markets and other inputs that can be corroborated by observable market data. Estimated fair values of U. S. Government agency and sponsored enterprise securities, certain private label mortgage-backed and non-mortgage asset-backed securities, collateralized loan obligations, certain preferred stocks, state and municipal obligations, Small Business Administration securities, certain other debt securities and most derivatives are generally based on level 2 inputs.

Level 3 inputs are unobservable inputs supported by limited or no market activity or data and inputs requiring significant management judgment or estimation. Estimated fair values of certain private label mortgage-backed securities and non-mortgage asset-backed securities, certain other debt securities, equity awards, other real estate owned and collateral dependent impaired loans may be based on level 3 inputs. Valuation techniques utilizing level 3 inputs include option pricing models, discounted cash flow models and similar techniques.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

The fair value hierarchy requires the Company to maximize the use of observable inputs and minimize the use of unobservable inputs in estimating fair value. Unobservable inputs are utilized in determining fair value measurements only to the extent that observable inputs are unavailable. The need to use unobservable inputs generally results from a lack of market liquidity and diminished observability of actual trades or assumptions that would otherwise be available to value a particular asset or liability.

Transfers between levels of the fair value hierarchy are recorded as of the end of the reporting period.

***Cash and Cash Equivalents***

Cash and cash equivalents include cash and due from banks, both interest bearing and non-interest bearing, amounts on deposit at the Federal Reserve Bank and federal funds sold. Cash equivalents have original maturities of three months or less.

***Investment Securities Available for Sale***

Debt securities that the Company may not have the intent to hold to maturity and marketable equity securities are classified as available for sale at the time of acquisition and carried at fair value with unrealized gains and losses, net of tax, excluded from earnings and reported in accumulated other comprehensive income, a separate component of stockholders' equity. Securities classified as available for sale may be used as part of the Company's asset/liability management strategy and may be sold in response to changes in interest rates, prepayment risk or other market factors. Currently, all of the Company's investment securities are classified as available for sale. The Company does not maintain a trading or held to maturity portfolio. Purchase premiums and discounts on debt securities are amortized as adjustments to yield over the expected lives of the securities using the level yield method. Realized gains and losses from sales of securities are recorded on the trade date and are determined using the specific identification method.

The Company reviews investment securities available for sale for impairment on a quarterly basis or more frequently if events and circumstances indicate that a potential impairment may have occurred. An investment security is impaired if its fair value is lower than its amortized cost basis. The Company considers many factors in determining whether a decline in fair value below amortized cost represents other-than-temporary impairment ("OTTI"), including, but not limited to:

- the Company's intent to hold the security until maturity or for a period of time sufficient for a recovery in value;
- whether it is more likely than not that the Company will be required to sell the security prior to recovery of its amortized cost basis;
- the length of time and extent to which fair value has been less than amortized cost;
- adverse changes in expected cash flows;
- collateral values and performance;
- the payment structure of the security including levels of subordination or over-collateralization;

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

- changes in the economic or regulatory environment;
- the general market condition of the geographic area or industry of the issuer;
- the issuer's financial condition, performance and business prospects; and
- changes in credit ratings.

The relative importance assigned to each of these factors varies depending on the facts and circumstances pertinent to the individual security being evaluated.

The Company recognizes OTTI of a debt security for which there has been a decline in fair value below amortized cost if (i) management intends to sell the security, (ii) it is more likely than not that the Company will be required to sell the security before recovery of its amortized cost basis, or (iii) the Company does not expect to recover the entire amortized cost basis of the security. The amount by which amortized cost exceeds the fair value of a debt security that is considered to be other-than-temporarily impaired is separated into a component representing the credit loss, which is recognized in earnings, and a component related to all other factors, which is recognized in other comprehensive income. The measurement of the credit loss component is equal to the difference between the debt security's amortized cost basis and the present value of its expected future cash flows discounted at the security's effective yield. If the Company intends to sell the security, or if it is more likely than not it will be required to sell the security before recovery, an OTTI write-down is recognized in earnings equal to the entire difference between the amortized cost basis and fair value of the security.

The evaluation of OTTI of marketable equity securities focuses on whether evidence supports recovery of the unrealized loss within a timeframe consistent with temporary impairment. The entire amount by which cost basis exceeds the fair value of an equity security that is considered to be other-than-temporarily impaired is recognized in earnings.

***Federal Reserve Bank Stock***

The Bank and Herald, as members of the Federal Reserve Bank ("FRB") system, are required to maintain investments in the stock of the FRB. No market exists for this stock, and the investment can be liquidated only through redemption by the FRB, at the discretion of and subject to conditions imposed by the FRB. The stock has no readily determinable fair value and is carried at cost.

***Federal Home Loan Bank Stock***

The Bank and Herald, as members of the Federal Home Loan Bank ("FHLB") system, are required to maintain investments in the stock of the FHLB. No market exists for this stock, and the investment can be liquidated only through redemption by the FHLB, at the discretion of and subject to conditions imposed by the FHLB. The stock has no readily determinable fair value and is carried at cost. Historically, FHLB stock redemptions have been at par value, which equals the Company's carrying value. The Company monitors its investment in FHLB stock for impairment through review of recent financial results of the FHLB, including capital adequacy and liquidity position, dividend payment history, redemption history and information from credit agencies. The Company has not identified any indicators of impairment of FHLB stock.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

***Loans Held for Sale***

Mortgage loans originated with the intent to sell in the secondary market are carried at the lower of cost or fair value, determined in the aggregate. These loans are generally sold on a non-recourse basis with servicing released. Gains and losses on the sale of loans recognized in earnings are measured based on the difference between proceeds received and the carrying amount of the loans, inclusive of deferred origination fees and costs, if any.

Loans not originated for sale in the secondary market and not otherwise acquired with the intent to sell are transferred into the held for sale classification at the lower of carrying amount or fair value when they are specifically identified as being available for sale and a formal plan exists to sell them. Acquired credit impaired loans accounted for in pools are removed from the pools at their carrying amounts when they are sold.

***Loans***

The Company's loan portfolio contains 1-4 single family residential first mortgages, home equity loans and lines of credit, multi-family, commercial real estate, construction and land, commercial and industrial and consumer loans and small business and municipal direct financing leases. A significant portion of the Company's loan portfolio consists of loans acquired from the FDIC in the FSB Acquisition, the substantial majority of which are covered under the Loss Sharing Agreements. These loans are referred to as covered loans. The Company segregates its loan portfolio between covered and non-covered loans. Non-covered loans are primarily those originated or purchased since the FSB Acquisition ("new loans"). Loans acquired in the FSB Acquisition are further segregated between those acquired with evidence of deterioration in credit quality since origination (Acquired Credit Impaired or "ACI" loans) and those acquired without evidence of deterioration in credit quality since origination ("non-ACI" loans).

*ACI Loans*

ACI loans are those for which, at acquisition, management determined it probable that the Company would be unable to collect all contractual principal and interest payments due. These loans were recorded at estimated fair value at the time of the FSB Acquisition, measured as the present value of all cash flows expected to be received, discounted at an appropriately risk-weighted discount rate. Initial cash flow expectations incorporated significant assumptions regarding prepayment rates, frequency of default and loss severity.

The difference between total contractually required payments on ACI loans and the cash flows expected to be received represents non-accretable difference. The excess of all cash flows expected to be received over the Company's recorded investment in the loans represents accretable yield and is recognized as interest income on a level-yield basis over the expected life of the loans.

The Company aggregated ACI 1-4 single family residential mortgage loans and home equity loans and lines of credit with similar risk characteristics into homogenous pools at acquisition. A composite

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

interest rate and composite expectations of future cash flows are used in accounting for each pool. These loans were aggregated into pools based on the following characteristics:

- delinquency status;
- product type, in particular, amortizing as opposed to option ARM products;
- loan-to-value ratio; and
- borrower FICO score.

Loans that do not have similar risk characteristics, primarily commercial and commercial real estate loans, are accounted for on an individual loan basis using interest rates and expectations of cash flows for each loan.

The Company is required to develop reasonable expectations about the timing and amount of cash flows to be collected related to ACI loans and to continue to update those estimates over the lives of the loans. Expected cash flows from ACI loans are updated quarterly. If it is probable that the Company will be unable to collect all the cash flows expected from a loan or pool at acquisition plus additional cash flows expected to be collected arising from changes in estimates after acquisition, the loan or pool is considered impaired and a valuation allowance is established by a charge to the provision for loan losses. If there is a significant increase in expected cash flows from a loan or pool, the Company first reduces any valuation allowance previously established by the amount of the increase in the present value of expected cash flows, and then recalculates the amount of accretable yield for that loan or pool. The adjustment of accretable yield due to an increase in expected cash flows, as well as changes in expected cash flows due to changes in interest rate indices and changes in prepayment assumptions is accounted for prospectively as a change in yield. Additional cash flows expected to be collected are transferred from non-accretable difference to accretable yield and the amount of periodic accretion is adjusted accordingly over the remaining life of the loan or pool.

The Company may resolve an ACI loan either through a sale of the loan, by working with the customer and obtaining partial or full repayment, by short sale of the collateral, or by foreclosure. When a loan accounted for in a pool is resolved, it is removed from the pool at its carrying amount. In the event of a sale of the loan, the Company recognizes a gain or loss on sale based on the difference between the sales proceeds and the carrying value of the loan. For loans resolved through agreed pre-payments or short sale of the collateral, the Company recognizes the difference between the amount of the payment received and the carrying amount of the loan in the income statement line item "Income from resolution of covered assets, net". For loans resolved through foreclosure, the difference between the fair value of the collateral obtained through foreclosure less estimated cost to sell and the carrying amount of the loan is recognized in the income statement line item "Income from resolution of covered assets, net". Any remaining accretable discount related to loans not accounted for in pools that are resolved by full or partial pre-payment, short sale or foreclosure is recognized in interest income at the time of resolution. Accretable discount represents the cumulative undiscounted difference between the contractual coupon rate on the loan and the accretion rate.

Payments received in excess of expected cash flows may result in a pool becoming fully amortized and its carrying value reduced to zero even though outstanding contractual balances remain related to loans in the pool. Once the carrying value of a pool is reduced to zero, any future proceeds, which may

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

include cash or real estate acquired in foreclosure, from the remaining loans are recognized as interest income upon receipt. As of December 31, 2012, the portfolio included one pool whose carrying value had been reduced to zero.

*Non-ACI Loans*

Loans acquired without evidence of deterioration in credit quality since origination were initially recorded at estimated fair value on the acquisition date. Non-ACI 1-4 single family residential mortgage loans and home equity loans and lines of credit with similar risk characteristics were aggregated into pools for accounting purposes at acquisition. Loans that do not have similar risk characteristics, primarily commercial and commercial real estate loans, are accounted for on an individual loan basis. These loans are carried at the principal amount outstanding, adjusted for unamortized acquisition date fair value adjustments and the allowance for loan losses. Interest income is accrued based on the unpaid principal balance ("UPB") and acquisition date fair value adjustments are amortized using the level-yield method over the expected lives of the related loans. For non-ACI 1-4 family residential mortgage loans accounted for in pools, prepayment estimates are used in determining the periodic amortization of acquisition date fair value adjustments using the effective yield method. Acquisition date fair value adjustments related to revolving home equity loans and lines of credit are recognized on a straight line basis.

*New Loans*

New loans are those originated or purchased by the Company since the FSB Acquisition. New loans are carried at the principal amount outstanding, net of premiums, discounts, unearned income, deferred loan origination fees and costs, and the allowance for loan and lease losses.

Interest income on new loans is accrued based on the principal amount outstanding. Non-refundable loan origination fees, net of direct costs of originating or acquiring loans, as well as purchase premiums and discounts, are deferred and recognized as adjustments to yield over the contractual lives of the related loans using the level yield method.

*Nonaccrual Loans*

New and non-ACI commercial loans are placed on non-accrual status when (i) management has determined that full repayment of all contractual principal and interest is in doubt, or (ii) the loan is past due 90 days or more as to principal or interest unless the loan is well secured and in the process of collection. New and non-ACI residential and consumer loans are generally placed on non-accrual status when 90 days of interest is due and unpaid. When a loan is placed on non-accrual status, uncollected interest accrued is reversed and charged to interest income. Commercial loans are returned to accrual status only after all past due principal and interest has been collected and full repayment of remaining contractual principal and interest is reasonably assured. Residential and consumer loans are returned to accrual status when there is no longer 90 days of interest due and unpaid. When a residential or consumer loan is returned to accrual status, interest accrued at the date the loan was placed on non-accrual status along with interest foregone during the non-accrual period are recognized as interest income. Past due status of loans is determined based on the contractual next payment due date. Loans less than 30 days past due are reported as current.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

Contractually delinquent ACI loans are not classified as non-accrual as long as discount continues to be accreted on the loans or pools.

*Impaired Loans*

An ACI pool or loan is considered to be impaired when it is probable that the Company will be unable to collect all the cash flows expected at acquisition, plus additional cash flows expected to be collected arising from changes in estimates after acquisition. 1-4 single family residential and home equity ACI loans accounted for in pools are evaluated collectively for impairment on a pool by pool basis based on expected pool cash flows. Commercial ACI loans are individually evaluated for impairment based on expected cash flows from the individual loans. Discount continues to be accreted on ACI loans or pools as long as there are expected future cash flows in excess of the current carrying amount of the loans or pools.

New and non-ACI loans are considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due, according to the contractual terms of the loan agreements. Commercial relationships with committed balances greater than or equal to $500,000 that have internal risk ratings of substandard or doubtful and are on non-accrual status are individually evaluated for impairment. The likelihood of loss related to loans assigned internal risk ratings of substandard or doubtful is considered elevated due to their identified credit weaknesses. Loans with well-defined credit weaknesses that may result in a loss if the identified deficiencies are not corrected are assigned an internal risk rating of substandard. Loans in this category may exhibit payment defaults, insufficient cash flows, operating losses, increasing balance sheet leverage, project cost overruns, unreasonable construction delays, exhausted interest reserves or declining collateral values. A loan with a weakness so severe that collection in full is highly questionable or improbable, but because of certain reasonably specific pending factors charge-off is not yet appropriate, will be assigned an internal risk rating of doubtful. Factors considered by management in evaluating impairment include payment status, financial condition of the borrower, collateral value, and other factors impacting the probability of collecting scheduled principal and interest payments when due. Generally, new and non-ACI loans identified as impaired have already been placed on non-accrual status.

*Troubled Debt Restructurings*

In certain situations due to economic or legal reasons related to a borrower's financial difficulties, the Company may grant a concession to the borrower for other than an insignificant period of time that it would not otherwise consider. At that time, except for ACI loans accounted for in pools, the related loan is classified as a troubled-debt restructuring ("TDR") and considered impaired. The concessions granted may include rate reductions, principal forgiveness, payment forbearance, extensions of maturity at rates of interest below that commensurate with the risk profile of the loans, modification of payment terms and other actions intended to minimize economic loss. A troubled-debt restructured loan is generally placed on non-accrual status at the time of the modification unless the borrower has no history of missed payments for six months prior to the restructuring. If the borrower performs pursuant to the modified loan terms for at least six months and the remaining loan balance is considered collectible, the loan is returned to accrual status. Modified ACI loans accounted for in pools

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

are not accounted for as TDRs, are not separated from the pools and are not classified as impaired loans. The majority of the Company's TDRs are covered loans.

*Direct Financing Leases*

Direct financing leases are carried at the aggregate of lease payments receivable and estimated residual value of the leased property, if applicable, less unearned income. Interest income on direct financing leases is recognized over the term of the leases to achieve a constant periodic rate of return on the outstanding investment. Initial direct costs are deferred and amortized over the lease term as a reduction to interest income using the effective interest method.

***Allowance for Loan and Lease Losses***

The allowance for loan and lease losses ("ALLL") represents the amount considered adequate by management to absorb probable losses inherent in the loan portfolio at the balance sheet date. The ALLL relates to (i) new loans, (ii) estimated additional losses arising on non-ACI loans subsequent to the FSB Acquisition and (iii) additional impairment recognized as a result of decreases in expected cash flows on ACI loans due to further credit deterioration since acquisition. The ALLL consists of both specific and general components. The ALLL is established as losses are estimated to have occurred through a provision charged to earnings. Individual loans are charged off against the ALLL when management determines them to be uncollectible.

An assessment of collateral value is made at no later than 120 days delinquency for new open- and closed-end loans secured by residential real estate and any outstanding loan balance in excess of fair value less cost to sell is charged off at no later than 180 days delinquency. Additionally, any outstanding balance in excess of fair value of collateral less cost to sell is charged off (i) within 60 days of receipt of notification of filing from the bankruptcy court, (ii) within 60 days of determination of loss if all borrowers are deceased or (iii) within 90 days of discovery of fraudulent activity. Non-ACI loans secured by residential real estate are generally charged off at final resolution which is consistent with the terms of the residential shared loss agreement. Consumer loans are typically charged off at 120 days delinquency. Commercial loans are charged off when management deems them to be uncollectible. Subsequent recoveries are credited to the ALLL.

*ACI Loans*

A specific valuation allowance related to an ACI loan or pool is established when quarterly evaluations of expected cash flows indicate it is probable that the Company will be unable to collect all of the cash flows expected at acquisition plus any additional cash flows expected to be collected arising from changes in estimate after acquisition. The amount of any necessary valuation allowance is measured by comparing the carrying value of the loan or pool to the updated net present value of expected cash flows for the loan or pool. In calculating the present value of expected cash flows for this purpose, changes in cash flows related to credit related factors are isolated from those related to changes in interest rate indices or prepayment assumptions. Alternatively, an improvement in the expected cash flows related to ACI loans results in a reduction of any previously established specific allowance with a corresponding credit to the provision for loan losses. A charge-off is taken for an

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

individual ACI commercial loan when it is deemed probable that the loan will be resolved for an amount less than its carrying value.

Expected cash flows are estimated on a pool basis for ACI 1-4 single family residential and home equity loans. The analysis of expected pool cash flows incorporates updated pool level expected prepayment rate, default rate, delinquency level and loss severity given default assumptions. Prepayment, delinquency and default curves are derived primarily from roll rates generated from the historical performance of the portfolio over the immediately preceding four quarters. Estimates of default probability and loss severity given default also incorporate updated loan-to-value ("LTV") ratios, at the loan level, based on Case-Shiller Home Price Indices for the relevant Metropolitan Statistical Area ("MSA"). Costs and fees represent an additional component of loss on default and are projected using the "Making Home Affordable" cost factors provided by the Federal government.

The primary assumptions underlying estimates of expected cash flows for commercial ACI loans are default probability and severity of loss given default. Generally, for commercial relationships with risk ratings of substandard or doubtful and committed balances greater than or equal to $500,000, updated cash flow assumptions are based primarily on net realizable value analyses prepared at the individual loan level. These analyses incorporate information about loan performance, collateral values, the financial condition of the borrower and other available information that may impact sources of repayment. Updated assumptions for smaller balance commercial loans are based on a combination of internal risk ratings, the Company's own historical delinquency and default severity data and industry level delinquency data. Cash flow estimates for consumer loans are based primarily on regularly updated historical performance information.

*Non-ACI and New Loans*

Non-ACI 1-4 single family residential mortgages and home equity loans and lines of credit are grouped into homogenous pools based on loan type for purposes of determining the amount of the ALLL. Calculated loss frequency and severity percentages are applied to the dollar value of loans in each pool to calculate the ALLL. Based on an analysis of historical portfolio performance, OREO and short sale data and other internal and external factors, management has determined that LTV is the leading predictive indicator of loss severity. The loans in each pool are therefore further disaggregated based on LTV ratios for purposes of calculating loss frequency and severity. LTV ratios are updated quarterly at the loan level using Case-Shiller Home Price Indices for the relevant MSA. Home price index data used in updating LTV's is that for the preceding calendar quarter, the most recent data available. Frequency is calculated using a four month roll to loss percentage. Loss severity given default is estimated based on internal data about short sales and OREO sales for the most recent quarter. Home equity loans and lines of credit that are junior liens are likely to experience greater loss severity in the event of default. The ALLL calculation incorporates a 100% loss severity assumption for home equity loans and lines of credit projected to roll to 120 days delinquency. The credit quality of loans in the residential portfolio segment may be impacted by fluctuations in home values, unemployment, general economic conditions, borrowers' financial circumstances and, to a lesser extent in the current economic environment, fluctuations in interest rates.

The new residential and home equity portfolio segments have not yet developed an observable loss trend. Due to several factors, there is a lack of similarity between the risk characteristics of new loans

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

and covered loans in the residential and home equity portfolios. Those factors include elimination of wholesale origination channels, elimination of Alt-A and no document loans, enhancements to real estate appraisal policies, elimination of option ARM loans and tightening of underwriting policies. Therefore, management does not believe it is appropriate to use the historical performance of the covered loans as a basis for calculating the ALLL applicable to the new loans. The ALLL for new residential and home equity loans is based on peer group average historical loss rates as described further below.

The new and non-ACI commercial loan portfolios have limited delinquency history and have not exhibited an observable loss trend. The credit quality of loans in this portfolio segment is impacted by debt service coverage generated by the borrowers' businesses and fluctuations in the value of real estate collateral. For loans evaluated individually for impairment and determined to be impaired, a specific allowance is established based on the present value of expected cash flows discounted at the loan's effective interest rate, the estimated fair value of the loan, or for collateral dependent loans, the estimated fair value of collateral less costs to sell. Loans not individually determined to be impaired are grouped based on common risk characteristics. The ALLL for these portfolio segments is based primarily on the Bank's internal credit risk rating system and peer group average historical loss rates. The ALLL for municipal lease receivables is based on historical loss experience of a portfolio of similar loans.

The peer group used to calculate average historical loss rates consists of banks in the Southeast region determined by management to be comparable to BankUnited. Factors impacting the selection of the banks in the peer group include asset size, loan portfolio composition and credit quality statistics published by the FDIC. For the new bank portfolio, a six quarter average of peer group historical loss rates is used as this period corresponds to the vintage of the majority of loans in this portfolio segment. For the non-ACI portfolio, a twelve quarter average is used as this period is considered more representative of expected loss experience for the more seasoned loans in this segment.

Prior to 2011, the ALLL for non-ACI and new loans was calculated based primarily on the Bank's internal credit risk rating system and the Office of Thrift Supervision "Thrift Industry Charge-Off Rates by Asset Type, annualized Net Charge-Off Rates—Twelve Quarter Average" for the southeast region. Largely in response to growth in the new loan portfolio, management incorporated peer group historical loss rates in the ALLL methodology. The peer group data is considered more representative of expected losses than broader based industry averages. The impact of this change was not material to the overall ALLL estimate.

Qualitative adjustments are made to the ALLL when, based on management's judgment and experience, there are internal or external factors impacting loss frequency and severity not taken into account by the quantitative calculations. Management has categorized potential qualitative adjustments into the following categories:

- Portfolio trends, including levels of delinquencies and non-performing loans;
- Portfolio growth rates;
- Policy and credit guidelines, including changes in credit administration management and staff and the level of policy and procedural exceptions;

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

- Economic factors, including changes in and levels of real estate price indices, unemployment rates and GDP; and
- Credit concentrations.

***FDIC Indemnification Asset***

The FDIC indemnification asset was initially recorded at the time of the FSB Acquisition at fair value, measured as the present value of the estimated cash payments expected from the FDIC for probable losses on covered assets, past due interest and reimbursement of certain expenses. Covered assets consist of loans, other real estate owned and certain investment securities acquired from the FDIC. The FDIC indemnification asset is measured separately from the related covered assets. It is not contractually embedded in the covered assets and it is not transferrable with the covered assets should the Company choose to dispose of them. The discount rate used to estimate the initial fair value of the FDIC indemnification asset was determined using a risk-free yield curve adjusted for a premium reflecting the uncertainty related to the collection, amount and timing of the cash flows as well as illiquidity of the asset.

The discount resulting from recording the FDIC indemnification asset at present value is accreted to non-interest income using the effective interest method over the period during which cash flows from the FDIC are expected to be collected, which is limited to the lesser of the contractual term of the indemnification agreement and the remaining life of the indemnified assets. Impairment of expected cash flows from covered assets results in an increase in cash flows expected to be collected from the FDIC. These increased expected cash flows from the FDIC are recognized as increases in the FDIC indemnification asset and as non-interest income in the same period that the impairment of the covered assets is recognized in earnings. Increases in expected cash flows from covered assets result in decreases in cash flows expected to be collected from the FDIC. These decreases in expected cash flows from the FDIC are recognized immediately in earnings to the extent that they relate to a reversal of a previously recorded valuation allowance related to the covered assets. Any remaining decreases in cash flows expected to be collected from the FDIC are recognized prospectively through an adjustment of the rate of accretion on the FDIC indemnification asset, consistent with the approach taken to recognize increases in expected cash flows on the covered assets.

Gains and losses from resolution of ACI loans are included in the income statement line item "Income from resolution of covered assets, net." These gains and losses represent the difference between the expected losses from ACI loans and consideration actually received in satisfaction of such loans that were resolved either by payment in full, foreclosure, short sale or, for the non-residential portfolio, charge-offs. The Company may also realize gains or losses on the sale of covered loans or other real estate owned. When the Company recognizes gains or losses related to the resolution or sale of covered assets in earnings, corresponding changes in the estimated amount recoverable from the FDIC under the loss sharing agreements are reflected in the consolidated financial statements as increases or decreases in the FDIC indemnification asset and in the consolidated statement of income line item "Net gain (loss) on indemnification asset."

The ultimate realization of the FDIC indemnification asset is dependent upon the performance of the underlying covered assets and payment of claims by the FDIC.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

***Bank Owned Life Insurance***

Bank owned life insurance is carried at the amount that could be realized under the contract at the balance sheet date, which is typically cash surrender value. Changes in cash surrender value are recorded in non-interest income.

***Other Real Estate Owned***

OREO consists of real estate assets acquired through, or in lieu of, loan foreclosure. These assets are held for sale and are initially recorded at the estimated fair value of the collateral less costs to sell, establishing a new cost basis. Subsequent to foreclosure, periodic valuations are performed and the assets are carried at the lower of the carrying amount at the date of foreclosure or estimated fair value less cost to sell. Significant property improvements that enhance the salability of the property are capitalized to the extent that the resulting carrying value does not exceed fair value less cost to sell. Legal fees, maintenance, taxes, insurance and other direct costs of holding and maintaining foreclosed properties are expensed as incurred.

***Goodwill and Other Intangible Assets***

Goodwill represents the excess of consideration transferred in business combinations over the fair value of net tangible and identifiable intangible assets acquired. Goodwill is not amortized, but is tested for impairment annually or more frequently if events or circumstances indicate that impairment may have occurred. The Company performs its annual goodwill impairment test in the third fiscal quarter. The Company has a single reporting unit. The impairment test compares the estimated fair value of the reporting unit to its carrying amount. If the fair value of the reporting unit exceeds its carrying amount, no impairment is indicated. If the fair value of the reporting unit is less than its carrying amount, impairment of goodwill is measured as the excess of the carrying amount of goodwill over its implied fair value. In 2012 and 2011, the estimated fair value of the reporting unit was based on the market capitalization of the Company's common stock. In 2010, management engaged third party valuation specialists to estimate the fair value of the reporting unit using a discounted cash flow valuation technique. The estimated fair value of the reporting unit at each impairment testing date substantially exceeded its carrying amount; therefore, no impairment of goodwill was indicated. The Company is permitted to first assess qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform this two-step goodwill impairment test.

Intangible assets with determinable lives include core deposit intangible assets and other customer relationship intangible assets. These assets are amortized over their estimated useful lives using the straight-line method, or for certain core deposit intangible assets using an accelerated method based on an exponential attrition curve. Intangible assets with determinable lives are evaluated for impairment when events or changes in circumstances indicate the carrying amount of the assets may not be recoverable.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

***Equipment Under Operating Lease***

Equipment under operating lease is initially recorded at fair value, adjusted for initial direct costs and is included in other assets in the accompanying consolidated balance sheets. Depreciation is recognized using the straight-line method over the lease term to the estimated residual value at the end of the lease term. Estimated residual values are re-evaluated at least annually. Rental revenue is recognized ratably over the contractual term of the lease, and is included in other non-interest income in the accompanying consolidated statements of income.

***Premises and Equipment***

Premises and equipment are carried at cost less accumulated depreciation and amortization and are included in other assets in the accompanying consolidated balance sheets. Depreciation is calculated using the straight line method over the estimated useful lives of the assets. The lives of improvements to existing buildings are based on the lesser of the estimated remaining lives of the buildings or the estimated useful lives of the improvements. Leasehold improvements are amortized over the shorter of the expected terms of the leases at inception, considering options to extend that are reasonably assured, or their useful lives. Direct costs of materials and services associated with developing or obtaining and implementing internal use computer software incurred during the application and development stage are capitalized and amortized over the estimated useful lives of the software. The estimated useful lives of premises and equipment are as follows:

- branch buildings and improvements—30 years;
- leasehold improvements—5 to 20 years;
- furniture, fixtures and equipment—5 to 7 years;
- computer equipment—3 years; and
- software and software licensing rights—3 to 5 years.

***Income Taxes***

The Company accounts for income taxes using the asset and liability method. Deferred tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities using enacted tax rates in effect for periods in which the differences are expected to reverse. The effect of changes in tax rates on deferred tax assets and liabilities are recognized in income in the period that includes the enactment date. A valuation allowance is established for deferred tax assets when management determines that it is more likely than not that some portion or all of a deferred tax asset will not be realized. In making such determinations, the Company considers all available positive and negative evidence that may impact the realization of deferred tax assets. These considerations include the amount of taxable income generated in statutory carryback periods, future reversals of existing taxable temporary differences, projected future taxable income and available tax planning strategies.

The Company recognizes tax benefits from uncertain tax positions when it is more likely than not that the related tax positions will be sustained upon examination, including resolutions of any related

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

appeals or litigation processes, based on the technical merits of the tax positions. An uncertain tax position is a position taken in a previously filed tax return or a position expected to be taken in a future tax return that is not based on clear and unambiguous tax law. The Company measures tax benefits related to uncertain tax positions based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement. If the initial assessment fails to result in recognition of a tax benefit, the Company subsequently recognizes a tax benefit if (i) there are changes in tax law or case law that raise the likelihood of prevailing on the technical merits of the position to more-likely-than-not, (ii) the statute of limitations expires, or (iii) there is a completion of an examination resulting in a settlement of that tax year or position with the appropriate agency. The Company recognizes interest and penalties related to uncertain tax positions in the provision for income taxes.

***Equity Based Compensation***

The Company periodically grants nonqualified stock options or unvested or restricted shares of common stock to key employees. Compensation cost is measured based on the estimated fair value of the awards at the grant date and is recognized in earnings on a straight-line basis over the requisite service period. Compensation cost related to awards that embody performance conditions is recognized if it is probable that the performance condition will be achieved.

The fair value of unvested shares is based on the closing market price of the Company's common stock at the date of grant. The value of shares granted with post-vesting restrictions as to transferability is reduced by a discount for lack of marketability. The fair value of stock options is estimated at the date of grant using a Black-Scholes option pricing model. This model requires assumptions as to expected volatility, expected term, dividend yield, and risk free interest rates. Since the Company's common stock has limited trading history, the measurement of expected volatility incorporates the volatility of the common stock of peer companies. The expected term represents the period of time that options are expected to be outstanding from the grant date and is based on the contractual term of the options and employees' anticipated exercise behavior. The risk free interest rate is based on the U.S. Treasury constant maturity rate corresponding to the expected term of the options at the date of grant. The expected dividend yield is determined based on historical dividend rates and dividends expected to be declared in the foreseeable future.

Prior to the IPO, BUFH had a class of authorized non-voting membership interests identified as Profits Interest Units ("PIUs"). PIUs were issued by BUFH to management members of the Company who owned common units of BUFH. The PIUs entitled their holders to share in distributions from BUFH after investors in BUFH received certain defined returns on their investment. PIUs consisted of both time-based awards, which vested based on fulfillment of a service condition and IRR-based awards. Based on their settlement provisions, the PIUs were classified as liabilities and adjusted to estimated fair value at each financial statement date. Fair value was estimated using a Black-Scholes option pricing model. Compensation expense related to PIUs was based on the fair value of the underlying units. Compensation expense related to time-based PIUs was recognized over the requisite service period on a straight-line basis. Compensation expense related to IRR-based PIUs was recognized upon vesting, which occurred on completion of the IPO. In conjunction with the IPO, all of

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

the outstanding PIUs were exchanged for a combination of non-qualified stock options and common shares in the Company.

***Warrant Issued to the FDIC***

In conjunction with the FSB Acquisition, the Company issued a warrant to the FDIC. Based on its settlement provisions, the warrant was classified as a liability and adjusted to the greater of fair value or guaranteed minimum value at each financial statement date, with changes in value reflected in earnings. The warrant was settled for cash in February, 2011.

***Derivative Financial Instruments and Hedging Activities***

*Interest rate swap agreements*

Interest rate swaps are contracts in which a series of interest cash flows are exchanged over a prescribed period. Interest rate swaps are recorded as assets or liabilities in the consolidated balance sheets at fair value. Interest rate swaps that are used as a risk management tool to hedge the Company's exposure to changes in interest rates have been designated as cash flow hedging instruments. The effective portion of the gain or loss on interest rate swaps designated and qualifying as cash flow hedging instruments is initially reported as a component of other comprehensive income and subsequently reclassified into earnings in the same period in which the hedged transaction affects earnings. The ineffective portion of the gain or loss on the derivative instruments, if any, is recognized currently in earnings. Hedge effectiveness is assessed using the hypothetical derivative method. Assessments of hedge effectiveness and measurements of hedge ineffectiveness are performed quarterly.

The Company discontinues hedge accounting prospectively when it is determined that the derivative is no longer effective in offsetting changes in the cash flows of the hedged item, the derivative expires or is sold, terminated, or exercised, management determines that the designation of the derivative as a hedging instrument is no longer appropriate or the occurrence of the forecasted transaction is no longer probable. When hedge accounting is discontinued, any subsequent changes in fair value of the derivative are recognized in earnings. The cumulative unrealized gain or loss related to a discontinued cash flow hedge continues to be reported in accumulated other comprehensive income unless it is probable that the forecasted transaction will not occur by the end of the originally specified time period, in which case the cumulative unrealized gain or loss reported in accumulated other comprehensive income is reclassified into earnings immediately.

Cash flows resulting from derivative financial instruments that are accounted for as hedges are classified in the cash flow statement in the same category as the cash flows from the hedged items.

Changes in the fair value of interest rate swaps not designated as, or not qualifying as, hedging instruments are recognized currently in earnings.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

*Derivative loan commitments*

Interest rate lock commitments to originate mortgage loans to be held for sale upon funding are derivative instruments and are recognized in the consolidated balance sheets at fair value with changes in fair value reflected in earnings.

*Forward loan sale commitments*

Mandatory delivery forward loan sale commitments and best efforts forward loan sale commitments for which the loan to the underlying borrower has closed are derivative instruments and are reflected in the consolidated balance sheets at fair value with changes in fair value reflected in earnings.

***Transfers of Financial Assets***

Transfers of financial assets are accounted for as sales when control over the assets has been surrendered. A gain or loss is recognized in earnings upon completion of the sale based on the difference between the sales proceeds and the carrying value of the assets. Control over the transferred assets is deemed to have been surrendered when: (i) the assets have been legally isolated from the Company, (ii) the transferee obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets, and (iii) the Company does not maintain effective control over the transferred assets through an agreement to repurchase them before their maturity or the ability to unilaterally cause the holder to return specific assets.

***Advertising Costs***

Advertising costs are expensed as incurred.

***Earnings per Common Share***

Basic earnings per common share is calculated by dividing income allocated to common stockholders for basic earnings per common share by the weighted average number of common shares outstanding for the period, reduced by average unvested stock awards. Unvested stock awards and stock option awards with non-forfeitable rights to dividends or dividend equivalents, whether paid or unpaid, and participating preferred stock are considered participating securities and are included in the computation of basic earnings per common share using the two class method whereby net income is allocated between common stock and participating securities. In periods of a net loss, no allocation is made to participating securities as they are not contractually required to fund net losses. Diluted earnings per common share is computed by dividing income allocated to common stockholders for basic earnings per common share, adjusted for earnings reallocated from participating securities, by the weighted average number of common shares outstanding for the period increased for the dilutive effect of unexercised stock options, warrants and unvested stock awards using the treasury stock method and by the dilutive effect of convertible preferred stock using the if-converted method. Contingently issuable shares are included in the calculation of earnings per common share as if the end of the respective period was the end of the contingency period.

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

***Reclassifications***

Certain amounts presented for prior periods have been reclassified to conform to the current period presentation.

***Recent Accounting Pronouncements***

In April 2011, the FASB issued Accounting Standards Update 2011-03, "*Reconsideration of Effective Control for Repurchase Agreements*." This update removed from the assessment of effective control: (1) the criterion requiring the transferor to have the ability to repurchase or redeem the financial assets on substantially the agreed terms, even in the event of default by the transferee, and (2) the collateral maintenance implementation guidance related to that criterion. This update was adopted by the Company in 2012 and did not have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

In May 2011, the FASB issued Accounting Standards Update 2011-04, "*Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs*." The amendments in this update resulted in common fair value measurement and disclosure requirements in U.S. GAAP and International Financial Reporting Standards ("IFRS"). The amendments changed the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. Some of the amendments clarified the FASB's intent about the application of fair value measurement requirements and others changed principles or requirements for measuring fair value or disclosing information about fair value measurements. The Company adopted this update in 2012. The update did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In June 2011, the FASB issued Accounting Standards Update 2011-05, "*Presentation of Comprehensive Income*." This update provided entities with an option of presenting the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. This update eliminated the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. The Company adopted this update in 2012. Adoption affected the manner of presentation of the components of comprehensive income in the Company's financial statements, but did not have an impact on the Company's consolidated financial position, results of operations or cash flows. Accounting Standards Update 2011-12 delayed the effective date of certain requirements of Accounting Standards Update 2011-05 related to the presentation of reclassifications of items out of accumulated other comprehensive income.

In September 2011, the FASB issued Accounting Standards Update 2011-08, "*Testing Goodwill for Impairment*." This update simplified how entities test goodwill for impairment. It permits an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. Under the amendments in this update, an entity is not required to calculate the fair value of a reporting unit unless the entity determines that it is more likely than not

**Note 1 Basis of Presentation and Summary of Significant Accounting Policies (Continued)**

that its fair value is less than its carrying amount. The Company adopted this update in 2012. Adoption did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

In December 2011, The FASB issued Accounting Standards Update 2011-11, "*Disclosures about Offsetting Assets and Liabilities*." This update requires entities to disclose both gross information and net information about instruments and transactions eligible for offset in the statement of financial position and instruments and transactions subject to an agreement similar to a master netting arrangement. The scope of this update includes derivatives, sale and repurchase agreements and reverse sale and repurchase agreements and securities borrowing and lending arrangements. The Company is required to adopt this update retrospectively for periods beginning after January 1, 2013. Management does not anticipate that adoption will have a material impact on the Company's consolidated financial position, results of operations or cash flows. Accounting Standards Update 2013-01 clarifies certain of the provisions of Accounting Standards Update 2011-11.

In October 2012, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2012-06, "*Subsequent Accounting for an Indemnification Asset Recognized at the Acquisition Date as a Result of a Government-Assisted Acquisition of a Financial Institution*." The amendments in this update clarify the applicable guidance for subsequently measuring an indemnification asset recognized as a result of a government-assisted acquisition of a financial institution. The update provides that changes in cash flows expected to be collected on the indemnification asset arising subsequent to initial recognition as a result of changes in cash flows expected to be collected on the related indemnified assets should be accounted for on the same basis as the change in the assets subject to indemnification. Any amortization of changes in value should be limited to the contractual term of the indemnification agreement. The Company is required to adopt this update prospectively for the quarter ending March 31, 2013. The requirements of the update are consistent with the Company's existing accounting policy; therefore, adoption will not have an impact on the Company's consolidated financial position, results of operations or cash flows.

In February 2013, the FASB issued Accounting Standards Update 2013-02, "*Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income*." This update requires entities to provide information about the amounts reclassified out of accumulated other comprehensive income by component. In addition, entities are required to present, either on the face of the statement where net income is presented or in the notes, significant amounts reclassified out of accumulated other comprehensive income by the respective line items of net income. The Company is required to adopt this update prospectively for the quarter ending March 31, 2013. The update may result in revised disclosures in the Company's financial statements but will not have an impact on the Company's consolidated financial position, results of operations or cash flows.

**Note 2 Earnings Per Common Share**

The computation of basic and diluted earnings per common share is presented below (in thousands except share and per share data):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| **Basic earnings per common share:** | | | |
| **Numerator:** | | | |
| Net income | $ 211,260 | $ 63,168 | $ 184,735 |
| Preferred stock dividends | (3,899) | — | — |
| Net income available to common stockholders | 207,361 | 63,168 | 184,735 |
| Distributed and undistributed earnings allocated to participating securities | (15,081) | (3,449) | — |
| Income allocated to common stockholders for basic earnings per common share | $ 192,280 | $ 59,719 | $ 184,735 |
| **Denominator:** | | | |
| Weighted average common shares outstanding | 94,791,484 | 96,875,386 | 92,950,735 |
| Less average unvested stock awards | (1,137,210) | (1,421,694) | — |
| Weighted average shares for basic earnings per common share | 93,654,274 | 95,453,692 | 92,950,735 |
| **Basic earnings per common share** | $ 2.05 | $ 0.63 | $ 1.99 |
| **Diluted earnings per common share:** | | | |
| **Numerator:** | | | |
| Income allocated to common stockholders for basic earnings per common share | $ 192,280 | $ 59,719 | $ 184,735 |
| Adjustment for earnings reallocated from participating securities | 20 | — | — |
| Income used in calculating diluted earnings per common share | $ 192,300 | $ 59,719 | $ 184,735 |
| **Denominator:** | | | |
| Average shares for basic earnings per common share | 93,654,274 | 95,453,692 | 92,950,735 |
| Dilutive effect of stock options | 174,509 | 151,585 | — |
| Weighted average shares for diluted earnings per common share | 93,828,783 | 95,605,277 | 92,950,735 |
| **Diluted earnings per common share** | $ 2.05 | $ 0.62 | $ 1.99 |

**Note 2 Earnings Per Common Share (Continued)**

For the years ended December 31, 2012, 2011 and 2010, the following potentially dilutive securities were outstanding but excluded from the calculation of diluted earnings per common share because their inclusion would have been anti-dilutive:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Unvested shares | 1,248,407 | 1,663,822 | — |
| Stock options and warrants | 6,950,735 | 5,073,580 | 981,710 |
| Convertible preferred shares | 5,415,794 | — | — |

**Note 3 Acquisition Activity**

***Herald National Bank***

On February 29, 2012, BKU completed the acquisition of Herald for a purchase price of $65.0 million consisting of cash of $25.2 million, 1,676,060 shares of common stock valued at $38.6 million and stock options and warrants valued at $1.2 million. Common stock issued was valued at the closing price of BKU common stock at the acquisition date. The options and warrants were valued using a Black-Scholes option pricing model. The acquisition of Herald was determined to be a business combination and was accounted for using the acquisition method of accounting; accordingly, the assets acquired and liabilities assumed were recorded at their estimated fair values at the acquisition date. The acquisition of Herald allowed the Company to expand its banking operations to the New York metropolitan area.

The following table summarizes the estimated fair values of assets acquired and liabilities assumed (in thousands):

| | |
|---|---|
| **Assets:** | |
| Cash and cash equivalents | $ 23,538 |
| Investment securities available for sale | 160,971 |
| Loans | 305,954 |
| Deferred tax asset, net | 12,023 |
| Intangible assets | 1,780 |
| Other assets | 4,141 |
| Total assets | 508,407 |
| **Liabilities:** | |
| Deposits | 435,500 |
| Other liabilities | 2,594 |
| Total liabilities | 438,094 |
| **Estimated fair value of net assets acquired** | 70,313 |
| **Consideration issued** | 65,025 |
| **Excess of fair value of net assets acquired over consideration issued** | $ 5,288 |

**Note 3 Acquisition Activity (Continued)**

The Company recognized a gain of $5.3 million on the acquisition of 100% of Herald, representing the excess of the fair value of net assets acquired over the value of consideration issued. Pursuant to the terms of the merger agreement between BKU and Herald, the determination of the final purchase price was dependent on the price of BKU's common stock for the ten trading days preceding the merger. A decline in the stock price between the execution of the agreement and consummation of the acquisition led to this gain, which is included in the consolidated statement of income line item "other non-interest income" for the year ended December 31, 2012. Transaction costs related to the acquisition of Herald totaled $3.2 million, of which $0.9 million and $2.3 million were included in the consolidated statement of income line item "professional fees" for the years ended December 31, 2012 and 2011, respectively. The results of operations of Herald have been included in the Company's consolidated financial statements from the date of acquisition and are not material. Financial statements of Herald and pro forma financial information are not required to be presented due to the immateriality of this acquisition to the Company's consolidated financial position and results of operations.

Valuation methodologies used to estimate the fair values of significant assets acquired and liabilities assumed are summarized as follows:

- Loans were valued using a discounted cash flow technique incorporating market based probability of default, loss severity given default, recovery lag and appropriately risk weighted discount rate assumptions.
- Investment securities were valued using the same methodologies employed to estimate the fair value of the Company's investment securities available for sale summarized in Note 20.
- Demand, savings and money market deposits were valued at the amount due on demand at the valuation date. Time deposits were valued using a discounted cash flow technique incorporating discount rates based on current market rates for deposits with similar maturities.
- Intangible assets consisted of a core deposit intangible asset, valued using an after tax cost savings methodology.

The gross contractual amount receivable related to acquired loans was approximately $395.2 million at the acquisition date. The estimated amount not expected to be collected based on probability of default and loss severity given default assumptions applied in estimating fair value was $12.1 million. No loans were specifically identified as impaired at the acquisition date.

Deferred tax assets and liabilities were recorded for the tax effects of differences between the tax bases of assets acquired and liabilities assumed and the fair values assigned to those assets and liabilities. The most significant component of the net deferred tax asset was an acquired net operating loss carryforward.

***Other Acquisitions***

In 2010, in two separate transactions, the Company acquired certain assets and assumed certain liabilities of a small business commercial lending company and a municipal leasing company for total cash consideration of approximately $50.5 million. These transactions were determined to be business combinations and were accounted for using the acquisition method of accounting. The acquired

**Note 3 Acquisition Activity (Continued)**

businesses were complementary to the Company's commercial lending business strategy. The assets acquired and liabilities assumed were accounted for at their estimated fair values at the date of acquisition and included primarily small business loans valued at $42.7 million, goodwill of $7.9 million, premises and equipment of $570 thousand, customer relationship intangible assets of $442 thousand and other liabilities of $1.1 million. Goodwill resulted primarily from the value of an assembled workforce and related industry expertise. The results of operations of the acquired businesses have been included in the Company's financial statements from the date of acquisition. Financial statements of the acquired companies and pro-forma financial information are not presented due to immateriality of these acquisitions to the Company's overall financial position and results of operations.

**Note 4 Investment Securities Available for Sale**

Investment securities available for sale at December 31, 2012 and December 31, 2011 consisted of the following (in thousands):

| | 2012 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Covered Securities | | | | Non-Covered Securities | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Treasury and Government agency securities | $ — | $ — | $ — | $ — | $ 34,998 | $ 157 | $ (1) | $ 35,154 |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | — | — | — | — | 1,520,047 | 64,476 | — | 1,584,523 |
| U.S. Government agency and sponsored enterprise commercial mortgage-backed securities | — | — | — | — | 58,518 | 1,898 | — | 60,416 |
| Resecuritized real estate mortgage investment conduits ("Re-Remics") | — | — | — | — | 575,069 | 10,063 | (90) | 585,042 |
| Private label residential mortgage-backed securities and CMOs | 143,739 | 58,266 | (185) | 201,820 | 243,029 | 3,437 | (201) | 246,265 |
| Private label commercial mortgage-backed securities | — | — | — | — | 413,110 | 19,982 | — | 433,092 |
| Collateralized loan obligations | — | — | — | — | 252,280 | 908 | — | 253,188 |
| Non-mortgage asset-backed securities | — | — | — | — | 233,791 | 7,672 | (117) | 241,346 |
| Mutual funds and preferred stocks | 16,382 | 1,439 | (361) | 17,460 | 125,127 | 7,066 | — | 132,193 |
| State and municipal obligations | — | — | — | — | 25,127 | 249 | (23) | 25,353 |
| Small Business Administration securities | — | — | — | — | 333,423 | 6,187 | — | 339,610 |
| Other debt securities | 3,723 | 3,502 | — | 7,225 | 9,164 | 561 | — | 9,725 |
| | $163,844 | $63,207 | $(546) | $226,505 | $3,823,683 | $122,656 | $(432) | $3,945,907 |

**Note 4 Investment Securities Available for Sale (Continued)**

| | 2011 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Covered Securities | | | | Non-Covered Securities | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | $ — | $ — | $ — | $ — | $1,952,095 | $34,823 | $ (1,205) | $1,985,713 |
| Re-Remics | — | — | — | — | 544,924 | 4,972 | (3,586) | 546,310 |
| Private label residential mortgage-backed securities and CMO's | 165,385 | 44,746 | (310) | 209,821 | 177,614 | 1,235 | (983) | 177,866 |
| Private label commercial mortgage-backed securities | — | — | — | — | 255,868 | 6,694 | — | 262,562 |
| Non-mortgage asset-backed securities | — | — | — | — | 414,274 | 2,246 | (5,635) | 410,885 |
| Mutual funds and preferred stocks | 16,382 | 491 | (556) | 16,317 | 235,705 | 3,071 | (1,276) | 237,500 |
| State and municipal obligations | — | — | — | — | 24,994 | 278 | (2) | 25,270 |
| Small Business Administration securities | — | — | — | — | 301,109 | 2,664 | (96) | 303,677 |
| Other debt securities | 3,868 | 2,188 | — | 6,056 | — | — | — | — |
| | $185,635 | $47,425 | $(866) | $232,194 | $3,906,583 | $55,983 | $(12,783) | $3,949,783 |

At December 31, 2012, contractual maturities of investment securities available for sale, adjusted for anticipated prepayments of mortgage-backed and other pass-through securities, were as follows (in thousands):

| | Amortized Cost | Fair Value |
|---|---|---|
| Due in one year or less | $ 677,730 | $ 713,273 |
| Due after one year through five years | 1,798,333 | 1,880,799 |
| Due after five years through ten years | 1,065,456 | 1,109,672 |
| Due after ten years | 304,499 | 319,015 |
| Mutual funds and preferred stocks with no stated maturity | 141,509 | 149,653 |
| | $3,987,527 | $4,172,412 |

Based on the Company's proprietary assumptions, the estimated weighted average life of the investment portfolio as of December 31, 2012 was 4.2 years. The effective duration of the investment portfolio as of December 31, 2012 was 1.7 years. The model results are based on assumptions that may differ from actual results.

The carrying value of securities pledged as collateral for FHLB advances, public deposits, interest rate swaps, securities sold under agreements to repurchase and to secure borrowing capacity at the Federal Reserve Bank totaled $0.9 billion and $1.2 billion at December 31, 2012 and December 31, 2011, respectively.

**Note 4 Investment Securities Available for Sale (Continued)**

The following table provides information about gains and losses on the sale or exchange of investment securities available for sale for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Proceeds from sale of investment securities available for sale | $835,745 | $217,069 | $222,014 |
| Gross realized gains | $ 17,338 | $ 1,224 | $ 1,861 |
| Gross realized losses | (299) | (88) | (48) |
| Loss on exchange of securities | — | — | (2,811) |
| Net realized gain (loss) | $ 17,039 | $ 1,136 | $ (998) |

During the year ended December 31, 2010, the Company exchanged certain non-covered trust preferred securities for preferred stock of the same issuer to achieve higher returns and more favorable tax treatment. Based on the market value of the trust preferred securities at the time of the exchange, the Company recognized a gross realized loss of $2.8 million.

The following tables present the aggregate fair value and the aggregate amount by which amortized cost exceeded fair value for investment securities in unrealized loss positions at December 31, 2012 and December 31, 2011, aggregated by investment category and length of time that individual securities had been in continuous unrealized loss positions (in thousands):

| | 2012 | | | | | |
|---|---|---|---|---|---|---|
| | Less than 12 Months | | 12 Months or Greater | | Total | |
| | Fair Value | Unrealized Losses | Fair Value | Unrealized Losses | Fair Value | Unrealized Losses |
| U.S. Treasury and Government agency securities | $ 5,000 | $ (1) | $ — | $ — | $ 5,000 | $ (1) |
| Re-Remics | 42,018 | (16) | 8,833 | (74) | 50,851 | (90) |
| Private label residential mortgage-backed securities and CMOs | 53,537 | (185) | 6,080 | (201) | 59,617 | (386) |
| Non-mortgage asset-backed securities | — | — | 10,566 | (117) | 10,566 | (117) |
| Mutual funds and preferred stocks | — | — | 15,082 | (361) | 15,082 | (361) |
| State and municipal obligations | 2,902 | (23) | — | — | 2,902 | (23) |
| | $103,457 | $(225) | $40,561 | $(753) | $144,018 | $(978) |

**Note 4 Investment Securities Available for Sale (Continued)**

| | 2011 | | | | | |
|---|---|---|---|---|---|---|
| | Less than 12 Months | | 12 Months or Greater | | Total | |
| | Fair Value | Unrealized Losses | Fair Value | Unrealized Losses | Fair Value | Unrealized Losses |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | $211,168 | $ (830) | $ 70,049 | $ (375) | $ 281,217 | $ (1,205) |
| Re-Remics | 254,826 | (3,344) | 19,491 | (242) | 274,317 | (3,586) |
| Private label residential mortgage-backed securities and CMO's | 114,915 | (1,120) | 6,469 | (173) | 121,384 | (1,293) |
| Non-mortgage asset-backed securities | 221,904 | (5,590) | 8,772 | (45) | 230,676 | (5,635) |
| Mutual funds and preferred stocks | 77,811 | (1,371) | 14,982 | (461) | 92,793 | (1,832) |
| State and municipal obligations | 1,002 | (2) | — | — | 1,002 | (2) |
| Small Business Administration securities | 29,774 | (96) | — | — | 29,774 | (96) |
| | $911,400 | $(12,353) | $119,763 | $(1,296) | $1,031,163 | $(13,649) |

The Company monitors its investment securities available for sale for OTTI on an individual security basis. No securities were determined to be other than temporarily impaired during the years ended December 31, 2012, 2011 and 2010. The Company does not intend to sell securities that are in significant unrealized loss positions and it is not more likely than not that the Company will be required to sell these securities before recovery of the amortized cost basis, which may be at maturity. At December 31, 2012, 24 securities were in unrealized loss positions. The amount of impairment related to 11 of these securities was considered insignificant, totaling approximately $18.0 thousand, and no further analysis with respect to these securities was considered necessary. The basis for concluding that impairment of the remaining securities is not other-than-temporary is further described below:

*Private label residential mortgage-backed securities and CMOs and Re-Remics:*

At December 31, 2012, nine private label residential mortgage-backed securities and Re-Remics were in unrealized loss positions. All but one of these securities were assessed for OTTI using third-party developed credit and prepayment behavioral models and CUSIP level constant default rates, voluntary prepayment rates and loss severity and delinquency assumptions. The remaining security was assessed using an internal Intex-based discounted cash flow model. The results of these assessments were not indicative of credit losses related to any of these securities as of December 31, 2012. The majority of these securities evidenced unrealized losses less than 1% of amortized cost. Five of the securities had been in unrealized loss positions for four months or less; the remaining four securities had been in unrealized loss positions for 12 or more months. Those securities in unrealized loss positions for 12 or more months exhibited faster than normal prepayment speeds, low loan counts or were odd lots, factors that can negatively impact pricing. Given the generally limited duration and severity of impairment and the expectation of timely recovery of outstanding principal, the impairments were considered to be temporary.

**Note 4 Investment Securities Available for Sale (Continued)**

*Non-mortgage asset-backed securities:*

At December 31, 2012, two non-mortgage asset-backed securities were in unrealized loss positions. The amount of impairment of each of the individual securities was approximately 1% of amortized cost. These securities were assessed for OTTI using a third-party developed credit and prepayment behavioral model and CUSIP level constant default rates, voluntary prepayment rates and loss severity and delinquency assumptions. The results of this evaluation were not indicative of credit losses related to these securities as of December 31, 2012. Given the limited severity of impairment and the expectation of timely recovery of outstanding principal, the impairments were considered to be temporary.

*Mutual funds:*

At December 31, 2012, one mutual fund investment was in an unrealized loss position and had been in a continuous unrealized loss position for 28 months. The majority of the underlying holdings of the mutual fund are either explicitly or implicitly guaranteed by the U.S. Government. The unrealized loss related to this security was approximately 2% of its cost basis. Given the limited severity, the impairment was considered to be temporary.

*State and municipal obligations:*

At December 31, 2012, one municipal security was in an unrealized loss position and had been in a continuous unrealized loss position for five months. The unrealized loss related to this security was approximately 3% of its cost basis. Given the limited duration and severity, the impairment was considered to be temporary.

## Note 5 Loans and Allowance for Loan and Lease Losses

At December 31, 2012 and 2011, loans consisted of the following (dollars in thousands):

| | 2012 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $1,300,109 | $ 93,438 | $ — | $ 920,713 | $2,314,260 | 41.5% |
| Home equity loans and lines of credit | 52,499 | 157,691 | — | 1,954 | 212,144 | 3.8% |
| | 1,352,608 | 251,129 | — | 922,667 | 2,526,404 | 45.3% |
| Commercial: | | | | | | |
| Multi-family | 56,148 | 716 | — | 307,183 | 364,047 | 6.5% |
| Commercial real estate | 173,732 | 910 | 4,087 | 794,706 | 973,435 | 17.5% |
| Construction and land | 18,064 | 829 | — | 72,361 | 91,254 | 1.6% |
| Commercial and industrial | 14,608 | 11,627 | — | 1,334,991 | 1,361,226 | 24.4% |
| Lease financing | — | — | — | 225,980 | 225,980 | 4.1% |
| | 262,552 | 14,082 | 4,087 | 2,735,221 | 3,015,942 | 54.1% |
| Consumer | 2,239 | — | — | 33,526 | 35,765 | 0.6% |
| Total loans | 1,617,399 | 265,211 | 4,087 | 3,691,414 | 5,578,111 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (18,235) | — | 11,863 | (6,372) | |
| Loans net of premiums, discounts, deferred fees and costs | 1,617,399 | 246,976 | 4,087 | 3,703,277 | 5,571,739 | |
| Allowance for loan and lease losses | (8,019) | (9,874) | — | (41,228) | (59,121) | |
| Loans, net | $1,609,380 | $237,102 | $4,087 | $3,662,049 | $5,512,618 | |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

| | 2011 | | | | | |
|---|---|---|---|---|---|---|
| | Covered Loans | | Non-Covered Loans | | | |
| | ACI | Non-ACI | ACI | New Loans | Total | Percent of Total |
| Residential: | | | | | | |
| 1-4 single family residential | $1,681,866 | $117,992 | $ — | $ 461,431 | $2,261,289 | 54.1% |
| Home equity loans and lines of credit | 71,565 | 182,745 | — | 2,037 | 256,347 | 6.1% |
| | 1,753,431 | 300,737 | — | 463,468 | 2,517,636 | 60.2% |
| Commercial: | | | | | | |
| Multi-family | 61,710 | 791 | — | 108,178 | 170,679 | 4.1% |
| Commercial real estate | 219,136 | 32,678 | 4,220 | 311,434 | 567,468 | 13.6% |
| Construction and land | 37,120 | 163 | — | 30,721 | 68,004 | 1.7% |
| Commercial and industrial | 24,007 | 20,382 | — | 699,798 | 744,187 | 17.8% |
| Lease financing | — | — | — | 100,180 | 100,180 | 2.4% |
| | 341,973 | 54,014 | 4,220 | 1,250,311 | 1,650,518 | 39.6% |
| Consumer | 2,937 | — | — | 3,372 | 6,309 | 0.2% |
| Total loans | 2,098,341 | 354,751 | 4,220 | 1,717,151 | 4,174,463 | 100.0% |
| Premiums, discounts and deferred fees and costs, net | — | (30,281) | — | (7,124) | (37,405) | |
| Loans net of premiums, discounts, deferred fees and costs | 2,098,341 | 324,470 | 4,220 | 1,710,027 | 4,137,058 | |
| Allowance for loan and lease losses | (16,332) | (7,742) | — | (24,328) | (48,402) | |
| Loans, net | $2,082,009 | $316,728 | $4,220 | $1,685,699 | $4,088,656 | |

At December 31, 2012 and 2011, the UPB of ACI loans was $4.2 billion and $5.3 billion, respectively.

During the years ended December 31, 2012 and 2011, the Company purchased 1-4 single family residential loans totaling $709.4 million and $384.2 million, respectively.

At December 31, 2012, the Company had pledged real estate loans with UPB of approximately $4.9 billion and carrying amounts of approximately $2.7 billion as security for FHLB advances.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following tables present total 1-4 single family residential loans categorized between fixed rate mortgages and adjustable rate mortgages ("ARMs") as of December 31, 2012 and 2011 (dollars in thousands):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI | Non-ACI | New Loans | Total | Percent of Total |
| 1 - 4 single family residential loans:(1) | | | | | |
| Fixed rate loans | $ 463,471 | $37,865 | $438,589 | $ 939,925 | 40.6% |
| ARM Loans | 836,638 | 55,573 | 482,124 | 1,374,335 | 59.4% |
| | $1,300,109 | $93,438 | $920,713 | $2,314,260 | 100.0% |

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Covered Loans | | | | |
| | ACI | Non-ACI | New Loans | Total | Percent of Total |
| 1 - 4 single family residential loans:(1) | | | | | |
| Fixed rate loans | $ 487,898 | $ 46,654 | $311,131 | $ 845,683 | 37.4% |
| ARM Loans | 1,193,968 | 71,338 | 150,300 | 1,415,606 | 62.6% |
| | $1,681,866 | $117,992 | $461,431 | $2,261,289 | 100.0% |

(1) Before premiums, discounts and deferred fees and costs.

At December 31, 2012 and 2011, based on UPB, the majority of outstanding loans were to customers domiciled in the following states (dollars in thousands):

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | Amount | % | Amount | % |
| Florida | $5,004,414 | 61.6% | $4,720,217 | 63.6% |
| California | 761,088 | 9.4% | 554,637 | 7.5% |
| New York | 394,333 | 4.8% | 184,253 | 2.5% |
| Illinois | 267,768 | 3.3% | 304,730 | 4.1% |
| Others | 1,703,042 | 20.9% | 1,656,204 | 22.3% |
| | $8,130,645 | 100.0% | $7,420,041 | 100.0% |

No other state represented borrowers with more than 4% of loans outstanding at December 31, 2012 or 2011.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

During the years ended December 31, 2012, 2011 and 2010, the Company sold covered 1-4 single family residential loans to third parties on a non-recourse basis. The following table summarizes the impact of these transactions (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Unpaid principal balance of loans sold | $239,135 | $268,588 | $272,178 |
| Gross cash proceeds | $104,543 | $ 76,422 | $ 68,099 |
| Carrying value of loans sold | 103,127 | 146,148 | 143,526 |
| Transaction costs incurred | (747) | (640) | (933) |
| Net pre-tax impact on earnings, excluding gain on indemnification asset | $ 669 | $(70,366) | $(76,360) |
| Loss on sale of covered loans | $(29,270) | $(70,366) | $(76,360) |
| Proceeds recorded in interest income | 29,939 | — | — |
| | $ 669 | $(70,366) | $(76,360) |
| Gain on indemnification asset | $ 30,725 | $ 56,053 | $ 57,747 |

For the year ended December 31, 2012, loans with UPB's of $73.1 million were sold from a pool of ACI loans with a zero carrying value. Proceeds of the sale of loans from this pool were recorded in interest income. The loss on the sale of loans from the remaining pools was recorded in "Loss on sale of loans, net" in the accompanying consolidated statements of income. These losses were partly mitigated by increases in the FDIC indemnification asset, reflected in the consolidated statement of income line item "Net gain (loss) on indemnification asset." Reimbursements from the FDIC under the terms of the Loss Sharing Agreements are calculated based on UPB rather than on the carrying value of the loans; therefore the amount of gain on indemnification asset reflected in the table above also includes amounts reimbursable from the FDIC related to loans sold from the pool with a zero carrying value.

The following table presents the components of the net investment in direct financing leases as of December 31, 2012 and 2011 (in thousands):

| | 2012 | 2011 |
|---|---|---|
| Total minimum lease payments to be received | $243,604 | $108,421 |
| Unearned income | (17,624) | (8,241) |
| Initial direct costs | 1,761 | 371 |
| | $227,741 | $100,551 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

As of December 31, 2012, future minimum lease payments to be received under direct financing leases were as follows (in thousands):

| Years Ending December 31: | |
|---|---|
| 2013 | $ 71,894 |
| 2014 | 66,908 |
| 2015 | 41,853 |
| 2016 | 22,192 |
| 2017 | 12,464 |
| Thereafter | 28,293 |
| | $243,604 |

**Allowance for loan and lease losses**

Activity in the ALLL is summarized as follows (in thousands):

| | 2012 | | | |
|---|---|---|---|---|
| | Residential | Commercial | Consumer | Total |
| Beginning balance | $10,175 | $38,176 | $ 51 | $ 48,402 |
| Provision for (recovery of) loan losses: | | | | |
| ACI loans | — | (4,347) | — | (4,347) |
| Non-ACI loans | 6,175 | (2,331) | — | 3,844 |
| New loans | 6,060 | 12,979 | 360 | 19,399 |
| Total provision | 12,235 | 6,301 | 360 | 18,896 |
| Charge-offs: | | | | |
| ACI loans | — | (3,966) | — | (3,966) |
| Non-ACI loans | (3,275) | (316) | — | (3,591) |
| New loans | — | (2,929) | — | (2,929) |
| Total charge-offs | (3,275) | (7,211) | — | (10,486) |
| Recoveries: | | | | |
| Non-ACI loans | 29 | 1,850 | — | 1,879 |
| New loans | — | 427 | 3 | 430 |
| Total recoveries | 29 | 2,277 | 3 | 2,309 |
| Ending balance | $19,164 | $39,543 | $414 | $ 59,121 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

| | 2011 | | | |
|---|---|---|---|---|
| | Residential | Commercial | Consumer | Total |
| Beginning balance | $ 28,649 | $ 29,656 | $55 | $ 58,360 |
| Provision for (recovery of) loan losses: | | | | |
| ACI loans | (18,488) | 7,210 | — | (11,278) |
| Non-ACI loans | (1,491) | 5,077 | — | 3,586 |
| New loans | 3,862 | 17,662 | (4) | 21,520 |
| Total provision | (16,117) | 29,949 | (4) | 13,828 |
| Charge-offs: | | | | |
| ACI loans | — | (13,527) | — | (13,527) |
| Non-ACI loans | (2,377) | (6,112) | — | (8,489) |
| New loans | — | (3,367) | — | (3,367) |
| Total charge-offs | (2,377) | (23,006) | — | (25,383) |
| Recoveries: | | | | |
| ACI loans | — | 1,212 | — | 1,212 |
| Non-ACI loans | 20 | 341 | — | 361 |
| New loans | — | 24 | — | 24 |
| Total recoveries | 20 | 1,577 | — | 1,597 |
| Ending balance | $ 10,175 | $ 38,176 | $51 | $ 48,402 |

| | 2010 | | | |
|---|---|---|---|---|
| | Residential | Commercial | Consumer | Total |
| Beginning balance | $20,220 | $ 2,355 | $ 46 | $ 22,621 |
| Provision for (recovery of) loan losses: | | | | |
| ACI loans | (1,533) | 35,461 | — | 33,928 |
| Non-ACI loans | 10,985 | 1,353 | 215 | 12,553 |
| New loans | 102 | 4,815 | 9 | 4,926 |
| Total provision | 9,554 | 41,629 | 224 | 51,407 |
| Charge-offs: | | | | |
| ACI loans | — | (14,024) | — | (14,024) |
| Non-ACI loans | (1,125) | (195) | (215) | (1,535) |
| New loans | — | (109) | — | (109) |
| Total charge-offs | (1,125) | (14,328) | (215) | (15,668) |
| Recoveries: | — | — | — | — |
| Ending balance | $28,649 | $ 29,656 | $ 55 | $ 58,360 |

The impact of provisions for (recoveries of) losses on covered loans is significantly mitigated by increases (decreases) in the FDIC indemnification asset, recorded in the consolidated statement of income line item "Net gain (loss) on indemnification asset." Increases (decreases) in the FDIC indemnification asset of $0.3 million, ($6.3) million and $29.3 million were reflected in non-interest

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

income for the years ended December 31, 2012, 2011 and 2010, respectively, related to the provision for (recovery of) loan losses on covered loans, including both ACI and non-ACI loans.

The following table presents information about the balance of the ALLL and related loans as of December 31, 2012 and 2011 (in thousands):

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | Residential | Commercial | Consumer | Total | Residential | Commercial | Consumer | Total |
| **Allowance for loan and lease losses:** | | | | | | | | |
| Ending balance | $ 19,164 | $ 39,543 | $ 414 | $ 59,121 | $ 10,175 | $ 38,176 | $ 51 | $ 48,402 |
| Ending balance: non-ACI and new loans individually evaluated for impairment | $ 984 | $ 1,533 | $ — | $ 2,517 | $ 593 | $ — | $ — | $ 593 |
| Ending balance: non-ACI and new loans collectively evaluated for impairment | $ 18,180 | $ 29,991 | $ 414 | $ 48,585 | $ 9,582 | $ 21,844 | $ 51 | $ 31,477 |
| Ending balance: ACI | $ — | $ 8,019 | $ — | $ 8,019 | $ — | $ 16,332 | $ — | $ 16,332 |
| Ending balance: non-ACI | $ 9,071 | $ 803 | $ — | $ 9,874 | $ 6,142 | $ 1,600 | $ — | $ 7,742 |
| Ending balance: new loans | $ 10,093 | $ 30,721 | $ 414 | $ 41,228 | $ 4,033 | $ 20,244 | $ 51 | $ 24,328 |
| **Loans:** | | | | | | | | |
| Ending balance(1) | $2,526,404 | $3,015,942 | $35,765 | $5,578,111 | $2,517,636 | $1,650,518 | $6,309 | $4,174,463 |
| Ending balance: non-ACI and new loans individually evaluated for impairment(1) | $ 5,302 | $ 24,698 | $ — | $ 30,000 | $ 1,937 | $ 6,728 | $ — | $ 8,665 |
| Ending balance: non-ACI and new loans collectively evaluated for impairment(1) | $1,168,494 | $2,724,605 | $33,526 | $3,926,625 | $ 762,268 | $1,297,597 | $3,372 | $2,063,237 |
| Ending balance: ACI loans | $1,352,608 | $ 266,639 | $ 2,239 | $1,621,486 | $1,753,431 | $ 346,193 | $2,937 | $2,102,561 |

(1) Ending balance of loans is before premiums, discounts, deferred fees and costs.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

**Credit quality information—New and non-ACI loans**

The tables below present information about new and non-ACI loans individually evaluated for impairment and identified as impaired as of December 31, 2012 and 2011. Commercial relationships on non-accrual status with internal risk ratings of substandard or doubtful and with committed balances greater than or equal to $500,000 as well as loans that have been modified in troubled debt restructurings are individually evaluated for impairment (in thousands):

| | 2012 | | |
|---|---|---|---|
| | Recorded Investment | Unpaid Principal Balance | Related Specific Allowance |
| **New loans:** | | | |
| With no specific allowance recorded: | | | |
| Multi-family | $ 3,649 | $ 3,649 | $ — |
| Commercial real estate | 1,564 | 1,564 | — |
| Commercial and industrial | 9,858 | 9,860 | — |
| With a specific allowance recorded: | | | |
| Commercial and industrial | 4,377 | 4,381 | 649 |
| Lease financing | 1,677 | 1,677 | 884 |
| Total: | | | |
| Residential | $ — | $ — | $ — |
| Commercial | 21,125 | 21,131 | 1,533 |
| | $21,125 | $21,131 | $1,533 |

| | 2011 | | |
|---|---|---|---|
| | Recorded Investment | Unpaid Principal Balance | Related Specific Allowance |
| **New loans:** | | | |
| With no specific allowance recorded: | | | |
| Construction and land | $ 332 | $ 332 | $— |
| Commercial and industrial | 731 | 731 | — |
| With a specific allowance recorded | — | — | — |
| Total: | | | |
| Residential | $ — | $ — | $— |
| Commercial | 1,063 | 1,063 | — |
| | $1,063 | $1,063 | $— |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

| | 2012 | | |
|---|---|---|---|
| | Recorded Investment | Unpaid Principal Balance | Related Specific Allowance |
| **Non-ACI loans:** | | | |
| With no specific allowance recorded: | | | |
| 1-4 single family residential | $ 375 | $ 446 | $ — |
| Home equity loans and lines of credit | 176 | 179 | — |
| Commercial real estate | 59 | 59 | — |
| Commercial and industrial | 3,506 | 3,508 | — |
| With a specific allowance recorded: | | | |
| 1-4 single family residential | 3,577 | 4,252 | 970 |
| Home equity loans and lines of credit | 417 | 425 | 14 |
| Total: | | | |
| Residential | $4,545 | $5,302 | $984 |
| Commercial | 3,565 | 3,567 | — |
| | $8,110 | $8,869 | $984 |

| | 2011 | | |
|---|---|---|---|
| | Recorded Investment | Unpaid Principal Balance | Related Specific Allowance |
| **Non-ACI loans:** | | | |
| With no specific allowance recorded: | | | |
| Commercial real estate | $ 295 | $ 295 | $ — |
| Commercial and industrial | 5,369 | 5,370 | — |
| With a specific allowance recorded: | | | |
| 1-4 single family residential | 1,521 | 1,937 | 593 |
| Total: | | | |
| Residential | $1,521 | $1,937 | $593 |
| Commercial | 5,664 | 5,665 | — |
| | $7,185 | $7,602 | $593 |

Interest income recognized on impaired loans after impairment was not significant for any of the periods presented.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following table presents the average recorded investment in impaired new and non-ACI loans for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| | New Loans | Non-ACI Loans | New Loans | Non-ACI Loans | New Loans | Non-ACI Loans |
| Residential: | | | | | | |
| 1-4 single family residential | $ — | $2,757 | $ — | $ 577 | $— | $ — |
| Home equity loans and lines of credit | — | 119 | — | — | — | — |
| | — | 2,876 | — | 577 | — | — |
| Commercial: | | | | | | |
| Multi-family | 4,614 | — | — | — | — | — |
| Commercial real estate | 1,291 | 143 | — | 73 | — | 1,051 |
| Construction and land | 190 | 1,074 | 266 | 1,074 | — | — |
| Commercial and industrial | 7,274 | 3,749 | 1,162 | 6,317 | — | 747 |
| Lease financing | 671 | — | — | — | — | — |
| | 14,040 | 4,966 | 1,428 | 7,464 | — | 1,798 |
| | $14,040 | $7,842 | $1,428 | $8,041 | $— | $1,798 |

The following table presents the carrying amount of new and non-ACI loans on non-accrual status as of December 31, 2012 and 2011 (in thousands):

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | New Loans | Non-ACI Loans | New Loans | Non-ACI Loans |
| Residential: | | | | |
| 1-4 single family residential | $ 155 | $ 2,678 | $ — | $ 7,410 |
| Home equity loans and lines of credit | — | 9,767 | 27 | 10,451 |
| | 155 | 12,445 | 27 | 17,861 |
| Commercial: | | | | |
| Commercial real estate | 1,619 | 59 | — | 295 |
| Construction and land | 278 | — | 335 | — |
| Commercial and industrial | 11,907 | 4,530 | 2,469 | 6,695 |
| Lease financing | 1,719 | — | — | — |
| | 15,523 | 4,589 | 2,804 | 6,990 |
| | $15,678 | $17,034 | $2,831 | $24,851 |

New and non-ACI loans contractually delinquent by 90 days or more and still accruing totaled $0.2 million and $0.4 million at December 31, 2012 and 2011, respectively. The amount of additional interest income that would have been recognized on nonaccrual loans and TDRs had they performed in accordance with their contractual terms is not material.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following tables summarize new and non-ACI loans that were modified in TDRs during the years ended December 31, 2012 and 2011 as well as new and non-ACI loans modified during the years ended December 31, 2012 and 2011 that experienced payment defaults during the periods indicated (dollars in thousands):

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | |
| | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment |
| **New loans:** | | | | | | | | |
| Multi-family | 1 | $3,649 | — | $ — | — | $ — | — | $ — |
| Commercial and industrial | 7 | 1,999 | 2 | 594 | 1 | 231 | 1 | 231 |
| | 8 | $5,648 | 2 | $594 | 1 | $231 | 1 | $231 |

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | |
| | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment |
| **Non-ACI loans:** | | | | | | | | |
| 1-4 single family residential | 5 | $2,428 | 2 | $1,139 | 11 | $1,521 | 5 | $ 938 |
| Commercial real estate | — | — | — | — | 2 | 295 | 2 | 295 |
| Commercial and industrial | 1 | 9 | — | — | 3 | 71 | 3 | 71 |
| | 6 | $2,437 | 2 | $1,139 | 16 | $1,887 | 10 | $1,304 |

New and non-ACI loans modified in TDRs during the year ended December 31, 2010 were de-minimis. Modifications during the years ended December 31, 2012 and 2011 included restructuring of the amount and timing of required periodic payments, modifications of interest rates, extensions of maturity and residential modifications under the U.S. Treasury Department's Home Affordable Modification Program ("HAMP"). Included in TDRs are loans to consumer borrowers who have not reaffirmed their debt discharged in Chapter 7 bankruptcy. The total amount of such loans is not significant. Because of the immateriality of the amount of loans modified in TDRs and nature of the modifications, the modifications did not have a material impact on the Company's consolidated financial statements or on the determination of the amount of the ALLL for the years ended December 31, 2012, 2011 and 2010.

Management considers delinquency status to be the most meaningful indicator of the credit quality of 1-4 single family residential, home equity and consumer loans. Delinquency statistics are updated at least monthly. Original loan to value ratio ("LTV") and original FICO score are also important indicators of credit quality for the new 1-4 single family residential portfolio.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

Internal risk ratings are considered the most meaningful indicator of credit quality for commercial loans. Internal risk ratings are a key factor in identifying loans that are individually evaluated for impairment and impact management's estimates of loss factors used in determining the amount of the ALLL. Internal risk ratings are updated on a continuous basis. Relationships with balances in excess of $250,000 are re-evaluated at least annually and more frequently if circumstances indicate that a change in risk rating may be warranted. Loans exhibiting potential credit weaknesses that deserve management's close attention and that if left uncorrected may result in deterioration of the repayment capacity of the borrower are categorized as special mention. Loans with well-defined credit weaknesses, including payment defaults, declining collateral values, frequent overdrafts, operating losses, increasing balance sheet leverage, inadequate cash flow, project cost overruns, unreasonable construction delays, past due real estate taxes or exhausted interest reserves, are assigned an internal risk rating of substandard. A loan with a weakness so severe that collection in full is highly questionable or improbable will be assigned an internal risk rating of doubtful.

The following tables summarize key indicators of credit quality for the Company's new and non-ACI loans as of December 31, 2012 and December 31, 2011. Amounts are net of premiums, discounts, deferred fees and costs (in thousands):

**Residential credit exposure, based on delinquency status:**

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | 1-4 Single Family Residential | Home Equity Loans and Lines of Credit | 1-4 Single Family Residential | Home Equity Loans and Lines of Credit |
| **New loans:** | | | | |
| Current | $927,859 | $ 1,811 | $450,661 | $ 1,996 |
| Past due less than 90 days | 7,619 | 143 | 15,932 | 14 |
| Past due 90 days or more | 193 | — | — | 27 |
| | $935,671 | $ 1,954 | $466,593 | $ 2,037 |
| **Non-ACI loans:** | | | | |
| Current | $ 71,096 | $140,975 | $ 83,075 | $164,367 |
| Past due less than 90 days | 5,057 | 4,005 | 2,972 | 6,807 |
| Past due 90 days or more | 2,431 | 9,767 | 6,624 | 7,825 |
| | $ 78,584 | $154,747 | $ 92,671 | $178,999 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

**1-4 single family residential credit exposure, based on original LTV and FICO score:**

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | FICO | | | | FICO | | | |
| LTV | 740 or less | 741 - 760 | 761 or greater | Total | 740 or less | 741 - 760 | 761 or greater | Total |
| 60% or less | $ 62,433 | $ 35,761 | $217,249 | $315,443 | $ 31,676 | $17,759 | $101,342 | $150,777 |
| 60% - 70% | 29,138 | 41,863 | 159,068 | 230,069 | 27,524 | 15,371 | 72,763 | 115,658 |
| 70% - 80% | 55,319 | 54,367 | 256,605 | 366,291 | 26,471 | 26,676 | 112,961 | 166,108 |
| 80% or more | 18,327 | 1,200 | 4,341 | 23,868 | 15,794 | 5,666 | 12,590 | 34,050 |
| | $165,217 | $133,191 | $637,263 | $935,671 | $101,465 | $65,472 | $299,656 | $466,593 |

**Consumer credit exposure, based on delinquency status:**

| | 2012 | 2011 |
|---|---|---|
| **New loans:** | | |
| Current | $33,488 | $3,387 |
| Past due less than 90 days | 54 | 10 |
| | $33,542 | $3,397 |

**Commercial credit exposure, based on internal risk rating:**

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Multi-Family | Commercial Real Estate | Construction and Land | Commercial and Industrial | Lease Financing |
| **New loans:** | | | | | |
| Pass | $299,303 | $789,017 | $71,724 | $1,274,595 | $226,022 |
| Special mention | 3,110 | — | — | 18,249 | — |
| Substandard | 4,068 | 4,033 | 278 | 38,837 | 1,719 |
| Doubtful | — | 55 | — | 1,100 | — |
| | $306,481 | $793,105 | $72,002 | $1,332,781 | $227,741 |
| **Non-ACI loans:** | | | | | |
| Pass | $ 703 | $ 851 | $ 775 | $ 6,674 | $ — |
| Substandard | 9 | 59 | — | 3,882 | — |
| Doubtful | — | — | — | 692 | — |
| | $ 712 | $ 910 | $ 775 | $ 11,248 | $ — |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Multi-Family | Commercial Real Estate | Construction and Land | Commercial and Industrial | Lease Financing |
| **New loans:** | | | | | |
| Pass | $106,010 | $302,278 | $30,201 | $677,661 | $100,408 |
| Special mention | 1,000 | 5,300 | — | 1,440 | — |
| Substandard | 913 | 2,430 | 335 | 8,963 | 143 |
| Doubtful | — | — | — | 918 | — |
| | $107,923 | $310,008 | $30,536 | $688,982 | $100,551 |
| **Non-ACI loans:** | | | | | |
| Pass | $ 757 | $ 32,096 | $ — | $ 10,550 | $ — |
| Special mention | — | 287 | — | 1,752 | — |
| Substandard | 17 | 295 | 164 | 6,662 | — |
| Doubtful | — | — | — | 220 | — |
| | $ 774 | $ 32,678 | $ 164 | $ 19,184 | $ — |

The following table presents an aging of loans in the new and non-ACI portfolios as of December 31, 2012 and 2011. Amounts are net of premiums, discounts, deferred fees and costs (in thousands):

| | 2012 | | | | | 2011 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Current | 30 - 59 Days Past Due | 60 - 89 Days Past Due | 90 Days or More Past Due or in Foreclosure | Total | Current | 30 - 59 Days Past Due | 60 - 89 Days Past Due | 90 Days or More Past Due or in Foreclosure | Total |
| **New loans:** | | | | | | | | | | |
| 1-4 single family residential | $ 927,859 | $ 7,458 | $ 161 | $ 193 | $ 935,671 | $ 450,661 | $15,790 | $ 142 | $ — | $ 466,593 |
| Home equity loans and lines of credit | 1,811 | 143 | — | — | 1,954 | 1,996 | 14 | — | 27 | 2,037 |
| Multi-family | 306,481 | — | — | — | 306,481 | 107,010 | 913 | — | — | 107,923 |
| Commercial real estate | 793,105 | — | — | — | 793,105 | 310,008 | — | — | — | 310,008 |
| Construction and land | 72,002 | — | — | — | 72,002 | 30,201 | — | — | 335 | 30,536 |
| Commercial and industrial | 1,322,937 | 7,147 | 192 | 2,505 | 1,332,781 | 687,128 | 281 | 307 | 1,266 | 688,982 |
| Lease financing | 227,741 | — | — | — | 227,741 | 100,483 | 68 | — | — | 100,551 |
| Consumer | 33,488 | 9 | 45 | — | 33,542 | 3,387 | 10 | — | — | 3,397 |
| | $3,685,424 | $14,757 | $ 398 | $ 2,698 | $3,703,277 | $1,690,874 | $17,076 | $ 449 | $ 1,628 | $1,710,027 |
| **Non-ACI loans:** | | | | | | | | | | |
| 1-4 single family residential | $ 71,096 | $ 4,448 | $ 609 | $ 2,431 | $ 78,584 | $ 83,075 | $ 1,812 | $1,160 | $ 6,624 | $ 92,671 |
| Home equity loans and lines of credit | 140,975 | 2,170 | 1,835 | 9,767 | 154,747 | 164,367 | 4,181 | 2,626 | 7,825 | 178,999 |
| Multi-family | 712 | — | — | — | 712 | 774 | — | — | — | 774 |
| Commercial real estate | 910 | — | — | — | 910 | 32,383 | — | — | 295 | 32,678 |
| Construction and land | 775 | — | — | — | 775 | 164 | — | — | — | 164 |
| Commercial and industrial | 7,164 | 27 | 12 | 4,045 | 11,248 | 13,318 | 109 | — | 5,757 | 19,184 |
| | $ 221,632 | $ 6,645 | $2,456 | $16,243 | $ 246,976 | $ 294,081 | $ 6,102 | $3,786 | $20,501 | $ 324,470 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

**ACI Loans**

The accretable yield on ACI loans represents the amount by which undiscounted expected future cash flows exceed carrying value. Changes in the accretable yield on ACI loans for the years ended December 31, 2012, 2011 and 2010 were as follows (in thousands):

| | |
|---|---|
| Balance, December 31, 2009 | $1,734,233 |
| Reclassifications from non-accretable difference | 487,718 |
| Accretion | (387,977) |
| Balance, December 31, 2010 | 1,833,974 |
| Reclassifications from non-accretable difference | 135,933 |
| Accretion | (446,292) |
| Balance, December 31, 2011 | 1,523,615 |
| Reclassifications from non-accretable difference | 206,934 |
| Accretion | (444,483) |
| Balance, December 31, 2012 | $1,286,066 |

Accretable yield at December 31, 2012 included expected cash flows of $105.6 million from a pool of 1-4 single family residential loans whose carrying value had been reduced to zero. The UPB of loans remaining in this pool was $213.9 million at December 31, 2012.

**Credit quality information—ACI loans**

ACI loans or loan pools are considered to be impaired when there has been further deterioration in the cash flows expected at acquisition plus any additional cash flows expected to be collected arising from changes in estimates after acquisition, other than due to decreases in interest rate indices and changes in prepayment assumptions. Discount continues to be accreted on ACI loans or pools as long as there are expected future cash flows in excess of the current carrying amount; therefore, these loans are not classified as non-accrual even though they may be contractually delinquent. ACI 1-4 single family residential and home equity loans accounted for in pools are evaluated for impairment on a pool basis and the amount of any impairment is measured based on the expected aggregate cash flows of the pools. ACI commercial and commercial real estate loans are evaluated individually for impairment.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The tables below set forth at December 31, 2012 and 2011 the carrying amount of ACI loans or pools for which the Company has determined it is probable that it will be unable to collect all the cash flows expected at acquisition plus additional cash flows expected to be collected arising from changes in estimates after acquisition, if any, as well as ACI loans not accounted for in pools that have been modified in troubled debt restructurings, and the related allowance amounts (in thousands):

| | 2012 | | |
|---|---|---|---|
| | Recorded Investment in Impaired Loans or Pools | Unpaid Principal Balance | Related Specific Allowance |
| With no specific allowance recorded: | | | |
| Commercial real estate | $ 104 | $ 171 | $ — |
| Construction and land | 512 | 669 | — |
| Commercial and industrial | 188 | 188 | — |
| With a specific allowance recorded: | | | |
| Multi-family | 6,626 | 7,043 | 504 |
| Commercial real estate | 23,696 | 27,357 | 5,400 |
| Construction and land | 4,874 | 6,567 | 350 |
| Commercial and industrial | 7,580 | 7,959 | 1,765 |
| Total: | | | |
| Residential | $ — | $ — | $ — |
| Commercial | 43,580 | 49,954 | 8,019 |
| | $43,580 | $49,954 | $8,019 |

| | 2011 | | |
|---|---|---|---|
| | Recorded Investment in Impaired Loans or Pools | Unpaid Principal Balance | Related Allowance |
| With no specific allowance recorded: | | | |
| Construction and land | $ 435 | $ 751 | $ — |
| With a specific allowance recorded: | | | |
| Multi-family | 11,144 | 13,497 | 1,063 |
| Commercial real estate | 49,876 | 67,698 | 10,672 |
| Construction and land | 16,167 | 25,516 | 2,310 |
| Commercial and industrial | 16,914 | 18,444 | 2,287 |
| Total: | | | |
| Residential | $ — | $ — | $ — |
| Commercial | 94,536 | 125,906 | 16,332 |
| | $94,536 | $125,906 | $16,332 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following table presents the average recorded investment in impaired ACI loans or pools for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Residential: | | | |
| 1-4 single family residential | $ — | $ — | $139,871 |
| Home equity loans and lines of credit | — | 45,947 | 47,888 |
| | — | 45,947 | 187,759 |
| Commercial: | | | |
| Multi-family | 11,936 | 29,606 | 24,997 |
| Commercial real estate | 41,952 | 61,291 | 55,459 |
| Construction and land | 12,482 | 25,729 | 16,548 |
| Commercial and industrial | 12,825 | 23,877 | 14,430 |
| | 79,195 | 140,503 | 111,434 |
| | $79,195 | $186,450 | $299,193 |

The following table summarizes ACI loans that were modified in TDRs during the years ended December 31, 2012 and 2011 (dollars in thousands):

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | | Loans Modified in TDRs During the Period | | TDRs Experiencing Payment Defaults During the Period | |
| | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment | Number of TDRs | Recorded Investment |
| Commercial real estate | 3 | $242 | 1 | $ 9 | 3 | $ 917 | 1 | $197 |
| Construction and land | — | — | — | — | 1 | 435 | 2 | 435 |
| Commercial and industrial | 3 | 261 | 1 | 188 | — | — | — | — |
| | 6 | $503 | 2 | $197 | 4 | $1,352 | 3 | $632 |

During the year ended December 31, 2010, three ACI commercial and commercial real estate credit relationships were the subject of troubled debt restructurings. These loans had an aggregate carrying amount of $2.4 million at December 31, 2010 and did not experience payment defaults during the period.

Modifications during the years ended December 31, 2012, 2011 and 2010 included extensions of maturity, restructurings of the amount and timing of payments, modifications of interest rates, and partial forgiveness of principal. Modified ACI loans accounted for in pools are not considered TDRs, are not separated from the pools and are not classified as impaired loans.

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following tables summarize key indicators of credit quality for the Company's ACI loans as of December 31, 2012 and 2011 (in thousands):

**Residential credit exposure, based on delinquency status:**

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | 1-4 Single Family Residential | Home Equity Loans and Lines of Credit | 1-4 Single Family Residential | Home Equity Loans and Lines of Credit |
| Current | $1,093,363 | $43,226 | $1,278,887 | $57,290 |
| Past due less than 90 days | 63,435 | 1,818 | 92,215 | 3,327 |
| Past due 90 days or more | 143,311 | 7,455 | 310,764 | 10,948 |
| | $1,300,109 | $52,499 | $1,681,866 | $71,565 |

**Consumer credit exposure, based on delinquency status:**

| | 2012 | 2011 |
|---|---|---|
| Current | $2,190 | $2,866 |
| Past due less than 90 days | 17 | 33 |
| Past due 90 days or more | 32 | 38 |
| | $2,239 | $2,937 |

**Commercial credit exposure, based on internal risk rating:**

| | 2012 | | | |
|---|---|---|---|---|
| | Multi-Family | Commercial Real Estate | Construction and Land | Commercial and Industrial |
| Pass | $36,068 | $118,397 | $ 6,937 | $ 6,183 |
| Special mention | 381 | 4,615 | — | — |
| Substandard | 19,699 | 54,794 | 11,127 | 8,198 |
| Doubtful | — | 13 | — | 227 |
| | $56,148 | $177,819 | $18,064 | $14,608 |

| | 2011 | | | |
|---|---|---|---|---|
| | Multi-Family | Commercial Real Estate | Construction and Land | Commercial and Industrial |
| Pass | $34,593 | $128,762 | $15,612 | $12,657 |
| Special mention | 2,074 | 10,857 | — | 171 |
| Substandard | 24,524 | 83,681 | 21,508 | 10,374 |
| Doubtful | 519 | 56 | — | 805 |
| | $61,710 | $223,356 | $37,120 | $24,007 |

**Note 5 Loans and Allowance for Loan and Lease Losses (Continued)**

The following table presents an aging of loans in the ACI portfolio as of December 31, 2012 and 2011 (in thousands):

| | 2012 | | | | | 2011 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Current | 30 - 59 Days Past Due | 60 - 89 Days Past Due | 90 Days or More Past Due or in Foreclosure | Total | Current | 30 - 59 Days Past Due | 60 - 89 Days Past Due | 90 Days or More Past Due or in Foreclosure | Total |
| 1-4 single family residential | $1,093,363 | $47,529 | $15,906 | $143,311 | $1,300,109 | $1,278,887 | $66,767 | $25,448 | $310,764 | $1,681,866 |
| Home equity loans and lines of credit | 43,226 | 1,254 | 564 | 7,455 | 52,499 | 57,290 | 2,500 | 827 | 10,948 | 71,565 |
| Multi-family | 47,474 | 45 | — | 8,629 | 56,148 | 49,116 | — | 674 | 11,920 | 61,710 |
| Commercial real estate | 171,908 | 2,075 | 447 | 3,389 | 177,819 | 212,253 | 1,292 | 459 | 9,352 | 223,356 |
| Construction and land | 9,257 | — | — | 8,807 | 18,064 | 25,031 | — | — | 12,089 | 37,120 |
| Commercial and industrial | 7,762 | 1,951 | 17 | 4,878 | 14,608 | 17,678 | 62 | 223 | 6,044 | 24,007 |
| Consumer | 2,190 | 10 | 7 | 32 | 2,239 | 2,866 | 25 | 8 | 38 | 2,937 |
| | $1,375,180 | $52,864 | $16,941 | $176,501 | $1,621,486 | $1,643,121 | $70,646 | $27,639 | $361,155 | $2,102,561 |

1-4 single family residential and home equity ACI loans that are contractually delinquent by more than 90 days and accounted for in pools that are on accrual status because discount continues to be accreted totaled $150.8 million and $321.7 million at December 31, 2012 and 2011, respectively. The carrying amount of commercial and commercial real estate ACI loans that are contractually delinquent in excess of ninety days but still classified as accruing loans due to discount accretion totaled $25.7 million and $39.4 million at December 31, 2012 and 2011, respectively.

**Note 6 FDIC Indemnification Asset**

The FDIC indemnification asset represents the present value of estimated future payments to be received from the FDIC under the terms of the Loss Sharing Agreements.

When the Company recognizes gains or losses related to covered assets in its consolidated financial statements, changes in the estimated amount recoverable from the FDIC under the Loss Sharing Agreements with respect to those gains or losses are also reflected in the consolidated financial statements. Covered loans may be resolved through prepayment, short sale of the underlying collateral, foreclosure, sale of the loans or, for the non-residential portfolio, charge-off. For loans resolved through prepayment, short sale or foreclosure, the difference between consideration received in satisfaction of the loans and the carrying value of the loans is recognized in the statement of income line item "Income from resolution of covered assets, net." Losses from the resolution of covered loans increase the amount recoverable from the FDIC under the Loss Sharing Agreements. Gains from the resolution of covered loans reduce the amount recoverable from the FDIC under the Loss Sharing Agreements. Similarly, differences in proceeds received on the sale of OREO and covered loans and their carrying amounts result in gains or losses and reduce or increase the amount recoverable from the FDIC under the Loss Sharing Agreements. Increases in valuation allowances or impairment charges related to covered assets also increase the amount estimated to be recoverable from the FDIC. These additions to or reductions in amounts recoverable from the FDIC related to the resolution of covered

**Note 6 FDIC Indemnification Asset (Continued)**

assets are recorded in the statement of income line item "Net gain (loss) on indemnification asset" and reflected as corresponding increases or decreases in the FDIC indemnification asset.

The following table summarizes the components of the gains and losses associated with covered assets, along with the related additions to or reductions in the amounts recoverable from the FDIC under the Loss Sharing Agreements, as reflected in the consolidated statements of income for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | | |
|---|---|---|---|
| | Transaction Income (Loss) | Net Gain (Loss) on Indemnification Asset | Net Impact on Pre-tax Earnings |
| Recovery of losses on covered loans | $ 503 | $ 344 | $ 847 |
| Income from resolution of covered assets, net | 51,016 | (41,962) | 9,054 |
| Net loss on sale of covered loans | (29,270) | 30,725 | 1,455 |
| Gain on sale of OREO | 4,164 | (3,078) | 1,086 |
| Impairment of OREO | (9,926) | 7,941 | (1,985) |
| | $ 16,487 | $ (6,030) | $10,457 |
| | **2011** | | |
| | Transaction Income (Loss) | Net Gain (Loss) on Indemnification Asset | Net Impact on Pre-tax Earnings |
| Recovery of losses on covered loans | $ 7,692 | $ (6,327) | $ 1,365 |
| Income from resolution of covered assets, net | 18,776 | (6,871) | 11,905 |
| Net loss on sale of covered loans | (70,366) | 56,053 | (14,313) |
| Loss on sale of OREO | (23,576) | 17,272 | (6,304) |
| Impairment of OREO | (24,569) | 19,685 | (4,884) |
| | $(92,043) | $79,812 | $(12,231) |
| | **2010** | | |
| | Transaction Income (Loss) | Net Gain (Loss) on Indemnification Asset | Net Impact on Pre-tax Earnings |
| Provision for losses on covered loans | $ (46,481) | $ 29,291 | $(17,190) |
| Income from resolution of covered assets, net | 121,462 | (84,138) | 37,324 |
| Net loss on sale of covered loans | (76,360) | 57,747 | (18,613) |
| Loss on sale of OREO | (2,174) | 1,932 | (242) |
| Impairment of OREO | (16,131) | 12,904 | (3,227) |
| | $ (19,684) | $ 17,736 | $ (1,948) |

**Note 6 FDIC Indemnification Asset (Continued)**

In addition to the loss on sale of covered loans reflected in the tables above, the consolidated statement of income line item "Loss on sale of loans, net" includes approximately $613 thousand, $652 thousand and $50 thousand of gains on the sale of loans held for sale for the years ended December 31, 2012, 2011 and 2010, respectively. These transactions are not subject to the Loss Sharing Agreements.

Changes in the FDIC indemnification asset for the years ended December 31, 2012, 2011 and 2010 were as follows (in thousands):

| | |
|---|---|
| Balance, December 31, 2009 | $3,279,165 |
| Accretion | 134,703 |
| Reduction for claims filed | (764,203) |
| Net gain on indemnification asset | 17,736 |
| Balance, December 31, 2010 | 2,667,401 |
| Accretion | 55,901 |
| Reduction for claims filed | (753,963) |
| Net gain on indemnification asset | 79,812 |
| Balance, December 31, 2011 | 2,049,151 |
| Accretion | 15,306 |
| Reduction for claims filed | (600,857) |
| Net loss on indemnification asset | (6,030) |
| Balance, December 31, 2012 | $1,457,570 |

Under the terms of the Loss Sharing Agreements, the Company is also entitled to reimbursement from the FDIC for certain expenses related to covered assets upon final resolution of those assets. For the years ended December 31, 2012, 2011 and 2010, non-interest expense includes approximately $20.3 million, $32.0 million, and $49.7 million, respectively, of expenses subject to reimbursement at the 80% level under the Loss Sharing Agreements. For those same periods, claims of $19.6 million, $31.5 million, and $29.8 million, respectively, were submitted to the FDIC for reimbursement. As of December 31, 2012, $16.9 million of expenses remained to be submitted for reimbursement from the FDIC in future periods as the related covered assets are resolved.

**Note 7 Other Real Estate Owned**

At December 31, 2012 all of the Company's OREO was covered under the Loss Sharing Agreements. An analysis of OREO activity for the years ended December 31, 2012, 2011 and 2010 follows (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Balance, beginning of period | $ 123,737 | $ 206,680 | $ 120,110 |
| Transfers from loan portfolio | 151,302 | 312,958 | 392,233 |
| Sales | (189,091) | (371,332) | (289,532) |
| Impairment | (9,926) | (24,569) | (16,131) |
| Balance, end of period | $ 76,022 | $ 123,737 | $ 206,680 |

## Note 8 Equipment Under Operating Lease

Equipment under operating lease is included in other assets in the accompanying consolidated balance sheets. The components of equipment under operating lease as of December 31, 2012 are summarized as follows (in thousands):

| | |
|---|---|
| Equipment under operating lease | $39,154 |
| Less: accumulated depreciation | (422) |
| Equipment under operating lease, net | $38,732 |

There was no equipment under operating lease at December 31, 2011.

At December 31, 2012, scheduled minimum rental payments under operating leases were as follows (in thousands):

| | |
|---|---|
| Years Ending December 31: | |
| 2013 | $ 3,165 |
| 2014 | 3,165 |
| 2015 | 3,165 |
| 2016 | 3,165 |
| 2017 | 2,594 |
| Thereafter through 2019 | 2,244 |
| | $17,498 |

## Note 9 Premises and Equipment and Lease Commitments

Premises and equipment are included in other assets in the accompanying consolidated balance sheets and are summarized as follows as of December 31, 2012 and 2011 (in thousands):

| | 2012 | 2011 |
|---|---|---|
| Branch buildings and improvements | $ 17,440 | $ 11,588 |
| Leasehold improvements | 30,491 | 13,090 |
| Construction in progress | 7,816 | 11,528 |
| Furniture, fixtures and equipment | 25,644 | 18,031 |
| Computer equipment | 10,356 | 7,173 |
| Software and software licensing rights | 22,363 | 20,824 |
| | 114,110 | 82,234 |
| Less: accumulated depreciation | (25,507) | (11,634) |
| Premises and equipment, net | $ 88,603 | $ 70,600 |

Depreciation and amortization expense related to premises and equipment was $14.0 million, $7.6 million and $3.1 million for the years ended December 31, 2012, 2011 and 2010, respectively.

**Note 9 Premises and Equipment and Lease Commitments (Continued)**

The Company leases branch and office facilities under operating leases, most of which contain renewal options under various terms. Total rent expense under operating leases for the years ended December 31, 2012, 2011 and 2010 was $23.3 million, $14.9 million and $12.8 million, respectively.

As of December 31, 2012, future minimum rentals under non-cancelable operating leases with initial or remaining terms in excess of one year were as follows (in thousands):

| | |
|---|---|
| Years ending December 31, | |
| 2013 | $ 20,612 |
| 2014 | 19,386 |
| 2015 | 16,992 |
| 2016 | 16,054 |
| 2017 | 15,988 |
| Thereafter through 2033 | 90,783 |
| | $179,815 |

**Note 10 Goodwill and Other Intangible Assets**

Goodwill and other intangible assets consisted of the following at December 31, 2012 and 2011 (in thousands):

| | 2012 | 2011 |
|---|---|---|
| Indefinite lived intangible assets: | | |
| Goodwill | $67,231 | $67,231 |
| Intangible assets with determinable useful lives: | | |
| Core deposit intangible | 3,580 | 1,799 |
| Customer relationship intangible | 442 | 442 |
| | 4,022 | 2,241 |
| Accumulated amortization | (1,485) | (805) |
| | 2,537 | 1,436 |
| Goodwill and other intangible assets, net | $69,768 | $68,667 |

The core deposit intangible is being amortized over a period of approximately 6 years and the customer relationship intangible is being amortized over a period of approximately 10 years. Amortization expense was $680 thousand, $344 thousand and $292 thousand for the years ended December 31, 2012, 2011 and 2010, respectively.

**Note 10 Goodwill and Other Intangible Assets (Continued)**

The following table presents the future expected amortization of intangible assets with determinable useful lives (in thousands):

| | |
|---|---|
| Years Ending December 31: | |
| 2013 | $ 701 |
| 2014 | 654 |
| 2015 | 490 |
| 2016 | 283 |
| 2017 | 251 |
| Thereafter | 158 |
| | $2,537 |

**Note 11 Deposits**

The following table presents average balances and weighted average rates paid on deposits for the years ended December 31, 2012, 2011 and 2010 (dollars in thousands):

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| | Average Balance | Average Rate Paid | Average Balance | Average Rate Paid | Average Balance | Average Rate Paid |
| Demand deposits: | | | | | | |
| Non-interest bearing | $1,099,448 | 0.00% | $ 622,377 | 0.00% | $ 440,673 | 0.00% |
| Interest bearing | 504,614 | 0.63% | 382,329 | 0.65% | 273,897 | 0.72% |
| Money market | 2,838,735 | 0.63% | 2,165,230 | 0.88% | 1,667,277 | 1.20% |
| Savings | 1,073,709 | 0.58% | 1,201,236 | 0.83% | 1,203,491 | 1.18% |
| Time | 2,632,451 | 1.48% | 2,585,201 | 1.71% | 3,889,961 | 1.85% |
| | $8,148,957 | 0.81% | $6,956,373 | 1.09% | $7,475,299 | 1.45% |

Time deposit accounts with balances of $100,000 or more totaled approximately $1.5 billion and $1.3 billion at December 31, 2012 and 2011, respectively. Time deposit accounts with balances of $250,000 or more totaled $539.7 million and $428.4 million at December 31, 2012 and 2011, respectively. The following table presents maturities of time deposits with balances equal to or greater than $100,000 as of December 31, 2012 (in thousands):

| | |
|---|---|
| Three months or less | $ 330,871 |
| Over three through six months | 281,258 |
| Over six through twelve months | 536,000 |
| Over twelve months | 383,791 |
| | $1,531,920 |

Included in deposits at December 31, 2012 are $200.0 million of time deposits issued to the State of Florida and $215.4 million of other public funds deposits. Investment securities available for sale

**Note 11 Deposits (Continued)**

with a carrying value of $138.2 million were pledged as security for these deposits at December 31, 2012.

Interest expense on deposits for the years ended December 31, 2012, 2011 and 2010 was as follows (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Interest bearing demand | $ 3,155 | $ 2,499 | $ 1,981 |
| Money market | 17,878 | 19,020 | 19,999 |
| Savings | 6,215 | 10,006 | 14,243 |
| Time | 38,930 | 44,248 | 72,121 |
| | $66,178 | $75,773 | $108,344 |

Interest expense on time deposits has been reduced by amortization of purchase accounting fair value adjustments of $473.0 thousand, $7.0 million and $21.4 million for the years ended December 31, 2012, 2011 and 2010, respectively.

**Note 12 Short-Term Borrowings**

The following table sets forth information about short-term borrowings, consisting of securities sold under agreements to repurchase, overnight FHLB advances and federal funds purchased for the years ended December 31, 2012, 2011 and 2010 (dollars in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Maximum outstanding at any month-end | $52,126 | $2,165 | $17,459 |
| Balance outstanding at end of period | $ 8,175 | $ 206 | $ 492 |
| Average outstanding during the period | $12,435 | $1,333 | $ 7,812 |
| Average interest rate during the period | 0.41% | 0.48% | 0.92% |
| Average interest rate at end of period | 0.49% | 0.50% | 0.43% |

As of December 31, 2012 and 2011, the Company had pledged securities with a carrying value of approximately $24.4 million and $25.0 million, respectively, as collateral for securities sold under agreements to repurchase.

As of December 31, 2012, BankUnited and Herald had unused borrowing capacity at the Federal Reserve Bank of approximately $107.9 million and $9.7 million, respectively, and unused Federal funds lines of credit with other financial institutions totaling $85.0 million and $6.0 million, respectively.

## Note 13 Federal Home Loan Bank Advances

Information about outstanding FHLB advances as of December 31, 2012 follows (dollars in thousands):

| | Amount | Range of Interest Rates Minimum | Range of Interest Rates Maximum | Weighted Average Rate |
|---|---|---|---|---|
| Maturing in: | | | | |
| 2013 | $1,285,000 | 0.18% | 4.77% | 1.59% |
| 2014 | 405,000 | 0.36% | 0.71% | 0.55% |
| 2015 | 125,350 | 0.00% | 0.79% | 0.74% |
| 2017 | 105,000 | 0.95% | 0.98% | 0.97% |
| Total contractual balance outstanding | 1,920,350 | | | |
| Acquisition accounting fair value adjustment and unamortized modification costs | (3,431) | | | |
| Carrying value | $1,916,919 | | | |

Acquisition accounting fair value adjustments and deferred modification costs are being amortized as adjustments to interest expense over the remaining terms of the related advances using the effective yield method. Amortization reduced interest expense by $14.8 million, $19.1 million and $23.9 million during the years ended December 31, 2012, 2011 and 2010, respectively.

During 2012, the Company modified FHLB advances with an outstanding balance of $105 million, extending the maturity and reducing the rate on the advances and incurring modification fees of $5.3 million. Additionally, during the year ended December 31, 2012, the Company elected to prepay $520 million of FHLB advances with a carrying value of $524.1 million for an aggregate cash payment of $538.3 million. The Company recorded a loss of $14.2 million on this extinguishment of debt.

The terms of the Company's security agreement with the FHLB require a specific assignment of collateral consisting of qualifying first mortgage loans, commercial real estate loans, home equity lines of credit and mortgage-backed securities with unpaid principal amounts discounted at various stipulated percentages at least equal to 100% of outstanding FHLB advances. As of December 31, 2012, the Company had pledged investment securities and real estate loans with an aggregate carrying amount of approximately $3.2 billion as collateral for advances from the FHLB.

At December 31, 2012, BankUnited and Herald had available borrowing capacity at the Federal Home Loan Banks of Atlanta and New York of approximately $1.3 billion and $26.6 million, respectively.

## Note 14 Income Taxes

The components of the provision for income taxes for the years ended December 31, 2012, 2011 and 2010 were as follows (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Current: | | | |
| Federal | $170,973 | $115,127 | $ 96,722 |
| State | 34,860 | 29,558 | 6,995 |
| | 205,833 | 144,685 | 103,717 |
| Deferred: | | | |
| Federal | (60,985) | (9,322) | 20,987 |
| State | (11,243) | (5,787) | 3,101 |
| | (72,228) | (15,109) | 24,088 |
| | $133,605 | $129,576 | $127,805 |

A reconciliation of expected income tax expense at the statutory federal income tax rate of 35% to the Company's actual income tax expense and effective tax rate for the years ended December 31, 2012, 2011 and 2010 follows (dollars in thousands):

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| | Amount | Percent | Amount | Percent | Amount | Percent |
| Tax expense calculated at the statutory federal income tax rate | $120,703 | 35.00% | $ 67,460 | 35.00% | $109,389 | 35.00% |
| Increases (decreases) resulting from: | | | | | | |
| State income taxes, net of federal tax benefit | 12,967 | 3.76% | 7,007 | 3.64% | 7,464 | 2.39% |
| Non-deductible equity based compensation | 3,624 | 1.05% | 47,023 | 24.40% | 12,660 | 4.05% |
| Uncertain state tax positions | 2,870 | 0.83% | 12,757 | 6.62% | 1,601 | 0.51% |
| Other, net | (6,559) | (1.90)% | (4,671) | (2.43)% | (3,309) | (1.06)% |
| | $133,605 | 38.74% | $129,576 | 67.23% | $127,805 | 40.89% |

**Note 14 Income Taxes (Continued)**

The components of deferred tax assets and liabilities at December 31, 2012 and 2011 were as follows (in thousands):

| | 2012 | 2011 |
|---|---|---|
| Deferred tax assets: | | |
| Excess of tax basis over carrying value of acquired loans | $290,735 | $301,518 |
| Excess of carrying value over tax basis of FHLB advances and time deposits assumed | — | 8,024 |
| Allowance for loan and lease losses | 22,743 | 18,371 |
| Acquisition costs | 12,969 | 12,471 |
| Warrant issued to the FDIC | — | 7,126 |
| OREO | 4,540 | 6,805 |
| Acquired net operating loss carryforward | 7,636 | — |
| Equity based compensation | 4,411 | 4,207 |
| Unrealized losses on derivatives designated as cash flow hedges | 18,603 | 23,331 |
| Other | 12,182 | 7,345 |
| Gross deferred tax assets | 373,819 | 389,198 |
| Deferred tax liabilities: | | |
| Deferred tax gain resulting from the FSB Acquisition | 216,632 | 320,152 |
| Net unrealized gains on investment securities available for sale | 71,290 | 34,588 |
| Premises and equipment, due to differences in depreciation | 20,931 | 13,840 |
| Other | 2,692 | 1,133 |
| Gross deferred tax liabilities | 311,545 | 369,713 |
| Net deferred tax asset | $ 62,274 | $ 19,485 |

In evaluating whether a valuation allowance is required related to deferred tax assets, the Company considers all available evidence, both positive and negative, based on the more-likely-than-not criteria that such assets will be realized. This evaluation includes but is not limited to (1) available carryback potential to prior tax years, (2) future taxable income that will result from reversal of existing taxable temporary differences, which are expected to have a reversal pattern generally consistent with deferred tax assets, (3) potential tax planning strategies and (4) projected future taxable income. Based on this evaluation, management has concluded that it is more likely than not that the existing deferred tax assets will be realized. The primary factors supporting this conclusion are the amount of taxable income available for carryback and the amount of future taxable income that will result from the scheduled reversal of existing deferred tax liabilities.

At December 31, 2012, the amount of remaining net operating loss carryforwards resulting from the acquisition of Herald was $21.5 million, expiring from 2029 through 2032. The tax benefit of net operating losses recognized for the year ended December 31, 2012 was $0.8 million. No tax benefits of net operating losses were recognized for the years ended December 31, 2011 and 2010.

**Note 14 Income Taxes (Continued)**

The Company has a liability for unrecognized tax benefits relating to uncertain tax positions primarily for state tax contingencies in several jurisdictions. A reconciliation of the beginning and ending amount of gross unrecognized tax benefits for the years ended December 31, 2012, 2011 and 2010 follows (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Balance, beginning of period | $20,961 | $ 2,845 | $ — |
| Additions for tax positions related to the current year | 1,246 | 6,501 | 2,176 |
| Additions for tax positions related to prior periods | — | 7,982 | 343 |
| Reductions due to settlements with taxing authorities | (41) | (185) | — |
| | 22,166 | 17,143 | 2,519 |
| Interest and penalties | 2,624 | 3,818 | 326 |
| Balance, end of period | $24,790 | $20,961 | $2,845 |

As of December 31, 2012, 2011 and 2010, the Company had $11.7 million, $10.9 million and $1.6 million of unrecognized federal and state tax benefits that if recognized would have impacted the effective tax rate. Unrecognized tax benefits related to state income tax contingencies that may decrease during the 12 months subsequent to December 31, 2012 as a result of the lapse in the statute of limitations total approximately $3.5 million.

Interest and penalties related to unrecognized tax benefits are included in the provision for income taxes in the consolidated statements of income. At December 31, 2012 and 2011, accrued interest and penalties included in the consolidated balance sheets, net of federal and state tax benefits, were $5.9 million and $3.8 million, respectively. Of these amounts, $2.1 million and $3.5 million of expense were recognized through income tax expense in 2012 and 2011, respectively. Such interest and penalties were not significant at December 31, 2010.

The Company and its subsidiaries file a consolidated federal income tax return as well as combined state income tax returns where combined filings are required. Income tax returns for the tax years ended December 31, 2012, 2011, 2010 and 2009 remain subject to examination in the U.S. Federal and various state tax jurisdictions.

**Note 15 Derivatives and Hedging Activities**

The Company uses interest rate swaps to manage interest rate risk related to variable rate FHLB advances and certificates of deposit with maturities of one year, which expose the Company to variability in cash flows due to changes in interest rates. The Company enters into LIBOR-based interest rate swaps that are designated as cash flow hedges with the objective of limiting the variability of interest payment cash flows resulting from changes in the benchmark interest rate LIBOR. The effective portion of changes in the fair value of interest rate swaps designated as cash flow hedging instruments is reported in accumulated other comprehensive income ("AOCI") and subsequently reclassified into interest expense in the same period in which the related interest on the floating-rate debt obligations affects earnings.

**Note 15 Derivatives and Hedging Activities (Continued)**

The Company also enters into interest rate derivative contracts with certain of its borrowers to enable those borrowers to manage their exposure to interest rate fluctuations. To mitigate interest rate risk associated with these derivative contracts, the Company enters into offsetting derivative contract positions with financial institution counterparties. These interest rate derivative contracts are not designated as hedging instruments; therefore, changes in the fair value of these derivatives are recognized immediately in earnings. The impact on earnings related to changes in fair value of these derivatives for the years ended December 31, 2012, 2011 and 2010 was not material.

The Company may be exposed to credit risk in the event of non-performance by the counterparties to its interest rate derivative agreements. The Company assesses the credit risk of its financial institution counterparties by monitoring publicly available credit rating and financial information. The Company manages dealer credit risk by entering into interest rate derivatives only with primary and highly rated counterparties, the use of ISDA master agreements and counterparty limits. The agreements contain bilateral collateral arrangements with the amount of collateral to be posted generally governed by the settlement value of outstanding swaps. At December 31, 2012, the Company was in a liability position with respect to these agreements and was therefore not holding any collateral. The Company manages the risk of default by its borrower counterparties through its normal loan underwriting and credit monitoring policies and procedures. The Company does not currently anticipate any losses from failure of interest rate derivative counterparties to honor their obligations.

Some of the Company's ISDA master agreements with financial institution counterparties contain provisions that permit either counterparty to terminate the agreements and require settlement in the event that regulatory capital ratios fall below certain designated thresholds, upon the initiation of other defined regulatory actions or upon suspension or withdrawal of the Bank's credit rating. Currently, there are no circumstances that would trigger these provisions of the agreements. The fair value of derivative instruments containing these provisions that were in a liability position at December 31, 2012 was $54.0 million.

## Note 15 Derivatives and Hedging Activities (Continued)

The following tables set forth certain information concerning the Company's interest rate contract derivative financial instruments and related hedged items at December 31, 2012 and December 31, 2011 (dollars in thousands):

**2012**

| | Hedged Item | Weighted Average Pay Rate | Weighted Average Receive Rate | Weighted Average Remaining Life in Years | Notional Amount | Balance Sheet Location | Fair value Asset | Fair value Liability |
|---|---|---|---|---|---|---|---|---|
| Derivatives designated as cash flow hedges: | | | | | | | | |
| Pay-fixed interest rate swaps | Variability of interest cash flows on certificates of deposit | 3.11% | 12-Month Libor | 2.8 | $225,000 | Other liabilities | $ — | $(14,622) |
| Purchased interest rate forward-starting swaps | Variability of interest cash flows on variable rate borrowings | 3.75% | 3-Month Libor | 3.8 | 285,000 | Other liabilities | — | (36,182) |
| Derivatives not designated as hedges: | | | | | | | | |
| Pay-fixed interest rate swaps and caps | | 4.18% | Indexed to 1-month Libor | 4.8 | 102,712 | Other liabilities | — | (4,908) |
| Pay-variable interest rate swaps and caps | | Indexed to 1-month Libor | 4.18% | 4.8 | 102,712 | Other assets | 4,908 | — |
| | | | | | $715,424 | | $4,908 | $(55,712) |

**2011**

| | Hedged Item | Weighted Average Pay Rate | Weighted Average Receive Rate | Weighted Average Remaining Life in Years | Notional Amount | Balance Sheet Location | Fair value Asset | Fair value Liability |
|---|---|---|---|---|---|---|---|---|
| Derivatives designated as cash flow hedges: | | | | | | | | |
| Pay-fixed interest rate swaps | Variability of interest cash flows on certificates of deposit | 3.11% | 12-Month Libor | 3.9 | $225,000 | Other liabilities | $ — | $(15,854) |
| Purchased interest rate forward-starting swaps | Variability of interest cash flows on variable rate borrowings | 3.65% | 3-Month Libor | 4.4 | 405,000 | Other liabilities | — | (47,593) |
| Derivatives not designated as hedges: | | | | | | | | |
| Pay-fixed interest rate swaps | | 5.15% | Indexed to 1-month Libor | 5.6 | 53,018 | Other liabilities | — | (3,731) |
| Pay-variable interest rate swaps | | Indexed to 1-month Libor | 5.15% | 5.6 | 53,018 | Other assets | 3,731 | — |
| | | | | | $736,036 | | $3,731 | $(67,178) |

**Note 15 Derivatives and Hedging Activities (Continued)**

The following table provides information about gains and losses related to interest rate contract derivative instruments designated as cash flow hedges for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Amount of loss included in AOCI at end of period, net of tax | $(29,623) | $(37,153) | $(23,931) |
| Amount of loss reclassified from AOCI into interest expense during the period (effective portion) | $(17,962) | $(18,982) | $(13,519) |
| Amount of loss related to termination of cash flow hedges reclassified from AOCI into non-interest income during the period | $ (8,701) | $ — | $ — |
| Amount of gain (loss) recognized in income during the period (ineffective portion) | $ — | $ 426 | $ (706) |

During the year ended December 31, 2012, a derivative position designated as a cash flow hedge with a notional amount of $120 million was discontinued and a loss of $8.7 million was reclassified from AOCI into earnings as a result of the discontinuance of the cash flow hedge and the early extinguishment of related variable rate debt. During the years ended December 31, 2011 and 2010, no derivative positions designated as cash flow hedges were discontinued and none of the gains and losses reported in AOCI were reclassified into earnings as a result of the discontinuance of cash flow hedges or because of the early extinguishment of debt. As of December 31, 2012, the amount expected to be reclassified from AOCI into income during the next twelve months was $14.5 million.

At December 31, 2012, investment securities available for sale with a carrying amount of $63.4 million and cash on deposit of $11.5 million were pledged as collateral for interest rate swaps. The amount of collateral required to be posted by the Company varies based on the settlement value of outstanding swaps, which approximates their carrying amount at December 31, 2012.

The Company enters into commitments to fund residential mortgage loans with the intention that these loans will subsequently be sold into the secondary market. A mortgage loan commitment binds the Company to lend funds to a potential borrower at a specified interest rate within a specified period of time, generally 30 to 90 days. These commitments are considered derivative instruments. The notional amount of outstanding mortgage loan commitment derivatives was $8.0 million and $8.4 million at December 31, 2012 and December 31, 2011, respectively. Outstanding derivative loan commitments expose the Company to the risk that the price of the loans arising from exercise of the commitments might decline from inception of the commitment to funding of the loan. To protect against the price risk inherent in derivative loan commitments, the Company utilizes “best efforts” forward loan sale commitments. Under a “best efforts” contract, the Company commits to deliver an individual mortgage loan to an investor if the loan to the underlying borrower closes. Generally, the price the investor will pay the Company for a loan is specified prior to the loan being funded. These commitments are considered derivative instruments once the underlying loans are funded. The notional amount of forward loan sale commitment derivatives was $2.1 million and $4.0 million at December 31, 2012 and December 31, 2011, respectively. The fair value of loan commitment and forward sale commitment derivatives was nominal at December 31, 2012 and December 31, 2011.

**Note 16 Stockholders' Equity**

In February, 2012, the Company created a series of 5,416,000 shares of preferred stock designated "Series A Nonvoting Convertible Preferred Stock", par value $0.01 per share. The preferred stock ranks *pari passu* with the Company's common stock with respect to the payment of dividends or distributions and has a liquidation preference of $0.01 per share. Subject to certain restrictions, each share of preferred stock is convertible into one share of common stock at the option of the holder or upon written request of the Company.

On February 2, 2011, the Company closed the initial public offering ("IPO") of 33,350,000 shares of its common stock at $27.00 per share. In the offering, the Company sold 4,000,000 shares and selling stockholders sold 29,350,000 shares. Proceeds received by the Company on the sale of the 4,000,000 shares amounted to $102.6 million, net of underwriting discounts. The Company incurred direct costs of the stock issuance of $4.0 million, which were charged to paid-in capital.

Effective January 10, 2011, the Board of Directors of BankUnited, Inc. (the "Board of Directors"), authorized a 10-for-1 split of the Company's outstanding common shares. Stockholders' equity has been retroactively adjusted to give effect to this stock split for all periods presented by reclassifying from paid-in capital to common stock the par value of the additional shares issued. All share and per share data have been retroactively restated for all periods presented to reflect this stock split.

In conjunction with the acquisition of Herald, the Company issued 1,834,160 warrants to purchase its common stock to certain former shareholders of Herald. The warrants expire in November, 2018. Each warrant is exercisable at an exercise price of $9.47, in exchange for which the holder is entitled to receive 0.0827 shares of BKU common stock and cash of $1.73.

***Accumulated Other Comprehensive Income***

Changes in AOCI for the years ended December 31, 2012, 2011 and 2010 are summarized as follows (in thousands):

| | 2012 | | |
|---|---|---|---|
| | **Before Tax** | **Tax Effect** | **Net of Tax** |
| Unrealized gains on investment securities available for sale: | | | |
| Net unrealized holding gain arising during the year | $112,165 | $(43,272) | $ 68,893 |
| Reclassification adjustment for net securities gains realized in income | (17,039) | 6,573 | (10,466) |
| Net change in unrealized gains on securities available for sale | 95,126 | (36,699) | 58,427 |
| Unrealized losses on derivative instruments: | | | |
| Net unrealized holding loss arising during the year | (14,405) | 5,557 | (8,848) |
| Reclassification adjustment for net losses realized in income | 26,663 | (10,285) | 16,378 |
| Net change in unrealized losses on derivative instruments | 12,258 | (4,728) | 7,530 |
| Other comprehensive income | $107,384 | $(41,427) | $ 65,957 |

**Note 16 Stockholders' Equity (Continued)**

| | 2011 | | |
|---|---|---|---|
| | Before Tax | Tax Effect | Net of Tax |
| Unrealized gains on investment securities available for sale: | | | |
| Net unrealized holding loss arising during the year | $ (44) | $ 17 | $ (27) |
| Reclassification adjustment for net securities gains realized in income | (1,136) | 438 | (698) |
| Net change in unrealized gains on securities available for sale | (1,180) | 455 | (725) |
| Unrealized losses on derivative instruments: | | | |
| Net unrealized holding loss arising during the year | (40,507) | 15,625 | (24,882) |
| Reclassification adjustment for net losses realized in income | 18,982 | (7,322) | 11,660 |
| Net change in unrealized losses on derivative instruments | (21,525) | 8,303 | (13,222) |
| Other comprehensive loss | $(22,705) | $ 8,758 | $(13,947) |

| | 2010 | | |
|---|---|---|---|
| | Before Tax | Tax Effect | Net of Tax |
| Unrealized gains on investment securities available for sale: | | | |
| Net unrealized holding gains arising during the year | $ 43,529 | $(16,791) | $ 26,738 |
| Reclassification adjustment for net securities losses realized in income | 998 | (385) | 613 |
| Net change in unrealized gains on securities available for sale | 44,527 | (17,176) | 27,351 |
| Unrealized losses on derivative instruments: | | | |
| Net unrealized holding loss arising during the year | (50,376) | 19,433 | (30,943) |
| Reclassification adjustment for net losses realized in income | 13,519 | (5,215) | 8,304 |
| Net change in unrealized losses on derivative instruments | (36,857) | 14,218 | (22,639) |
| Other comprehensive gain | $ 7,670 | $ (2,958) | $ 4,712 |

The categories of other comprehensive income for the years ended December 31, 2012, 2011 and 2010 are presented below (in thousands):

| | Unrealized Gains on Investment Securities Available for Sale | Unrealized Losses on Derivative Instruments | Total |
|---|---|---|---|
| Balance, December 31, 2009 | $ 28,546 | $ (1,292) | $ 27,254 |
| Other comprehensive income | 27,351 | (22,639) | 4,712 |
| Balance, December 31, 2010 | 55,897 | (23,931) | 31,966 |
| Other comprehensive income | (725) | (13,222) | (13,947) |
| Balance, December 31, 2011 | 55,172 | (37,153) | 18,019 |
| Other comprehensive income | 58,427 | 7,530 | 65,957 |
| Balance, December 31, 2012 | $113,599 | $(29,623) | $ 83,976 |

## Note 17 Equity Based Compensation and Other Benefit Plans

***Description of Equity Based Compensation Plans***

Pursuant to the terms of the BankUnited, Inc. 2009 Stock Option Plan (the "2009 Plan"), the Company's Board of Directors may grant up to 2,312,500 non-qualified stock options to key employees of the Company and its affiliates. Stock options may be granted with an exercise price equal to or greater than the stock's fair value at the date of grant. The terms and conditions applicable to options granted under the 2009 Plan are determined by the Company's Board of Directors or a committee thereof, provided however, that each stock option shall expire on the tenth anniversary of the date of the grant, unless it is earlier exercised or forfeited. Options granted to date under the 2009 Plan vest over a period of three years. Shares of common stock delivered under the 2009 Plan may be authorized but unsold common stock or previously issued common stock reacquired by the Company. Vesting of stock options may be accelerated in the event of a change in control, as defined. The Company does not intend to issue any new awards under the 2009 Plan.

In connection with the IPO, the Company adopted the BankUnited 2010 Omnibus Equity Incentive Plan (the "2010 Plan"). The 2010 Plan is administered by the Board of Directors or a committee thereof and provides for the grant of non-qualified stock options, share appreciation rights ("SARs"), restricted shares, deferred shares, performance shares, unrestricted shares and other share-based awards to selected employees, directors or independent contractors of the Company and its affiliates. The number of shares of common stock authorized for award under the 2010 Plan is 7,500,000, of which 1,172,566 shares remain available for issuance as of December 31, 2012. Shares of common stock delivered under the plan may consist of authorized but unissued shares or previously issued shares reacquired by the Company. The term of a share option or SAR issued under the plan may not exceed ten years from the date of grant and the exercise price may not be less than the fair market value of the Company's common stock at the date of grant. Unvested awards generally become fully vested in the event of a change in control, as defined.

At the time of acquisition by BankUnited, Inc., Herald had an existing stock option plan, the Heritage Bank, N.A. 2008 Stock Incentive Plan (the "Herald Plan"). Replacement options issued to employees and directors of Herald in conjunction with the acquisition were issued under the Herald Plan. No further awards are available for issuance under the Herald Plan.

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

***Compensation Expense Related to Equity Based Awards***

The following table summarizes compensation cost related to equity based awards for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Compensation cost of equity based awards: | | | |
| Unvested and restricted share awards | $ 7,389 | $ 2,069 | $ — |
| Option awards | 2,671 | 1,707 | 1,301 |
| Performance share awards | 507 | — | — |
| PIUs | — | 110,398 | 36,170 |
| Instruments issued in exchange for PIUs | 13,235 | 30,614 | — |
| Total compensation cost of equity based awards | 23,802 | 144,788 | 37,471 |
| Related tax benefits | (4,887) | (3,767) | (502) |
| Compensation cost of equity based awards, net of tax | $18,915 | $141,021 | $36,969 |

The following table summarizes total unrecognized compensation cost and the weighted average remaining period over which compensation cost will be recognized for share and option awards outstanding at December 31, 2012:

| | Unrecognized Compensation Cost | Weighted Average Remaining Period |
|---|---|---|
| Share awards | $22,211 | 2.26 |
| Option awards | $ 2,138 | 1.21 |

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

***Share Awards***

*Unvested share awards*

A summary of activity related to unvested share awards granted under the 2010 Plan for the years ended December 31, 2012 and 2011 follows:

| | Number of Share Awards | Weighted Average Grant Date Fair Value |
|---|---|---|
| Unvested share awards outstanding, December 31, 2010 | — | $ — |
| Granted | 706,230 | 24.58 |
| Issued in exchange for PIUs | 1,931,745 | 27.00 |
| Vested | (965,873) | 27.00 |
| Canceled or forfeited | (8,280) | 28.05 |
| Unvested share awards outstanding, December 31, 2011 | 1,663,822 | 25.97 |
| Granted | 608,714 | 23.42 |
| Vested | (1,179,118) | 26.58 |
| Canceled or forfeited | (90,629) | 24.18 |
| Unvested share awards outstanding, December 31, 2012 | 1,002,789 | $23.86 |

No unvested share awards were granted during the year ended December 31, 2010. Unvested share awards, other than those issued in exchange for PIUs, were valued at the closing price of the Company's common stock on the date of grant, ranging from $23.08 to $25.20 for the year ended December 31, 2012 and $21.74 to $28.05 for the year ended December 31, 2011. Unvested share awards issued in exchange for PIUs were valued at the IPO price of $27 per share.

The aggregate grant date fair value of shares vested during the years ended December 31, 2012 and 2011 was $31.3 million and $26.0 million respectively. Substantially all of the shares vest in equal annual installments over a period of three years from the date of grant. Shares issued in exchange for PIUs retained the vesting provisions of the time-based PIUs for which they were exchanged and fully vested in 2012. Unvested shares participate in dividends declared on the Company's common stock on a one-for-one basis.

*Restricted share awards*

In 2012, the Company granted shares of restricted stock under the 2010 Plan to certain of its officers. The restricted shares vest on varying schedules through December 31, 2014 and embody

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

post-vesting transfer restrictions through the first anniversary of each vesting date. Restricted share activity for the year ended December 31, 2012 is presented below:

| | Number of Share Awards | Weighted Average Grant Date Fair Value |
|---|---|---|
| Restricted share awards outstanding, December 31, 2011 | — | $ — |
| Granted | 276,429 | 22.27 |
| Vested | (89,322) | 22.28 |
| Restricted share awards outstanding, December 31, 2012 | 187,107 | $22.27 |

Restricted shares were valued at the closing price of the Company's common stock at the date of grant, less a discount for lack of marketability ("DLOM") related to post-vesting transferability restrictions. The model used to calculate the DLOM first determines an estimated volatility based on historical and implied volatility of the Company's common stock and then, utilizing the estimated volatility, calculates the DLOM using both the "protective put method" and the "Asian put method." Discounts applied in valuing restricted shares granted during 2012 ranged from 7.10% to 11.55%. The aggregate fair value of restricted shares granted was $6.2 million, net of a $0.8 million DLOM. The restricted shares participate in dividends declared on the Company's common stock on a one-for-one basis.

*Performance share awards*

Certain of the Company's executive officers are eligible to receive performance share awards at the end of each 12 month performance period ending on June 30. The first annual performance period will end on June 30, 2013. The dollar value of share awards to be granted is based on the achievement of certain performance criteria pre-established by the Company's Compensation Committee. The awards vest over varying schedules of up to three years, with the first tranche of awards vesting on June 30, 2013. For the annual performance period ending June 30, 2013, the maximum aggregate value of performance shares that may be granted is $2.0 million. The number of performance shares to be awarded is variable; therefore, these awards are classified as liability instruments in the Company's consolidated balance sheet. As of December 31, 2012, a total liability of $507.5 thousand related to performance share awards was reflected in the consolidated balance sheet based on management's assessment of the probability that the defined performance criteria will be achieved and the vesting terms of the awards to be granted.

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

***Option Awards***

A summary of activity related to stock option awards for the years ended December 31, 2012, 2011 and 2010 follows:

| | Number of Option Awards | Weighted Average Exercise Price |
|---|---|---|
| Option awards outstanding, December 31, 2009 | 384,680 | $11.32 |
| Granted | 647,020 | 20.01 |
| Canceled or forfeited | (49,990) | 11.58 |
| Option awards outstanding, December 31, 2010 | 981,710 | 17.04 |
| Granted | 300,000 | 22.31 |
| Option awards issued in exchange for PIUs | 4,534,970 | 27.00 |
| Exercised | (31,029) | 10.48 |
| Canceled or forfeited | (47,529) | 19.55 |
| Option awards outstanding, December 31, 2011 | 5,738,122 | 25.20 |
| Replacement options issued in conjunction with the acquisition of Herald | 256,028 | 31.32 |
| Exercised | (251,904) | 14.35 |
| Canceled or forfeited | (44,242) | 34.31 |
| Option awards outstanding, December 31, 2012 | 5,698,004 | $25.89 |
| Exercisable at December 31, 2012 | 5,290,177 | $26.25 |

The intrinsic value of options exercised during the years ended December 31, 2012 and 2011 was $2.6 million and $369.7 thousand, respectively.

The grant-date fair value of option awards granted during the years ended December 31, 2012, 2011 and 2010 was determined using a Black-Scholes option pricing model incorporating the following weighted average assumptions:

| | 2012 | 2011 | | 2010 |
|---|---|---|---|---|
| | Options Granted | Options Granted | Exchanged for PIUs | Options Granted |
| Expected volatility | 35.97% | 42.85% | 45.00% | 35.92% |
| Expected dividend yield | 2.95% | 2.51% | 2.07% | 3.06% |
| Expected term in years | 1.7 | 6.0 | 5.1 | 8.4 |
| Risk-free interest rate | 0.27% | 1.07% | 1.98% | 2.78% |
| Weighted average grant date fair value | $4.70 | $7.19 | $9.42 | $6.49 |

Prior to the IPO, the Company's common stock was not traded on an exchange. Expected volatility for options granted prior to the IPO was based on the volatility of comparable peer banks. Due to limited trading history in the Company's common stock, expected volatility for options granted subsequent to the IPO was estimated using both the volatility of the Company's common stock since it began trading and the volatility of peer companies. The Company has limited exercise history related to

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

stock option awards. For options granted prior to November, 2010 the expected life was assumed to be equal to the contractual term of the options. For options granted after November, 2010, the simplified method provided for in Staff Accounting Bulletin 14 was used to estimate the expected term. The change in the expected life assumption was based primarily on the increased probability of completion of the IPO.

Additional information about options outstanding and exercisable at December 31, 2012 is presented in the following table:

| | Outstanding Options | | | Exercisable Options | | |
|---|---|---|---|---|---|---|
| Range of Exercise Prices | Number of Options | Weighted Average Remaining Contractual Term (in years) | Aggregate Intrinsic Value (in thousands) | Number of Options | Weighted Average Remaining Contractual Term (in years) | Aggregate Intrinsic Value (in thousands) |
| $10.00 - $13.39 | 143,027 | 6.74 | $1,935 | 143,027 | 6.74 | $1,935 |
| $15.94 - $19.97 | 414,762 | 7.53 | 2,715 | 292,630 | 7.61 | 1,981 |
| $21.36 - $22.31 | 540,965 | 8.49 | 1,173 | 255,270 | 8.32 | 558 |
| $27 | 4,534,970 | 8.09 | — | 4,534,970 | 8.09 | — |
| $30.92 | 2,353 | 6.90 | — | 2,353 | 6.90 | — |
| $63.74 | 61,927 | 5.92 | — | 61,927 | 5.92 | — |
| | 5,698,004 | 8.03 | $5,823 | 5,290,177 | 8.01 | $4,474 |

***Profits Interests Units***

In conjunction with the IPO, the PIUs outstanding were exchanged for a combination of vested and unvested shares of the Company's common stock and vested and unvested stock options. The unvested shares and vested stock options participate in dividends declared on the Company's common stock on a one-for-one basis. The unvested stock options participate on a one-for-one basis in dividends declared on common stock until they vest. In the first quarter of 2011 in conjunction with the IPO, the Company recorded approximately $110.4 million in compensation expense related to the exchange and vesting of PIUs. This expense, which was not deductible for tax purposes, resulted in an offsetting increase in paid-in capital.

***Deferred Compensation Plan***

The Company has a non-qualified deferred compensation plan (the "Deferred Compensation Plan") for a select group of highly compensated employees whereby a participant, upon election, may defer a portion of eligible compensation. The Deferred Compensation Plan provides for Company contributions equal to 100% of the first 1% plus 70% of the next 5% of eligible compensation deferred. The Company credits each participant's account at an annual interest rate determined by the Company's Compensation Committee. The Company accrued interest on the deferred obligation at an annual rate of 6% for the years ended December 31, 2012, 2011 and 2010. A participant's elective deferrals and interest thereon are at all times 100% vested. Company contributions and interest thereon will become 100% vested upon the earlier of a change in control, as defined, or the

**Note 17 Equity Based Compensation and Other Benefit Plans (Continued)**

participant's death, disability, attainment of normal retirement age or the completion of two years of service. Participant deferrals and any associated earnings will be paid upon separation from service or the specified distribution year elected. The specified distribution year can be no earlier than the third calendar year after the calendar year in which the participant deferrals and or Company contributions are made. A participant may elect to be paid in a lump sum or in five, ten or fifteen annual installments. Deferred compensation expense for this plan was $312.3 thousand, $216.7 thousand and $191.6 thousand for the years ended December 31, 2012, 2011 and 2010, respectively.

***BankUnited 401(k) Plan***

The Company sponsors the BankUnited 401(k) Plan, a tax-qualified, deferred compensation plan (the "401(k) Plan"). Under the terms of the 401(k) Plan, eligible employees may contribute a portion of compensation not exceeding the limits set by law. Employees are eligible to participate in the plan after one month of service. The 401(k) Plan allows a matching employer contribution equal to 100% of elective deferrals that do not exceed 1% of compensation, plus 70% of elective deferrals that exceed 1% but are less than 6% of compensation. Matching contributions are fully vested after two years of service. For the years ended December 31, 2012, 2011 and 2010, BankUnited made matching contributions to the 401(k) Plan of approximately $3.6 million, $3.0 million and $2.1 million, respectively.

**Note 18 Warrant Issued to the FDIC**

In connection with the FSB Acquisition, BUFH issued a warrant to the FDIC. The warrant had an initial contractual term of ten years and was exercisable for a sixty day period beginning on the tenth day after the consummation of a qualifying IPO or exit event as defined in the warrant agreement. The warrant entitled the FDIC to acquire a number of common shares in the Company, or the entity acquiring BUFH or the Company, determined by applying a formula defined in the warrant agreement. After becoming exercisable, the warrant was redeemable for cash by the Company or BUFH at a redemption price equal to the warrant value, as defined.

In October 2010, the Company and the FDIC agreed to amend the warrant to guarantee a minimum value to the FDIC of $25.0 million. The Company recognized expense of $21.8 million related to the increase in value of this instrument for the year ended December 31, 2010. The Company settled the warrant for $25.0 million in cash in February, 2011.

**Note 19 Regulatory Requirements and Restrictions**

The Company and its banking subsidiaries are subject to various regulatory capital requirements administered by Federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory—and possibly additional discretionary—actions by regulators that, if undertaken, could have a direct material effect on the Company's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Company and its banking subsidiaries must meet specific capital guidelines that involve quantitative measures of assets, liabilities and certain off-balance-sheet items calculated pursuant to regulation. The capital amounts and classification also are subject to qualitative judgments by the regulators about components, risk weightings and other factors. Banking regulations identify five capital categories for insured depository

**Note 19 Regulatory Requirements and Restrictions (Continued)**

institutions: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. As of December 31, 2012 and 2011, all capital ratios of the Company and its banking subsidiaries exceeded the “well capitalized” levels under the regulatory framework for prompt corrective action. Quantitative measures established by regulation to ensure capital adequacy require the Company and its banking subsidiaries to maintain minimum amounts and ratios of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined), and of Tier 1 capital to average tangible assets (leverage ratio).

The following tables provide information regarding regulatory capital for the Company and its banking subsidiaries as of December 31, 2012 and 2011 (dollars in thousands):

| | 2012 | | | | | |
|---|---|---|---|---|---|---|
| | Actual | | Required to be Considered Well Capitalized | | Required to be Considered Adequately Capitalized | |
| | Amount | Ratio | Amount | Ratio | Amount | Ratio |
| **BankUnited, Inc.:** | | | | | | |
| Tier 1 leverage | $1,646,120 | 13.16% | N/A(1) | N/A(1) | $500,402 | 4.00% |
| Tier 1 risk-based capital | $1,646,120 | 33.60% | $293,952 | 6.00% | $195,968 | 4.00% |
| Total risk based capital | $1,708,907 | 34.88% | $489,920 | 10.00% | $391,936 | 8.00% |
| **BankUnited:** | | | | | | |
| Tier 1 leverage | $1,304,980 | 11.01% | $592,836 | 5.00% | $474,269 | 4.00% |
| Tier 1 risk-based capital | $1,304,980 | 29.12% | $268,903 | 6.00% | $179,269 | 4.00% |
| Total risk based capital | $1,361,736 | 30.38% | $448,173 | 10.00% | $358,538 | 8.00% |
| **Herald:** | | | | | | |
| Tier 1 leverage | $ 91,249 | 18.78% | $ 24,294 | 5.00% | $ 19,435 | 4.00% |
| Tier 1 risk-based capital | $ 91,249 | 31.67% | $ 17,287 | 6.00% | $ 11,525 | 4.00% |
| Total risk based capital | $ 92,998 | 32.28% | $ 28,810 | 10.00% | $ 23,048 | 8.00% |

**Note 19 Regulatory Requirements and Restrictions (Continued)**

| | 2011 | | | | | |
|---|---|---|---|---|---|---|
| | Actual | | Required to be Considered Well Capitalized | | Required to be Considered Adequately Capitalized | |
| | Amount | Ratio | Amount | Ratio | Amount | Ratio |
| **BankUnited, Inc.:** | | | | | | |
| Tier 1 leverage | $1,448,592 | 13.06% | N/A(1) | N/A(1) | $443,673 | 4.00% |
| Tier 1 risk-based capital | $1,448,592 | 41.62% | $208,837 | 6.00% | $139,225 | 4.00% |
| Total risk based capital | $1,492,939 | 42.89% | $348,062 | 10.00% | $278,450 | 8.00% |
| **BankUnited:** | | | | | | |
| Tier 1 leverage | $1,182,647 | 10.77% | $549,047 | 5.00% | $439,238 | 4.00% |
| Tier 1 risk-based capital | $1,182,647 | 34.59% | $205,166 | 6.00% | $136,778 | 4.00% |
| Total risk based capital | $1,226,299 | 35.86% | $341,944 | 10.00% | $273,555 | 8.00% |

(1) There is no Tier 1 leverage ratio component in the definition of a well capitalized bank holding company.

For purposes of risk based capital computations, the FDIC Indemnification asset and the covered assets are risk-weighted at 20% due to the conditional guarantee represented by the Loss Sharing Agreements.

BankUnited and Herald are required by the Board of Governors of the Federal Reserve System to maintain reserve balances in the form of vault cash or deposits with the Federal Reserve Bank. At December 31, 2012, the reserve requirements for BankUnited and Herald were $25.8 million and $4.9 million, respectively.

BankUnited is subject to various regulatory restrictions relating to the payment of dividends, including requirements to maintain capital at or above certain minimums, and to remain "well-capitalized" under the prompt corrective action regulations. The Company does not expect that any of these laws, regulations or policies will materially affect the ability of BankUnited to pay dividends.

**Note 20 Fair Value Measurements**

*Assets and liabilities measured at fair value on a recurring basis*

Following is a description of the methodologies used to estimate the fair values of assets and liabilities measured at fair value on a recurring basis and the level within the fair value hierarchy in which those measurements are typically classified.

*Investment securities available for sale*—Fair value measurements are based on quoted prices in active markets when available; these measurements are classified within level 1 of the fair value hierarchy. These securities typically include U.S. Treasury securities, certain preferred stocks and mutual funds. If quoted prices in active markets are not available, fair values are estimated using quoted prices of securities with similar characteristics, quoted prices of identical securities in less active markets, discounted cash flow techniques, or matrix pricing models. Investment securities available for

**Note 20 Fair Value Measurements (Continued)**

sale that are generally classified within level 2 of the fair value hierarchy include U.S. Government agency debentures, U.S. Government agency and sponsored enterprise mortgage-backed securities, preferred stock investments for which level 1 valuations are not available, corporate debt securities, non-mortgage asset-backed securities, certain private label mortgage-backed securities, Re-Remics, private label commercial mortgage-backed securities, collateralized loan obligations, state and municipal obligations and U.S. Small Business Administration securities. Pricing of these securities is generally primarily spread driven. Observable inputs that may impact the valuation of these securities include benchmark yield curves, credit spreads, reported trades, dealer quotes, bids, issuer spreads, current rating, historical constant prepayment rates, historical voluntary prepayment rates, structural and waterfall features of individual securities, published collateral data, and for certain securities, historical constant default rates and default severities. Investment securities available for sale generally classified within level 3 of the fair value hierarchy include certain private label mortgage-backed securities and trust preferred securities. The Company typically values these securities using internally developed or third-party proprietary pricing models, primarily discounted cash flow valuation techniques, which incorporate both observable and unobservable inputs. Unobservable inputs that may impact the valuation of these securities include risk adjusted discount rates, projected prepayment rates, projected default rates and projected loss severity.

*Derivative financial instruments*—Interest rate swaps are predominantly traded in over-the-counter markets and, as such, values are determined using widely accepted discounted cash flow modeling techniques. These discounted cash flow models use projections of future cash payments and receipts that are discounted at mid-market rates. Observable inputs that may impact the valuation of these instruments include LIBOR swap rates, LIBOR forward yield curves and counterparty credit risk spreads. These fair value measurements are generally classified within level 2 of the fair value hierarchy. Loan commitment derivatives are priced based on a bid pricing convention adjusted based on the Company's historical fallout rates. Fallout rates are a significant unobservable input; therefore, these fair value measurements are classified within level 3 of the fair value hierarchy. The fair value of loan commitment derivatives is nominal.

**Note 20 Fair Value Measurements (Continued)**

The following tables present assets and liabilities measured at fair value on a recurring basis as of December 31, 2012 and December 31, 2011 (in thousands):

| | 2012 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Investment securities available for sale: | | | | |
| U.S. Treasury and Government agency securities | $ 20,141 | $ 15,013 | $ — | $ 35,154 |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | — | 1,584,523 | — | 1,584,523 |
| U.S. Government agency and sponsored enterprise commercial mortgage-backed securities | — | 60,416 | — | 60,416 |
| Re-Remics | — | 585,042 | — | 585,042 |
| Private label residential mortgage-backed securities and CMOs | — | 205,027 | 243,058 | 448,085 |
| Private label commercial mortgage-backed securities | — | 433,092 | — | 433,092 |
| Collateralized loan obligations | — | 253,188 | — | 253,188 |
| Non-mortgage asset-backed securities | — | 241,346 | — | 241,346 |
| Mutual funds and preferred stocks | 149,279 | 374 | — | 149,653 |
| State and municipal obligations | — | 25,353 | — | 25,353 |
| Small Business Administration securities | — | 339,610 | — | 339,610 |
| Other debt securities | — | 12,777 | 4,173 | 16,950 |
| Derivative assets | — | 4,908 | — | 4,908 |
| Total assets at fair value | $169,420 | $3,760,669 | $247,231 | $4,177,320 |
| Derivative liabilities | — | 55,712 | 29 | 55,741 |
| Total liabilities at fair value | $ — | $ 55,712 | $ 29 | $ 55,741 |

**Note 20 Fair Value Measurements (Continued)**

| | 2011 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Investment Securities Available for Sale: | | | | |
| U.S. Government agency and sponsored enterprise residential mortgage-backed securities | $ — | $1,985,713 | $ — | $1,985,713 |
| Re-Remics | — | 546,310 | — | 546,310 |
| Private label residential mortgage-backed securities and CMO's | — | — | 387,687 | 387,687 |
| Private label commercial mortgage-backed securities | — | 262,562 | — | 262,562 |
| Non-mortgage asset-backed securities | — | 331,015 | 79,870 | 410,885 |
| Mutual funds and preferred stocks | 253,778 | 39 | — | 253,817 |
| State and municipal obligations | — | 25,270 | — | 25,270 |
| Small Business Administration securities | — | 303,677 | — | 303,677 |
| Other debt securities | — | 2,897 | 3,159 | 6,056 |
| Derivative assets | — | 3,731 | — | 3,731 |
| Total assets at fair value | $253,778 | $3,461,214 | $470,716 | $4,185,708 |
| Derivative liabilities | — | 67,178 | — | 67,178 |
| Total liabilities at fair value | $ — | $ 67,178 | $ — | $ 67,178 |

During the year ended December 31, 2012, certain non-covered private label residential mortgage-backed securities and certain non-mortgage asset-backed securities with an aggregate fair value of $271.3 million were transferred from level 3 to level 2 of the fair value hierarchy. Activity in the market for these securities had increased such that unobservable inputs were no longer significant to the valuation process.

During the year ended December 31, 2011, financial institution preferred stocks with a fair value of $200.1 million were transferred from level 2 to level 1 of the fair value hierarchy. Activity in the market for these securities had increased, enabling management to obtain quoted prices in a market considered to be active for identical securities on the measurement date. Non-mortgage asset-backed securities with a fair value of $64.5 million were transferred from level 2 to level 3 of the fair value hierarchy due to an increase in the significance of unobservable inputs to the valuation of the securities transferred. Re-Remics, private label commercial mortgage-backed securities, and non-mortgage asset-backed securities with a fair value of $780 million were transferred from level 3 to level 2 of the fair value hierarchy due to an increase in the level of market activity for these securities such that unobservable inputs were no longer considered significant to the valuation process.

**Note 20 Fair Value Measurements (Continued)**

The following tables reconcile changes in the fair value of assets and liabilities measured at fair value on a recurring basis and classified in level 3 of the fair value hierarchy for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | | | |
|---|---|---|---|---|
| | Private Label Residential Mortgage-Backed Securities | Non-Mortgage Asset-Backed Securities | Other Debt Securities | Derivatives |
| Balance at beginning of period | $ 387,687 | $ 79,870 | $3,159 | $— |
| Gains for the period included in: | | | | |
| Net income | — | — | — | 29 |
| Other comprehensive income | 16,629 | 1,482 | 1,234 | — |
| Purchases or issuances | 167,300 | — | — | — |
| Sales | — | — | — | — |
| Settlements | (123,531) | (15,056) | (220) | — |
| Transfers into level 3 | — | — | — | — |
| Transfers out of level 3 | (205,027) | (66,296) | — | — |
| Balance at end of period | $ 243,058 | $ — | $4,173 | $29 |

| | 2011 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Re-Remics | Private Label Residential Mortgage-Backed Securities | Private Label Commercial Mortgage-Backed Securities | Non-Mortgage Asset-Backed Securities | Other Debt Securities | FDIC Warrant | PIU Liability | Derivatives |
| Balance, beginning of period | $ 612,631 | $382,920 | $ — | $ 130,610 | $3,943 | $(25,000) | $(44,964) | $(78) |
| Gains (losses) for the period included in: | | | | | | | | |
| Net income | — | — | — | — | — | — | — | 78 |
| Other comprehensive income | (9,949) | (18,135) | 6,033 | (3,256) | (771) | — | — | — |
| Purchases or issuances | — | 93,594 | 178,370 | 140,922 | — | — | — | — |
| Sales | — | — | — | (14,978) | — | — | — | — |
| Settlements | (144,270) | (70,692) | (20,685) | (80,160) | (13) | 25,000 | 44,964 | — |
| Transfers into level 3 | — | — | — | 64,533 | — | — | — | — |
| Transfers out of level 3 | (458,412) | — | (163,718) | (157,801) | — | — | — | — |
| Balance, end of period | $ — | $387,687 | $ — | $ 79,870 | $3,159 | $ — | $ — | $ — |

**Note 20 Fair Value Measurements (Continued)**

| | 2010 | | | | | | |
|---|---|---|---|---|---|---|---|
| | Re-Remics | Private Label Residential Mortgage-Backed Securities | Non-Mortgage Asset-Backed Securities | Other Debt Securities | FDIC Warrant | PIU Liability | Derivatives |
| Balance, beginning of period | $ 475,003 | $366,508 | $ 30,000 | $3,528 | $ (3,168) | $ (8,793) | $ — |
| Gains (losses) for the period included in: | | | | | | | |
| Net income | — | — | — | — | (21,832) | (36,171) | (78) |
| Other comprehensive income | 16,677 | 16,081 | 375 | 634 | — | — | — |
| Purchases or issuances | 325,543 | 80,566 | 106,946 | — | — | — | — |
| Sales | (50,591) | — | — | — | — | — | — |
| Settlements | (154,001) | (80,235) | (6,711) | (219) | | | — |
| Transfers into level 3 | — | — | — | — | — | — | — |
| Transfers out of level 3 | — | — | — | — | — | — | — |
| Balance, end of period | $ 612,631 | $382,920 | $130,610 | $3,943 | $(25,000) | $(44,964) | $(78) |

Changes in the fair value of derivatives are included in the consolidated statement of income line item "Other non-interest expense."

The following table provides information about the valuation techniques and unobservable inputs used in the valuation of financial instruments falling within level 3 of the fair value hierarchy as of December 31, 2012 (dollars in thousands):

| | Fair Value at December 31, 2012 | Valuation Technique | Unobservable Input | Range (Weighted Average) |
|---|---|---|---|---|
| Private label residential mortgage-backed securities and CMO's—Covered | $201,821 | Discounted cash flow | Voluntary prepayment rate | 1.98% - 31.15% (8.64%) |
| | | | Probability of default | 0.00% - 32.49% (7.89%) |
| | | | Loss severity | 0.00% - 70.00% (8.51%) |
| Private label residential mortgage-backed securities and CMO's—Non-covered | $ 41,237 | Discounted cash flow | Voluntary prepayment rate | 6.32% - 37.10% (12.43%) |
| | | | Probability of default | 0.00% - 4.98% (1.80%) |
| | | | Loss severity | 0.00% - 9.74% (1.67%) |

The significant unobservable inputs impacting the fair value measurement of private label residential mortgage-backed securities include voluntary prepayment rates, probability of default and loss severity given default. Generally, significant increases in any of those inputs would result in a lower fair value measurement. Alternatively, decreases in any of those inputs would result in a higher fair value measurement. The fair value measurements of those securities with higher levels of subordination will be less sensitive to changes in these unobservable inputs, while securities with lower levels of subordination will show a higher degree of sensitivity to changes in these unobservable inputs. Generally, a change in the assumption used for probability of default is accompanied by a directionally

**Note 20 Fair Value Measurements (Continued)**

similar change in the assumption used for loss severity given default and a directionally opposite change in the assumption used for voluntary prepayment rate.

Non-covered private label residential mortgage-backed securities for which fair value measurements are classified in level 3 of the fair value hierarchy at December 31, 2012 had an aggregate fair value of $41.2 million. These securities consisted of senior tranches issued from 2003 to 2004 collateralized by prime fixed rate and hybrid 1-4 single family residential mortgages originated from 2002 to 2004. These securities have coupons ranging from 2.7% to 5.5%, ratings ranging from Baa1 to AA+ and current subordination levels ranging from 7.2% to 10.9%.

The covered securities for which fair value measurements are categorized in level 3 of the fair value hierarchy at December 31, 2012 consisted of pooled trust preferred securities with a fair value of $4.2 million and private label residential mortgage-backed securities with a fair value of $201.8 million. The trust preferred securities are not material to the Company's financial statements. The private label mortgage-backed securities were acquired in the FSB Acquisition and vary significantly with respect to seniority, subordination, collateral type and collateral performance; however, because of the Loss Sharing Agreements, the Company has minimal risk with respect to fluctuations in the value of these securities.

The Company uses third-party pricing services in determining fair value measurements for investment securities that are categorized in level 3 of the fair value hierarchy. To obtain an understanding of the methodologies and assumptions used, management reviews written documentation provided by the pricing services, conducts interviews with valuation desk personnel, performs on-site walkthroughs and reviews model results and detailed assumptions used to value selected securities as considered necessary. Management has established a robust price challenge process that includes a review by the treasury front office of all prices provided on a monthly basis. Any price evidencing unexpected month over month fluctuations or deviations from expectations is challenged. If considered necessary to resolve any discrepancies, a price will be obtained from an additional independent valuation source. The Company does not typically adjust the prices provided, other than through this established challenge process. The results of price challenges are subject to review by executive management. The Company has also established a quarterly process whereby prices provided by our primary pricing service for a sample of securities are validated. When there are price discrepancies, the final determination of fair value is based on careful consideration of the assumptions and inputs employed by each of the pricing sources.

*Assets and liabilities measured at fair value on a non-recurring basis*

Following is a description of the methodologies used to estimate the fair values of assets and liabilities measured at fair value on a non-recurring basis, and the level within the fair value hierarchy in which those measurements are typically classified.

*Impaired loans and OREO*—The carrying amount of collateral dependent impaired loans is typically based on the fair value of the underlying collateral, which may be real estate or other business assets, less estimated costs to sell. The carrying value of OREO is initially measured based on the fair value of the real estate acquired in foreclosure and subsequently adjusted to the lower of cost or estimated fair value, less estimated cost to sell. Fair values of real estate collateral are typically based

**Note 20 Fair Value Measurements (Continued)**

on real estate appraisals which utilize market and income approaches to valuation incorporating both observable and unobservable inputs. When current appraisals are not available, the Company may use brokers' price opinions, home price indices or other available information about changes in real estate market conditions to adjust the latest appraised value available. These adjustments to appraised values may be subjective and involve significant management judgment. The fair value of collateral consisting of other business assets is generally based on appraisals that use market approaches to valuation incorporating primarily unobservable inputs. Fair value measurements related to collateral dependent impaired loans and OREO are classified within level 3 of the fair value hierarchy.

The following tables present assets for which nonrecurring changes in fair value have been recorded for the years ended December 31, 2012, 2011 and 2010 (in thousands):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total | Gains (Losses) from Fair Value Changes |
| Other real estate owned | $— | $— | $76,022 | $76,022 | $(9,926) |
| Impaired loans | $— | $— | $ 5,956 | $ 5,956 | $(1,600) |

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total | Gains (Losses) from Fair Value Changes |
| Other real estate owned | $— | $— | $123,737 | $123,737 | $(24,569) |
| Impaired loans | $— | $— | $ 5,028 | $ 5,028 | $ (4,254) |

| | 2010 | | | | |
|---|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total | Gains (Losses) from Fair Value Changes |
| Other real estate owned | $— | $— | $206,680 | $206,680 | $(16,131) |

The Company did not have any impaired loans whose carrying amounts were measured based on the fair value of underlying collateral at December 31, 2010.

**Note 20 Fair Value Measurements (Continued)**

The following table presents the carrying value and fair value of financial instruments as of December 31, 2012 and December 31, 2011 and the level within the fair value hierarchy in which those measurements are classified (dollars in thousands):

| | | 2012 | | 2011 | |
|---|---|---|---|---|---|
| | Level | Carrying Value | Fair Value | Carrying Value | Fair Value |
| **Assets:** | | | | | |
| Cash and cash equivalents | 1 | $ 495,353 | $ 495,353 | $ 303,742 | $ 303,742 |
| Investment securities available for sale | 1/2/3 | 4,172,412 | 4,172,412 | 4,181,977 | 4,181,977 |
| Non-marketable equity securities | 2 | 133,060 | 133,060 | 147,055 | 147,055 |
| Loans held for sale | 2 | 2,129 | 2,151 | 3,952 | 3,994 |
| Loans: | | | | | |
| Covered | 3 | 1,846,482 | 2,508,466 | 2,398,737 | 2,856,268 |
| Non-covered | 3 | 3,666,136 | 3,718,377 | 1,689,919 | 1,725,313 |
| FDIC Indemnification asset | 3 | 1,457,570 | 1,285,434 | 2,049,151 | 1,950,446 |
| Accrued interest receivable | 2 | 22,059 | 22,059 | 19,133 | 19,133 |
| Derivative assets | 2 | 4,908 | 4,908 | 3,731 | 3,731 |
| **Liabilities:** | | | | | |
| Demand, savings and money market deposits | 2 | $5,897,362 | $5,897,362 | $4,777,530 | $4,777,530 |
| Time deposits | 2 | 2,640,711 | 2,666,780 | 2,587,184 | 2,621,874 |
| Short-term borrowings | 2 | 8,175 | 8,175 | 206 | 206 |
| Federal Home Loan Bank advances | 2 | 1,916,919 | 1,929,316 | 2,236,131 | 2,294,265 |
| Accrued interest payable | 2 | 3,877 | 3,877 | 8,519 | 8,519 |
| Derivative liabilities | 2/3 | 55,741 | 55,741 | 67,178 | 67,178 |

The following methods and assumptions were used to estimate the fair value of each class of financial instruments, other than those described above:

The carrying amounts of certain financial instruments approximate fair value due to their short-term nature and generally negligible credit risk. These financial instruments include cash and cash equivalents, accrued interest receivable, short-term borrowings and accrued interest payable.

*Non-marketable equity securities:*

Non-marketable equity securities include FHLB, Federal Reserve Bank and banker's bank stock. There is no market for these securities, which can be liquidated only by redemption by the issuer. These securities are carried at par, which has historically represented the redemption price and is therefore considered to approximate fair value. Non-marketable equity securities are evaluated quarterly for potential impairment.

*Loans held for sale:*

The fair value of conforming loans originated and held for sale is based on pricing currently available to the Company in the secondary market. Non-conforming loans held for sale, if performing, are valued using a market approach based on observable market prices and transactions for comparable

**Note 20 Fair Value Measurements (Continued)**

instruments. Nonperforming loans held for sale are valued using a discounted cash flow technique incorporating market based probability of default, loss severity given default, recovery lag and appropriately risk weighted discount rate assumptions.

*ACI and non-ACI loans:*

Fair values are estimated based on a discounted cash flow analysis. Estimates of future cash flows incorporate various factors that may include the type of loan and related collateral, collateral values, estimated default probability and loss severity given default, internal risk rating, whether the interest rate is fixed or variable, term of loan, whether or not the loan is amortizing and loan specific net realizable value analyses for certain commercial and commercial real estate loans. The fair values of loans accounted for in pools are estimated on a pool basis. Other loans may be grouped based on risk characteristics and fair value estimated in the aggregate when applying discounted cash flow valuation techniques. Discount rates are based on current market rates for new originations of comparable loans adjusted for liquidity and credit risk premiums that the Company believes would be required by market participants.

*New loans:*

Fair values are estimated using a discounted cash flow analysis with a discount rate based on interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. The ALLL is considered a reasonable estimate of the required adjustment to fair value to reflect the impact of credit risk. This estimate may not represent an exit value as defined in ASC 820.

*FDIC indemnification asset:*

The fair value of the FDIC indemnification asset has been estimated using a discounted cash flow technique incorporating assumptions about the timing and amount of future projected cash payments from the FDIC related to the resolution of covered assets. The factors that impact estimates of future cash flows are similar to those impacting estimated cash flows from ACI and non-ACI loans described above. The discount rate is determined by adjusting the risk free rate to incorporate uncertainty in the estimate of the timing and amount of future cash flows and illiquidity.

*Deposits:*

The fair value of demand deposits, savings accounts and money market deposits is the amount payable on demand at the reporting date. The fair value of time deposits is estimated using a discounted cash flow technique based on rates currently offered for deposits of similar remaining maturities.

*Federal Home Loan Bank advances:*

Fair value is estimated by discounting contractual future cash flows using the current rate at which borrowings with similar terms and remaining maturities could be obtained by the Company.

## Note 21 Commitments and Contingencies

The Company issues off-balance sheet financial instruments to meet the financing needs of its customers. These financial instruments include commitments to fund loans, unfunded commitments under existing lines of credit, and commercial and standby letters of credit. These commitments expose the Company to varying degrees of credit and market risk which are essentially the same as those involved in extending loans to customers, and are subject to the same credit policies used in underwriting loans. Collateral may be obtained based on the Company's credit evaluation of the counterparty. The Company's maximum exposure to credit loss is represented by the contractual amount of these commitments. Amounts funded under non-cancellable commitments in effect at the date of the FSB Acquisition are covered under the Loss Sharing Agreements if certain conditions are met.

*Commitments to fund loans:*

These are agreements to lend funds to customers as long as there is no violation of any condition established in the contract. Commitments to fund loans generally have fixed expiration dates or other termination clauses and may require payment of a fee. Many of these commitments are expected to expire without being funded and, therefore, the total commitment amounts do not necessarily represent future liquidity requirements.

*Unfunded commitments under lines of credit:*

Unfunded commitments under lines of credit include commercial, commercial real estate, home equity and consumer lines of credit to existing customers. Some of these commitments may mature without being fully funded.

*Commercial and standby letters of credit:*

Letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer to a third party. These letters of credit are primarily issued to support trade transactions or guarantee arrangements. Fees collected on standby letters of credit represent the fair value of those commitments and are deferred and amortized over their term, which is typically one year or less. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to customers.

Total lending related commitments outstanding at December 31, 2012 were as follows (in thousands):

| | Covered | Non-Covered | Total |
|---|---|---|---|
| Commitments to fund loans | $ — | $199,165 | $199,165 |
| Commitments to purchase loans | — | 18,723 | 18,723 |
| Unfunded commitments under lines of credit | 63,797 | 435,855 | 499,652 |
| Commercial and standby letters of credit | — | 37,395 | 37,395 |
| | $63,797 | $691,138 | $754,935 |

**Note 21 Commitments and Contingencies (Continued)**

*Legal Proceedings*

The Company is involved as plaintiff or defendant in various legal actions arising in the normal course of business. In the opinion of management, based upon advice of legal counsel, the likelihood is remote that the impact of these proceedings, either individually or in the aggregate, would be material to the Company's consolidated financial position, results of operations or cash flows.

**Note 22 Condensed Financial Statements of BankUnited, Inc.**

Condensed financial statements of BankUnited, Inc. are presented below (in thousands):

**Condensed Balance Sheets**

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| **Assets:** | | |
| Cash and cash equivalents | $ 52,989 | $ 128,126 |
| Investment securities available for sale, at fair value | 155,688 | 105,707 |
| Investment in subsidiaries | 1,554,153 | 1,270,682 |
| Deferred tax asset, net | 14,973 | 14,837 |
| Other assets | 32,582 | 33,891 |
| Total assets | $1,810,385 | $1,553,243 |
| **Liabilities and Stockholders' Equity:** | | |
| Other liabilities | $ 3,705 | $ 17,963 |
| Total liabilities | 3,705 | 17,963 |
| Stockholders' equity | 1,806,680 | 1,535,280 |
| Total liabilities and stockholders' equity | $1,810,385 | $1,553,243 |

**Note 22 Condensed Financial Statements of BankUnited, Inc. (Continued)**

**Condensed Statements of Income**

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Income:** | | | |
| Interest and dividends on investment securities available for sale | $ 3,890 | $ 2,033 | $ — |
| Service fees from subsidiaries | 14,043 | 25,659 | 25,797 |
| Equity in earnings of subsidiaries | 218,154 | 190,134 | 209,753 |
| Gain on sale of investment securities available for sale | 617 | — | — |
| Other | 5,288 | — | — |
| Total | 241,992 | 217,826 | 235,550 |
| **Expense:** | | | |
| Employee compensation and benefits | 26,928 | 145,279 | 41,817 |
| Other | 6,914 | 7,858 | 3,425 |
| Total | 33,842 | 153,137 | 45,242 |
| Income before income taxes | 208,150 | 64,689 | 190,308 |
| Provision (benefit) for income taxes | (3,110) | 1,521 | 5,573 |
| Net income | $211,260 | $ 63,168 | $184,735 |

**Note 22 Condensed Financial Statements of BankUnited, Inc. (Continued)**

**Condensed Statements of Cash Flows**

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Cash flows from operating activities:** | | | |
| Net income | $ 211,260 | $ 63,168 | $ 184,735 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Equity in undistributed earnings of subsidiaries | (118,154) | (75,134) | (149,753) |
| Equity based compensation | 23,204 | 144,769 | 1,301 |
| Change in fair value of equity instruments classified as liabilities | — | — | 35,062 |
| Other | (5,529) | (883) | 2,397 |
| Net cash provided by operating activities | 110,781 | 131,920 | 73,742 |
| **Cash flows from investing activities:** | | | |
| Capital contributions to subsidiary | (30,000) | — | — |
| Purchase of investment securities available for sale | (99,710) | (123,367) | — |
| Proceeds from repayments, sale, maturities and calls of investment securities available for sale | 53,094 | 17,812 | — |
| Cash paid in business combination | (25,164) | — | — |
| Other | (326) | (223) | (723) |
| Net cash used in investing activities | (102,106) | (105,778) | (723) |
| **Cash flows from financing activities:** | | | |
| Issuance of common stock | — | 98,620 | 2,500 |
| Dividends paid | (89,021) | (55,803) | (20,000) |
| Settlement of FDIC Warrant | — | (25,000) | — |
| Other | 5,209 | 931 | — |
| Net cash provided by (used in) financing activities | (83,812) | 18,748 | (17,500) |
| Net increase (decrease) in cash and cash equivalents | (75,137) | 44,890 | 55,519 |
| Cash and cash equivalents, beginning of period | 128,126 | 83,236 | 27,717 |
| Cash and cash equivalents, end of period | $ 52,989 | $ 128,126 | $ 83,236 |
| **Supplemental schedule of non-cash investing and financing activities:** | | | |
| Dividends declared, not paid | $ — | $ 14,930 | $ 14,000 |
| Exchange of common stock for Series A preferred stock | $ 54 | $ — | $ — |
| Equity consideration issued in business combination | $ 39,861 | $ — | $ — |
| Reclassification of PIU liability to equity | $ — | $ 44,964 | $ — |

**Note 22 Condensed Financial Statements of BankUnited, Inc. (Continued)**

BankUnited, Inc.'s investment in the Bank totaled $1.6 billion and $1.3 billion at December 31, 2012 and 2011, respectively. Dividends received by BankUnited, Inc. from the Bank totaled $100.0 million, $115.0 million and $60.0 million for the years ended December 31, 2012, 2011 and 2010, respectively.

**Note 23 Quarterly Financial Information (Unaudited)**

Financial information by quarter for the years ended December 31, 2012 and 2011 follows (in thousands, except per share data):

| | 2012 | | | | |
|---|---|---|---|---|---|
| | Fourth Quarter | Third Quarter | Second Quarter | First Quarter | Total |
| Interest income | $202,346 | $170,305 | $177,915 | $170,290 | $720,856 |
| Interest expense | 27,782 | 30,888 | 32,118 | 32,481 | 123,269 |
| Net interest income before provision for loan losses | 174,564 | 139,417 | 145,797 | 137,809 | 597,587 |
| Provision for loan losses | 1,030 | 6,374 | 2,725 | 8,767 | 18,896 |
| Net interest income after provision for loan losses | 173,534 | 133,043 | 143,072 | 129,042 | 578,691 |
| Non-interest income(1)(2)(3) | 5,499 | 25,684 | 21,666 | 36,398 | 89,247 |
| Non-interest expense | 78,702 | 77,222 | 83,031 | 84,118 | 323,073 |
| Income before income taxes | 100,331 | 81,505 | 81,707 | 81,322 | 344,865 |
| Provision for income taxes | 37,829 | 31,948 | 32,778 | 31,050 | 133,605 |
| Net income | $ 62,502 | $ 49,557 | $ 48,929 | $ 50,272 | $211,260 |
| Earnings per common share, basic | $ 0.61 | $ 0.48 | $ 0.48 | $ 0.49 | $ 2.05 |
| Earnings per common share, diluted | $ 0.61 | $ 0.48 | $ 0.48 | $ 0.49 | $ 2.05 |

**Note 23 Quarterly Financial Information (Unaudited) (Continued)**

| | 2011 | | | | |
|---|---|---|---|---|---|
| | Fourth Quarter | Third Quarter | Second Quarter | First Quarter | Total |
| Interest income | $174,639 | $163,155 | $152,097 | $148,206 | $638,097 |
| Interest expense | 33,926 | 34,357 | 34,775 | 35,879 | 138,937 |
| Net interest income before provision for loan losses | 140,713 | 128,798 | 117,322 | 112,327 | 499,160 |
| Provision for (recovery of) loan losses | 4,012 | 1,252 | (2,892) | 11,456 | 13,828 |
| Net interest income after provision for (recovery of) loan losses | 136,701 | 127,546 | 120,214 | 100,871 | 485,332 |
| Non-interest income(3) | 13,342 | 32,755 | 52,858 | 64,262 | 163,217 |
| Non-interest expense(4) | 75,825 | 79,752 | 95,889 | 204,339 | 455,805 |
| Income (loss) before income taxes | 74,218 | 80,549 | 77,183 | (39,206) | 192,744 |
| Provision for income taxes(4) | 32,938 | 34,996 | 33,188 | 28,454 | 129,576 |
| Net income (loss) | $ 41,280 | $ 45,553 | $ 43,995 | $(67,660) | $ 63,168 |
| Earnings (loss) per common share, basic | $ $0.41 | $ $0.45 | $ $0.44 | $ ($0.72) | $ 0.63 |
| Earnings (loss) per common share, diluted | $ $0.41 | $ $0.45 | $ $0.44 | $ ($0.72) | $ 0.62 |

(1) Non-interest income for the fourth quarter of 2012 includes a loss from the extinguishment of Federal Home Loan Bank advances of $14.2 million. See Note 13.

(2) Non-interest income for the fourth quarter of 2012 includes a loss from the termination of an interest rate swap of $8.7 million. See Note 15.

(3) Non-interest income for the fourth quarters of 2012 and 2011 includes gains (losses) from the sale of covered residential loans of $1.5 million and ($14.3) million, respectively, net of the impact of indemnification from the FDIC under the Loss Sharing Agreements. See Note 6.

(4) Non-interest expense for the first quarter of 2011 includes $110.4 million in equity based compensation recorded at the time of the Company's IPO. This expense was not deductible for income tax purposes and therefore impacted the Company's effective tax rate for the quarter. See Note 17.

## Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

## Item 9A. Controls and Procedures

***Evaluation of Disclosure Controls and Procedures***

As of the end of the period covered by this Annual Report on Form 10-K, we carried out an evaluation under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that our disclosure controls and procedures were effective.

***Changes in Internal Control over Financial Reporting***

None.

***Management's Report on Internal Control Over Financial Reporting***

Management's report set forth on page F-2 is incorporated herein by reference.

## Item 9B. Other Information

None.

## PART III

### Item 10. Directors, Executive Officers and Corporate Governance

Information regarding the directors and executive officers of BankUnited, Inc. and information regarding Section 16(a) compliance, the Audit Committee, the Company's code of ethics, background of the directors and director nominations appearing under the captions "Section 16(a) Beneficial Ownership Reporting Compliance," "Committees of the Board of Directors," "Corporate Governance Guidelines, Code of Conduct and Code of Ethics," "Director Nominating Process and Diversity" and "Election of Directors" in the Company's Proxy Statement for the 2013 annual meeting of stockholders is hereby incorporated by reference.

### Item 11. Executive Compensation

***Executive Compensation***

For purposes of Item 402 of Regulation S-K, the "named executive officers" of BankUnited, Inc. for the fiscal year ended December 31, 2012 are John A. Kanas, Chairman, President and Chief Executive Officer; John Bohlsen, Vice Chairman and Chief Lending Officer; Douglas J. Pauls, Chief Financial Officer; Rajinder P. Singh, Chief Operating Officer; and Randy R. Melby, Senior Executive Vice President and Chief Risk Officer at BankUnited.

Information appearing under the captions "Director Compensation" and "Executive Compensation" in the 2013 Proxy Statement (other than the "Compensation Committee Report," which is deemed furnished herein by reference) is hereby incorporated by reference.

### Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information setting forth the security ownership of certain beneficial owners and management appearing under the caption "Beneficial Ownership of the Company's Common Stock" and information in the "Equity Compensation Plans" table appearing under the caption "Equity Compensation Plans" in the 2013 Proxy Statement is hereby incorporated by reference.

### Item 13. Certain Relationships and Related Transactions, and Director Independence

Information regarding certain related transactions appearing under the captions "Certain Relationships and Related Person Transactions" and information regarding director independence appearing under the caption "Director Independence" in the 2013 Proxy Statement is hereby incorporated by reference.

### Item 14. Principal Accountant Fees and Services

Information appearing under the captions "Auditor Fees and Services" and "Policy for Approval of Audit and Permitted Non-Audit Services" in the 2013 Proxy Statement is hereby incorporated by reference.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules

(a) List of documents filed as part of this report:

1) Consolidated Financial Statements and Report of Independent Registered Public Accounting Firm

   See Index on page F-1.

2) Financial Statement Schedules:

   Financial statement schedules are omitted as not required or not applicable or because the information is included in the Consolidated Financial Statements or notes thereto.

3) List of Exhibits:

   The exhibit list in the Exhibit Index is incorporated herein by reference as the list of exhibits required as part of this report.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused the report to be signed on its behalf by the undersigned, thereunto duly authorized.

**BANKUNITED, INC.**

Date: February 25, 2013

By: /s/ JOHN A. KANAS

Name: John A. Kanas

Title: *Chairman, President and Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
| --- | --- | --- |
| /s/ JOHN A. KANAS<br>John A. Kanas | Chairman, President and Chief Executive Officer (Principal Executive Officer) | February 25, 2013 |
| /s/ DOUGLAS J. PAULS<br>Douglas J. Pauls | Chief Financial Officer (Principal Financial and Accounting Officer) | February 25, 2013 |
| /s/ JOHN BOHLSEN<br>John Bohlsen | Vice Chairman, Chief Lending Officer and Director | February 25, 2013 |
| /s/ CHINH E. CHU<br>Chinh E. Chu | Director | February 25, 2013 |
| /s/ SUE M. COBB<br>Ambassador Sue M. Cobb | Director | February 25, 2013 |
| /s/ EUGENE F. DEMARK<br>Eugene F. DeMark | Director | February 25, 2013 |
| /s/ RICHARD S. LEFRAK<br>Richard S. LeFrak | Director | February 25, 2013 |

| Signature | Title | Date |
|---|---|---|
| /s/ WILBUR L. ROSS, JR.<br>Wilbur L. Ross, Jr. | Director | February 25, 2013 |
| /s/ PIERRE OLIVIER SARKOZY<br>Pierre Olivier Sarkozy | Director | February 25, 2013 |
| /s/ LANCE N. WEST<br>Lance N. West | Director | February 25, 2013 |
| /s/ THOMAS M. O'BRIEN<br>Thomas M. O'Brien | Director | February 25, 2013 |

## EXHIBIT INDEX

| Exhibit Number | Description | Location |
|---|---|---|
| 2.1a | Purchase and Assumption Agreement, dated as of May 21, 2009, among the Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Cables, Florida, the Federal Deposit Insurance Corporation and BankUnited (Single Family Shared-Loss Agreement and Commercial and Other Shared-Loss Agreement included as Exhibits 4.15A and 4.15B thereto, respectively)† | Exhibit 2.1a to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |
| 2.1b | Addendum to Purchase and Assumption Agreement, dated as of May 21, 2009, by and among the Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Gables, Florida, BankUnited, and the Federal Deposit Insurance Corporation | Exhibit 2.1b to the Registration Statement on Form S-1 of the Company filed January 10, 2011 |
| 2.1c | Amendment No. 1 to the BankUnited Single Family Shared-Loss Agreement with the FDIC, dated as of November 2, 2010 | Exhibit 2.1c to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |
| 2.1d | Amendment No. 2 the BankUnited Single Family Shared-Loss Agreement with the FDIC, dated as of December 22, 2010 | Exhibit 2.1d to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |
| 3.1 | Amended and Restated Certificate of Incorporation | Exhibit 3.1 of the Company's Annual Report on Form 10-K filed March 31, 2011 |
| 3.2 | Amended and Restated By-Laws | Exhibit 3.2 of the Company's Annual Report on Form 10-K filed March 31, 2011 |
| 3.3 | Certificate of Designation, Preferences and Rights of Series A Nonvoting Preferred Stock of BankUnited, Inc., dated February 29, 2012 | Exhibit 3.3 to the Registration Statement on Form S-8 of the Company filed February 29, 2012 |
| 4.1 | Specimen common stock certificate | Exhibit 4.1 to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |
| 10.1a | Amended and Restated Limited Liability Company Agreement of BU Financial Holdings LLC, dated as of May 21, 2009, by and among John A. Kanas, Rajinder P. Singh, John N. DiGiacomo, John Bohlsen and the other parties listed on Schedule A thereto (Schedule A as of January 15, 2011) | Exhibit 10.1 to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |

| Exhibit Number | Description | Location |
|---|---|---|
| 10.1b | Joinders to the Amended and Restated Limited Liability Company Agreement | Exhibit 10.1b to the Registration Statement on Form S-1 of the Company filed January 24, 2011 |
| 10.2 | BankUnited Nonqualified Deferred Compensation Plan | Exhibit 10.6 to the Registration Statement on Form S-1 of the Company filed October 29, 2010 |
| 10.3 | BankUnited, Inc. (formerly known as BU Financial Corporation) 2009 Stock Option Plan | Exhibit 10.7 to the Registration Statement on Form S-1 of the Company filed October 29, 2010 |
| 10.4 | BankUnited, Inc. 2010 Omnibus Equity Incentive Plan | Exhibit 10.8 to the Registration Statement on Form S-1 of the Company filed January 18, 2011 |
| 10.5a | Registration Rights Agreement by and among BankUnited, Inc., John A. Kanas, Rajinder P. Singh, Douglas J. Pauls and John Bohlsen, and each of the other parties thereto | Exhibit 10.9 to Annual Report on Form 10-K of the Company filed March 31, 2011 |
| 10.5b | Amendment No. 1, dated February 29, 2012, to Registration Rights Agreement, dated February 2, 2011, by and among BankUnited, Inc., John A. Kanas, Rajinder P. Singh, Douglas J. Pauls and John Bohlsen, and each of the other parties thereto | Exhibit 10.3 to the Current Report on Form 8-K of the Company filed March 6, 2012 |
| 10.6 | Amended and Restated Director Nomination Agreement, dated February 29, 2012, by and among BankUnited, Inc., John A. Kanas and the other parties thereto | Exhibit 10.2 to the Current Report on Form 8-K of the Company filed March 6, 2012 |
| 10.7 | Transaction Fee Agreement, dated May 21, 2009, among BU Financial Holdings LLC, Blackstone Management Partners L.L.C., Carlyle Investment Management L.L.C., Centerbridge Advisors, LLC and WL Ross & Co. LLC | Exhibit 10.11 to the Registration Statement on Form S-1 of the Company filed October 29, 2010 |
| 10.8 | Form of indemnification agreement between BankUnited, Inc. and each of its directors and executive officers | Exhibit 10.1 to the Current Report on Form 8-K of the Company filed February 16, 2011 |
| 10.9 | BankUnited, Inc. Policy on Incentive Compensation Arrangements | Exhibit 10.14 to the Registration Statement on Form S-1 of the Company filed January 24, 2011 |
| 10.10 | Offer Letter to Randy R. Melby dated September 28, 2009 | Exhibit 10.15 to the Registration Statement on Form S-1 of the Company filed January 27, 2011 |

| Exhibit Number | Description | Location |
|---|---|---|
| 10.11 | Heritage Bank, N.A. 2008 Stock Incentive Plan | Exhibit 10.1 to the Registration Statement on Form S-8 of the Company filed February 29, 2012 |
| 10.12 | Exchange Agreement, dated February 29, 2012, by and among BankUnited, Inc., Blackstone Capital Partners V L.P., Blackstone Capital Partners V-AC L.P., Blackstone Family Investment Partnership V L.P., and Blackstone Participation Partnership V, L.P. | Exhibit 10.1 to the Current Report on Form 8-K of the Company filed March 6, 2012 |
| 10.13 | Stock Warrant Agreement, dated as of November 24, 2008, by Heritage Bank, N.A. in favor of the parties listed on Exhibit A thereto | Exhibit 10.4 to the Current Report on Form 8-K of the Company filed March 6, 2012 |
| 10.14 | Supplemental Warrant Agreement, dated as of February 29, 2012, by and between BankUnited, Inc. and Heritage Bank, N.A. | Exhibit 10.5 to the Current Report on Form 8-K of the Company filed March 6, 2012 |
| 10.15a | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited, Inc. and John A. Kanas | Exhibit 10.1 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 10.15b | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited and John A. Kanas | Exhibit 10.4 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 10.16a | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited, Inc. and Rajinder P. Singh | Exhibit 10.2 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 10.16b | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited and Rajinder P. Singh | Exhibit 10.5 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 10.17a | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited, Inc. and John Bohlsen | Exhibit 10.3 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 10.17b | Amended and Restated Employment Agreement, dated August 29, 2012, by and between BankUnited and John Bohlsen | Exhibit 10.6 to the Current Report on Form 8-K of the Company filed August 31, 2012 |
| 21.1 | Subsidiaries of BankUnited, Inc. | Filed herewith |
| 23.1 | Consent of KPMG LLP | Filed herewith |

| Exhibit Number | Description | Location |
|---|---|---|
| 31.1 | Rule 13a-14(a) Certification of Chief Executive Officer of the Company in accordance with Section 302 of the Sarbanes-Oxley Act of 2002 | Filed herewith |
| 31.2 | Rule 13a-14(a) Certification of Chief Financial Officer of the Company in accordance with Section 302 of the Sarbanes-Oxley Act of 2002 | Filed herewith |
| 32.1 | Section 1350 Certification of Chief Executive Officer of the Company in accordance with Section 906 of the Sarbanes-Oxley Act of 2002 | Filed herewith |
| 32.2 | Section 1350 Certification of Chief Financial Officer of the Company in accordance with Section 906 of the Sarbanes-Oxley Act of 2002 | Filed herewith |
| 101.INS* | XBRL Instance Document | Filed herewith |
| 101.SCH* | XBRL Taxonomy Extension Schema | Filed herewith |
| 101.CAL* | XBRL Taxonomy Extension Calculation Linkbase | Filed herewith |
| 101.DEF* | XBRL Taxonomy Extension Definition Linkbase | Filed herewith |
| 101.LAB* | XBRL Taxonomy Extension Label Linkbase | Filed herewith |
| 101.PRE* | XBRL Taxonomy Extension Presentation Linkbase | Filed herewith |

† Schedules and similar attachments to the Purchase and Assumption Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant will furnish supplementally a copy of any omitted schedules or similar attachment to the SEC upon request.

* Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.