



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**CRA Decision #96
July 1999**

**DECISION OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
BANK OF COMMERCE, SAN DIEGO, CALIFORNIA, INTO
U.S. BANK NATIONAL ASSOCIATION, MINNEAPOLIS, MINNESOTA,
UNDER THE CHARTER AND TITLE OF
U.S. BANK NATIONAL ASSOCIATION.**

June 30, 1999

A. Introduction

On March 26, 1999, application was made to the Comptroller of the Currency for prior approval to merge Bank of Commerce, San Diego, California, into U. S. Bank National Association, Minneapolis, Minnesota, (hereinafter "U.S. Bank") under the charter and the title of U. S. Bank, under 12 U.S.C. §§ 215a & 1828(c). As part of the merger application, U.S. Bank also requests approval to retain Bank of Commerce's main office and branches, as branches of U.S. Bank, under 12 U.S.C. § 36(b)(2). This application was based on an agreement entered into between the proponents on February 18, 1999, as amended and restated March 26, 1999.

As of December 31, 1998, Bank of Commerce, a state member bank, had total deposits of \$573 million and operated 10 offices in California. On the same date, U. S. Bank had total deposits of \$49 billion and operated an extensive branching network in seventeen states, including California. U.S. Bank is 100 percent owned and controlled by U.S. Bancorp, a multi-bank holding company.

The proposed merger is legally permissible under 12 U.S.C. § 215a because U.S. Bank has

branches in California, and so it may acquire Bank of Commerce, another bank located in California, by merger under section 215a.¹ U.S. Bank may retain the main office and branches of Bank of Commerce as branches after the merger under 12 U.S.C. § 36(b)(2)(A), since California permits statewide branching. Accordingly, the proposed merger and retention of branches are legally authorized.

B. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for a merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find this merger may be approved under section 1828(c).

1. Competitive Analysis

The OCC has reviewed the competitive effects of this proposal by using its standard procedures for determining whether a business combination clearly has minimal or no adverse competitive effects. The OCC finds that the proposal satisfies its criteria for a merger that clearly has no or minimal adverse competitive effects.

2. Financial and Managerial Resources

We find that the financial and managerial resources of Bank of Commerce and U.S. Bank do not raise concerns that would warrant disapproval of the application. The future prospects of the proponents, individually and combined, are considered favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and Needs

The merger will not have an adverse impact on the convenience and needs of the communities to be served. No products or services will be discontinued, and all facilities will remain open after consummation of the merger. Therefore, the resulting bank is expected to meet the convenience and needs of the community to be served.

The OCC received a letter from an organization based in San Diego, California, raising concerns with the referenced application. The organization is a quasi public committee authorized by City

¹ See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1) (pages 6-8). See also *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction).

and County resolution to develop reinvestment plans with lenders in the San Diego region. The organization raised concerns with the branch locations of Bank of Commerce, alleging that the locations were not accessible to low-income and minority communities. The organization also requested additional time for it to negotiate with U.S. Bank and obtain its plan for serving the San Diego area. The OCC did not act on the request, but during its review of the application conducted its own review of the concerns raised by the organization by reviewing Bank of Commerce's last CRA Performance Evaluation dated November 2, 1998. The Performance Evaluation indicated that the branches were reasonably accessible to essentially all portions of its assessment areas. The Performance Evaluation also indicated that nine of the ten offices were either located in or adjacent to low- or moderate-income ("LMI") census tracts. While no change in the locations of those branches has occurred since the last CRA Performance Evaluation, OCC examiners also reviewed the locations of the 10 offices and concluded that the offices are reasonably accessible to all segments of the community. Subsequently, the organization informed the OCC that U.S. Bank had submitted a plan and as such, its concerns regarding the merger were mitigated. The organization forwarded U.S. Bank's plans for final acceptance to the San Diego City Council and County Board of Supervisors.

C. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, including LMI neighborhoods, when evaluating certain applications, including mergers. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, effective July 1, 1997, the OCC evaluates performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

U.S. Bank received a Satisfactory CRA rating dated April 8, 1998.² Bank of Commerce received a Satisfactory CRA rating from the Federal Reserve Bank of San Francisco dated November 2, 1998.

During the comment period, the OCC received comments from thirteen California-based community organizations, eight of which were in support of the merger. The adverse comments related to U.S. Bank's CRA performance in California. The adverse comments also requested the

² The Performance Evaluation of U.S. Bank covered only those assessment areas that were merged into the bank prior to June 1, 1997. Accordingly, the California assessment areas were not included in that evaluation. Subsequent to June 1, 1997, United States National Bank of Oregon, Portland, Oregon and First Bank National Association, Minneapolis, Minnesota, both lead banks of their respective holding companies, merged into U.S. Bank. Both of those institutions had Outstanding CRA ratings when they merged with U.S. Bank. The OCC expects to conduct a full scope CRA Performance Evaluation of U.S. Bank in the year 2000 which will include the resulting bank's California assessment areas.

OCC to conduct a public hearing to discuss the concerns raised by the commenters.³ In light of the written comment received and the nature of the hearing requests, the OCC concluded that such a hearing would not provide any additional facts orally that could not be provided in writing. Accordingly, the OCC decided not to hold a public hearing on this merger application. However, based upon the concerns raised by the commenters, the OCC directed examiners with extensive consumer compliance experience, and who were not involved in the last CRA or fair lending examinations of U.S. Bank, to conduct an investigation into these concerns. The scope of this review included an investigation of the specific CRA-related allegations raised by the commenters and a limited assessment of the bank's record of CRA performance in California.⁴ In order to investigate those concerns and assess the record of CRA performance, the OCC removed the application from expedited review processing on April 30, 1999. The allegations raised and the findings of the OCC's investigation are presented below. Based on the OCC's investigation, we find that approval of the proposed transaction is consistent with the Community Reinvestment Act.⁵

Lending

OCC examiners reviewed U.S. Bank's overall lending efforts in California for 1998 and determined that the bank's level of lending was consistent with its total resources and its business focus. During that year, U.S. Bank focused most of its efforts on consumer and small business lending. The percentage of loan originations within each of U.S. Bank's California assessment areas is consistent with both the percentage of its deposits originating in each assessment area and the percentage of population located in each assessment area. OCC examiners also found that U.S. Bank's distribution of loans across all segments of its assessment areas and to borrowers of all income levels is reasonable. In addition, OCC examiners noted that, during 1998, U.S. Bank originated a significant volume of qualifying community development loans. Some commenters alleged that U.S. Bank was not meeting the lending needs of the rural segments of its assessment areas in California. The examiner's limited review found that U.S. Bank was not failing to meet the needs of the bank's rural assessment areas.⁶

³ The OCC also received a request from a community organization to delay the decision on the application until U.S. Bank agreed to enter into a written commitment formalizing its CRA programs and plans for California. The OCC does not monitor or take any position regarding private commitments between banks and community organizations. Rather, the OCC assesses the bank's record of CRA performance within its assessment areas.

⁴ The investigation was not a full scope CRA examination but a limited scope review designed to provide the OCC with an understanding of U.S. Bank's record of CRA performance in California. The investigation was conducted to analyze the allegations raised by the commenters because the OCC had not previously reviewed U.S. Bank's CRA performance in California.

⁵ One of the comments expressed a concern that U.S. Bank was not meeting its goal of increasing vendor programs to increase contracts with minority-owned business enterprises. While this is not a factor considered by the OCC when evaluating mergers, U.S. Bank represented that its 1998 purchases from minority and women-owned businesses were over \$17.9 million. U.S. Bank also stated that it plans to increase that amount by 12% in 1999.

⁶ One commenter expressed the need for multi-family housing in rural areas. OCC examiners noted that in 1998 U.S. Bank made two low-income community development loans in non-MSA areas. One of those loans was for an 8-unit multi-family housing project located in an non-MSA area within the bank's assessment area.

Small Farm Lending

OCC examiners reviewed the bank's record of making agricultural loans in California and concluded that while U.S. Bank was not a large agricultural lender in California, the bank's distribution of loans was consistent with the demographic composition of its assessment areas.⁷ OCC examiners found that during 1998, U.S. Bank originated 13.4% of its small farm loans in moderate-income geographies, which compared favorably with the level of farms located in moderate-income geographies of 12.4%. While the bank did not make any small farm loans in low-income geographies, only 1.7% of total number of farms in California are located in low-income geographies within the bank's assessment areas. OCC examiners also found that U.S. Bank makes the vast majority of reportable small farm loans in amounts less than or equal to \$100,000. Of the 82 originations, 71% were in amounts of \$100,000 or less.

Small Business Lending

The commenters also expressed concerns as to whether U.S. Bank was serving the credit needs of small businesses in the bank's assessment areas in California. OCC examiners reviewed 1998 data and concluded that the geographic distribution of U.S. Bank's small business loans in California was commensurate with the distribution of small businesses within its California assessment areas. U.S. Bank originated about 21% of its small business loans in LMI geographies which reasonably approximates the 26% of businesses located in LMI geographies. During 1998, U.S. Bank originated 3,180 small business loans (or 88% of total reported small business loans) in amounts of \$100,000 or less. OCC examiners also noted that while the average size of U.S. Bank's small business loan was \$68,000, 71% of the reported small business loans were of amounts of \$50,000 or less. The acquisition of Bank of Commerce, a bank with a strong small business lending history, is expected to result in an increase in U.S. Bank's volume of small business loans.

Lending to Minorities

One commenter expressed concerns that U.S. Bank was not meeting its goal of receiving a percentage of applications from minorities consistent with the population in California. While 30% of the bank's California market are comprised of minorities, in 1997 and 1998, 29.6% and 26%, respectively, of the bank's mortgage related applications were from minority applicants. The commenter also expressed concerns that the application approval rate for Latinos was below the state industry average. OCC examiners reviewed the percentage of applications received from minority groups compared to the demographics of the assessment areas. OCC examiners found no concerns that warranted closer review at this time. In addition, the last fair lending examination of U.S. Bank as of June 15, 1997, disclosed no evidence of discrimination. The OCC expects to conduct a fair lending exam of U.S. Bank within the next twelve months.

⁷ Ten of U.S. Bank's fourteen assessment areas in California are located in MSAs. These ten assessment areas contain 91% of the 5.5 million people who reside in the bank's California markets.

The commenters also alleged that U.S. Bank was not collecting racial information on applications received by telephone or mail. OCC examiners noted that approximately 50% of the bank's mortgage-related applications did not contain government monitoring information. However, OCC examiners reviewed the bank's practice of collecting racial monitoring data on applications received by telephone or mail and concluded that the bank was in compliance with the data collection requirements associated with Regulation B and the Home Mortgage Disclosure Act, which does not require that monitoring information be collected for applications received by telephone or mail.

Investments

OCC examiners reviewed the bank's 1998 investments and determined that the bank generated a significant volume of qualifying investments within California. During 1998, U.S. Bank made 40 qualifying investments of \$29 million in California. This represented approximately 10% of the portion of U.S. Bank's Tier 1 capital that could be attributed to its activities in California.⁸ The commenters alleged that U.S. Bank's investments did not meet the definition of qualifying investments under CRA and that the bank made few investments that promote economic development. OCC examiners noted that the bank made approximately nine investments that would be considered economic development investments in nature.

Services

OCC examiners determined that U.S. Bank's services are reasonably accessible to all areas of its California assessment areas. The distribution of branches throughout California is reasonable when compared to the percentage of the population living in each income category. U.S. Bank has 22% of its branches located in low- or moderate-income areas compared to 23% of the population served by U. S. Bank living in low- or moderate-income areas. U.S. Bank also provides an alternative delivery system for retail banking services through a telephone application system. This system permits customers to apply for loans over the telephone without having to visit a banking office to make application.

One commenter expressed concerns with the lack of availability of multi-lingual services at U.S. Bank, noting that most public programs recognize a need for translation of materials in over thirty languages. U.S. Bank indicated that it makes Spanish brochures available in California and its ATMs offer Spanish language options. In addition, the bank indicated it has developed flyers in languages other than English and Spanish and will monitor the need to develop brochures in other languages.

In summary, our investigation and analysis of the issues raised relating to CRA performance indicated no basis for denying or conditioning the approval of this application.

⁸ Examiners determined this number based on the percentage of deposits in California in relation to the bank's total deposits from all 17 states in which it has offices.

