



**CRA Decision #156
May 2013**

April 5, 2013

Carlton E. Langer
Senior Vice President and Assistant Counsel
FirstMerit Bank, National Association
III Cascade Plaza
Akron, Ohio 44308

Re: Application for the Merger of Citizens Bank, Flint, Michigan with and into FirstMerit Bank, National Association, Akron, Ohio
OCC Control Number 2012-CE-02-0024

Dear Mr. Langer:

The Office of the Comptroller of the Currency (OCC) hereby approves the above referenced application to merge Citizens Bank, Flint, Michigan (Citizens) with and into FirstMerit Bank, National Association, Akron, Ohio (FirstMerit). In addition, the OCC approves FirstMerit retaining its main office and branches as well as the main office and branches of Citizens following consummation of the merger. These approvals are granted based on a thorough review of the application, additional written materials that FirstMerit has provided to the OCC, and additional information available to the OCC, commitments and representations (both written and oral) made by FirstMerit's representatives during the application process, and supervisory materials and other information that was available to the OCC as a result of its regulatory responsibilities.

I. Background

Citizens is a wholly owned subsidiary of Citizens Republic Bancorp, Inc., a bank holding company headquartered in Flint, Michigan. Citizens is a state-chartered member bank with its main office in Flint, Michigan, and branches in Michigan, Ohio, and Wisconsin.

FirstMerit is a wholly owned subsidiary of FirstMerit Corporation, a bank holding company located in Akron, Ohio. FirstMerit is a national bank with its main office in Akron, Ohio, and branches in Illinois, Ohio, and Pennsylvania.

FirstMerit Corporation submitted an application to the Federal Reserve Bank of Cleveland to acquire Citizens Republic Bancorp, Inc. through a merger transaction. Immediately following consummation of the bank holding company merger, Citizens will merge with and into FirstMerit in an affiliated interstate merger transaction. The Federal Reserve Board approved the holding company transaction on March 22, 2013.

II. The Proposed Merger Transaction

On October 11, 2012, FirstMerit filed an application with the OCC to merge with and into Citizens under the charter and title of FirstMerit, pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c), and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal), 12 U.S.C. § 1831u, which authorizes mergers between insured banks with different home states. 12 U.S.C. § 1831u(a)(1). Riegle-Neal amended the National Bank Consolidation and Merger Act to permit national banks to engage in interstate merger transactions. 12 U.S.C. § 215a-1. As discussed below, the OCC has determined that the merger satisfies relevant legal requirements.

A. Riegle-Neal Factors

Riegle-Neal permits a state to elect to prohibit interstate merger transactions by enacting legislation that expressly prohibits all mergers with out-of-state banks. 12 USC 1831u(a)(2) (state “opt-out” laws). The OCC may not approve an interstate merger if the transaction involves a bank whose home state has enacted a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. The home state of FirstMerit is Ohio and the home state of Citizens is Michigan. Neither of these states enacted a state “opt-out” law. Accordingly, the merger of Citizens with and into FirstMerit is legally authorized as an interstate merger transaction under Riegle-Neal, 12 U.S.C. §§215a-1 and 1831u(a), subject to certain requirements and conditions set forth in 12 U.S.C. §§1831u(a)(5) and 1831u(b) for affiliated banks. These conditions address: (i) compliance with state-imposed age limits, if any; (ii) compliance with certain state filing requirements; (iii) concentration limits; (iv) compliance with community reinvestment requirements; and (v) adequacy of capital and management resources. The OCC considered each of these factors and found them consistent with approval of this application.

B. Bank Merger Act Factors

The proposed merger between FirstMerit and Citizens is also subject to OCC review under the Bank Merger Act. The OCC reviewed the proposed merger under the criteria of the Bank Merger Act and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a merger that would result in a monopoly or substantially lessen competition. The Bank Merger 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. 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of the banks in combating money laundering activities. 12 U.S.C. § 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5) (as amended by section 604 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-

Frank Act)).¹ The OCC considered each of these factors and found them consistent with approval of this application.

C. Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account the records of the institutions' performance in helping to meet the credit needs of their communities, including low- and moderate-income (LMI) neighborhoods, when evaluating applications under the Bank Merger Act.² The OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. The review of the banks' records and other information available to the OCC as a result of its regulatory responsibilities revealed that the banks' records of helping to meet the credit needs of their communities are consistent with approval of this application.

1. FirstMerit Bank, National Association

FirstMerit's most recent PE, dated November 17, 2008, and issued by the OCC,³ assigned the bank an overall "Outstanding" rating. Among the major factors supporting the overall "Outstanding" rating were: (i) a good geographic distribution of loans, with a substantial majority of loans made within its assessment areas; (ii) a good distribution of loans among borrowers of different income levels and businesses of different sizes, with an excellent distribution of home mortgage lending to LMI borrowers in each of FirstMerit's full-scope assessment areas; (iii) an excellent record of community development lending, and an overall good level of qualified community development investments; and (iv) good accessibility of FirstMerit's delivery systems to geographies and individuals of different income levels.

2. Citizens Bank

Citizens' most recent PE, dated November 1, 2010, and issued by the Federal Reserve Bank of Chicago,⁴ assigned it an overall "Satisfactory" rating. Major factors supporting the overall "Satisfactory" rating were: (i) good distribution of loans to small businesses in geographies of different income levels; (ii) Citizens' distribution of loans reflected excellent penetration among borrowers of different income levels and businesses of different sizes; (iii) a relatively high level

¹ The Dodd-Frank Act also added another new provision to the Bank Merger Act under which the responsible agency may not approve any interstate merger transaction that results in the resulting insured depository institution controlling more than 10 percent of the total amount of deposits of the insured depository institutions in the United States. See the Dodd-Frank Act § 623. However, it does not apply to mergers between affiliates. In addition, FirstMerit and its affiliates will not control more than 10 percent of the deposits in the United States.

² 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 CFR § 25.29(a)(3).

³ FirstMerit was examined by the OCC as a large bank under the lending, investment, and service tests. It received an "Outstanding" rating on the lending test and "High Satisfactory" ratings on the investment and service tests. PEs issued by the OCC may be found at <http://www.occ.treas.gov/tools-forms/tools/compliance-bsa/cra-perf-eval-search.html>.

⁴ Citizens was examined by the Federal Reserve Bank of Chicago as a large bank under the lending, investment, and service tests. Citizens received a "High Satisfactory" rating on the lending test and "Low Satisfactory" ratings on the investment and service tests.

of community development loans; (iv) an adequate level of community development investments and grants; (v) Citizens' use of innovative and flexible lending programs and practices that help meet the credit needs of LMI individuals and in LMI areas; and (vi) delivery systems that were accessible to essentially all portions of the Citizens' assessment areas.

3. Public Comment

The OCC did not receive any comment letters from the public on the bank merger application. However, one comment letter was submitted to the Federal Reserve Board and the Federal Reserve Bank of Cleveland (collectively, the Federal Reserve) expressing three concerns about the related bank holding company merger application. The commenter expressed concerns that both Citizens' and FirstMerit's volume of lending to minorities was low based on 2011 Home Mortgage Disclosure Act (HMDA) data. Moreover, the commenter was concerned that the proposed merger may pose unexpected asset quality problems and risk management challenges. Lastly, the commenter expressed concern regarding the existence of shareholder litigation against Citizens Republic Bancorp, Inc., Citizens' board members, and FirstMerit Corporation, alleging breach of fiduciary duty for the failure to obtain the best available price in connection with the merger.

The commenter, in citing HMDA data, expressed the following concerns to the Federal Reserve: (i) First Merit originated fewer conventional home purchase loans to African-American and Hispanic applicants than to White applicants, and denied disproportionately higher numbers of conventional home purchase loan applications by minorities in the Akron and Cleveland metropolitan statistical areas (MSAs); (ii) FirstMerit originated no conventional home purchase loans to African-American applicants in the Toledo MSA; and (iii) Citizens originated no conventional home purchase loans to African-American applicants in the Akron and Cleveland MSAs.

Although the OCC did not receive this comment directly, we have carefully considered the commenter's concerns as they relate to those statutory factors that the OCC is authorized to consider when reviewing an application under the Bank Merger Act.⁵ The OCC has summarized and addressed the commenter's concerns below.

(i) Fair Lending Concerns

The commenter expressed concerns regarding the volume of FirstMerit's loan originations and denials in three Ohio MSAs. The commenter suggested that, based on an analysis of 2011 HMDA data, FirstMerit's lending to minorities for conventional home purchase loans within these three MSAs is unsatisfactory. The commenter similarly suggested that Citizens' 2011 lending for conventional home purchase loans within two of those MSAs also was unsatisfactory.

⁵ Commenter concerns regarding shareholder litigation are considered by the Federal Reserve, and are beyond the OCC's review authority. Potential integration issues such as unexpected asset quality problems and risk management challenges are safety and soundness considerations that the OCC evaluates in its analysis of the application.

The OCC performed a review of FirstMerit's 2011 HMDA data in response to the commenter's concerns. This analysis disclosed modestly lower levels of lending in high minority census tracts within the Cleveland MSA. However, it is important to note that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities or efforts. The OCC, in recognizing the limitations of HMDA data analysis without additional context, considered other pertinent information in its analysis prior to reaching its conclusion. The OCC determined that the noted differences were insufficient to preclude approval of the application. The additional information relied upon by the OCC included confidential examination reports that provided a comprehensive on-site evaluation of FirstMerit's compliance with fair lending laws and regulations. The OCC, during the course of its supervisory activity, will continue to thoroughly assess FirstMerit's record of lending to minority populations in light of the overall performance context, as well as coordinate supervision of the institution with the Consumer Financial Protection Bureau (CFPB).

Pursuant to 12 C.F.R. §25.28(c), the evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. The most recent PEs for the two banks involved in this transaction noted that no evidence of discriminatory or other illegal credit practices had been identified.

Section 1025 of the Dodd-Frank Act assigns to the CFPB exclusive examination authority, and primary enforcement authority, to ensure compliance by insured depository institutions, including national banks and Federal savings associations (FSAs), with Federal consumer financial laws, if the institution has more than \$10 billion in assets. The CFPB performed a consumer compliance review of FirstMerit in the fourth quarter of 2011. The CFPB has advised the OCC that it did not identify evidence that FirstMerit engaged in discriminatory acts or practices.

FirstMerit Corporation has represented that FirstMerit has active legal and compliance risk management programs with various measures and safeguards implemented to ensure that it complies with fair lending and other consumer compliance laws and regulations. These activities include: (i) a process for evaluating every new law or regulation for applicability to its mortgage lending operations and to ensure ongoing compliance with all applicable laws and regulations; (ii) fair lending risk assessments conducted at least annually to assess weaknesses, if any, in processes and controls that could potentially result in any fair lending compliance issues; (iii) computer-based fair lending training for all lending-related employees and specialized supplemental training for personnel with higher fair lending risks in their job roles; (iv) ongoing fair lending data analysis, including statistical regression analyses and comparative file reviews; (v) legal and compliance review of all fair lending complaints; (vi) a corporate fair lending committee; and (vii) a second review of all denied home mortgage loan applications. As evidence of FirstMerit's commitment to ensure ongoing compliance with fair lending and other consumer compliance laws, FirstMerit has committed to enhancing control systems in

recognition of the significant increase in its size and span of operations associated with the proposed merger.

(ii) Home Mortgage and Community Development Lending

FirstMerit has, to date, established a record of serving its communities' needs. In each CRA PE issued since its June 30, 1998 PE, FirstMerit has received an overall rating of at least "Satisfactory." In each of the three CRA evaluations performed since 2000, it has received an "Outstanding" rating for its performance under the lending test.

FirstMerit Corporation has represented that FirstMerit actively participates in various in-house, community-based, and government-assisted loan programs targeted to LMI borrowers, first-time home buyers, and small businesses. As noted in FirstMerit's November 17, 2008 PE, some of the programs in which it participates and that specifically target LMI borrowers include: (i) the Federal Home Loan Bank (FHLB) of Cincinnati's Welcome Home Program;⁶ (ii) the FHLB's Affordable Housing Program;⁷ (iii) FirstMerit's BEST Loans Program;⁸ and (iv) the Low-Income Housing Tax Credit (LIHTC) program.⁹

FirstMerit Corporation has represented that FirstMerit's commitment to its communities has continued at an accelerated pace since its 2008 CRA performance evaluation. It represented that FirstMerit has invested \$18 million in LIHTC Equity Funds syndicated by the Ohio Capital Corporation for Housing, which provide direct equity to affordable housing projects throughout Ohio. FirstMerit has also provided small business loans of almost \$665 million and made available over \$126 million in community development loans, in the Cleveland, Akron, and Toledo MSAs. Specifically, community development lending included \$101 million in loans in the Cleveland MSA, \$19 million in loans in the Akron MSA, and \$6 million in loans in the Toledo MSA. These projects included the creation of single family homes for LMI families and affordable housing for low-income seniors in Akron, participation in the Cleveland Housing Network,¹⁰ which provides housing for more than 2,000 Cleveland families, and a senior housing development in Toledo.

⁶ The Welcome Home program provides grants for home mortgage closing costs and down payments.

⁷ As a sponsor of this FHLB program, which provides grants to organizations that construct or rehabilitate affordable housing, FirstMerit assists organizations with applications and monitors compliance with program requirements.

⁸ This flexible home mortgage program targets LMI neighborhoods in FirstMerit's assessment areas.

⁹ The LIHTC program finances the development of affordable rental housing for low-income households.

¹⁰ The Cleveland Housing Network is an affordable housing program in which FirstMerit participates. Housing options under this program include homes for-sale, U.S. Department of Housing and Urban Development Section 8 project-based rental apartments, and a 15-year lease purchase home ownership program for families who could not otherwise afford to purchase a home. Through partnerships with other organizations, this program also develops housing for chronically homeless individuals.

FirstMerit and Citizens have been subject to comprehensive consumer compliance and fair lending supervisory oversight by the OCC, the CFPB, and the Federal Reserve Bank of Cleveland, and this oversight will continue with respect to the merged entity. In connection with the holding company merger, FirstMerit Corporation represented that, upon consummation of the merger, Citizens will be fully integrated into FirstMerit's compliance program through the extension of FirstMerit's current consumer compliance, fair lending, and CRA programs.

4. Summary

Accordingly, upon review of the respective records of the banks involved in the transaction, the application and other submitted materials, the public comment and FirstMerit's responses to the comment, all representations made by FirstMerit, supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, FirstMerit's and Citizens' respective records of helping to meet the credit needs of their communities are consistent with approval of the application.

D. Subsidiaries and Branches

FirstMerit has represented in the application that Citizens has no operating subsidiaries, and that all assets and activities of Citizens are permissible for a national bank.

Under Riegle-Neal, the resulting bank is authorized to retain and operate offices of both banks. 12 U.S.C. §§ 36(d) and 1831u(d)(1). Accordingly, FirstMerit may retain and operate Citizens' main office and branches as branches of FirstMerit following the merger. FirstMerit may also retain Citizens' loan production office located in Indiana as a loan production office of the resulting bank.

III. Consummation Requirements

The OCC's district office must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period that commenced on March 23, 2013 and any after FirstMerit secures any other required regulatory approval.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

In the event FirstMerit chooses to close any of the branches, a 90-day advance notice of the proposed branch closing must be submitted to the OCC pursuant to 12 U.S.C. § 1831r-1.

These approvals and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of

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this date. The OCC may modify, suspend or rescind these approvals if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A separate letter is enclosed requesting FirstMerit's feedback on how we handled the referenced application. If you have questions regarding the public comments, please contact Senior Licensing Analyst Anne Marie Fernandez at (202)649-7217 or Anne.Fernandez@occ.treas.gov, or for questions regarding other aspects of the application, contact Senior Licensing Analyst Carolina M. Ledesma at (312) 360-8867 or Carolina.Ledesma@occ.treas.gov. We ask that you reference the OCC control number in any correspondence.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing