Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Deicison #98-37
July 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF NATIONAL CITY BANK OF INDIANA, INDIANAPOLIS, INDIANA TO ACQUIRE THE INDIANA BRANCHES OF FIRST OF AMERICA, N.A. KALAMAZOO, MICHIGAN

June 23, 1998

I. INTRODUCTION

On March 4, 1998, National City Bank of Indiana ("NatCity") filed with the Office of the Comptroller of the Currency (" OCC") to acquire 46 branches, with their associated assets and deposit liabilities, from the First of America Bank, N.A. ("FOA"), Kalamazoo, Michigan. FOA is a Savings Association Insurance Fund member. It has approximately $11.1 billion in deposits, with approximately $1 billion attributed to its Indiana branches subject to this transaction. NatCity is a Bank Insurance Fund member with deposits of approximately $3.8 billion. National City Corporation ("NCC"), the parent of NatCity, recently acquired First of America Bank Corporation ("FOA Corp"), the parent corporation of FOA. Therefore, FOA and NatCity are affiliated through common ownership by NCC and this transaction, which is intrastate in nature, is solely a transaction between affiliates. The application indicates that NatCity will close three FOA branches and consolidate seven FOA branches into NatCity offices as part of the total corporate reorganization of NatCity and FOA.

II. LEGAL AUTHORITY

A. The Purchase and Assumption Transaction

1. Authority for the Transaction

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions, as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872 (8th Cir. 1931). In addition, where insured deposits are being acquired by an insured national bank, the transaction

must be reviewed by the OCC for compliance with the Bank Merger Act[1] (12 U.S.C. § 1828(c)), and the Federal Community Reinvestment Act (12 U.S.C. §§ 2901 through 2907).

Additionally, where BIF and SAIF members are transferring deposit liabilities among each other, the transaction must be reviewed for compliance with the Oakar Amendment (12 U.S.C. § 1815(d)(3)).

2. Branch Acquisition by National City Bank of Indiana

Because NatCity, a national bank located in Indiana, proposes to acquire the Indiana branch offices from its affiliate FOA by means of a purchase of assets and assumption of liabilities, it is necessary to review applicable Federal and state law to determine the permissibility of the retention of these branches.

The authority of a national bank to establish intrastate branches is dependent on state law as incorporated into Federal law by 12 U.S.C. § 36(c) and applied to national banks.

While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. § 36(b)(2), section 36(c) applies to branches to be established by a bank through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980).

Title 12 U.S.C. § 36(c) provides:

> *A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.*

Therefore, the authority of a national bank to acquire intrastate branches is dependent on state law as incorporated into Federal law by 12 U.S.C. § 36(c) and applied to national banks.

The pertinent Indiana branching law provides that a state bank is entitled to establish one (1) or more branches de novo in any location or locations within Indiana. Indiana Code Ann. § 28-2-13-19 (Burns 1996 & Supp. 1997). A de novo branch, under Indiana law, includes a branch or

---

[1] In this regard, we note that transactions subject to approval under the Bank Merger Act are not subject to the requirements of 12 U.S.C. § 371c governing certain transactions with affiliates. See 12 C.F.R. § 250.241 (1997). Title 12 U.S.C. § 371c-1 also is inapplicable to this transaction because it does not apply to transactions between affiliated banks.

branches acquired from another bank without acquiring substantially all of the assets of the other bank. Id. at § 28-2-13-9.

Because Indiana law permits unrestricted statewide branching through acquisition, all the Indiana offices of FOA can be operated by NatCity.[2]

B. Compliance with the Bank Merger Act, Oakar Amendment, and the Community Reinvestment Act

1. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger or purchase and assumption transaction between insured depository institutions where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger that 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 the purchase and assumption transaction may be approved under section 1828(c).

a. Competitive Analysis

The purchase and assumption transaction ("P&A") set out in this application will constitute a transaction between affiliated institutions since they are owned by the same bank holding company. Therefore, the P&A transaction involving NatCity and FOA will have no anti-competitive effects due to the affiliation by common ownership prior to the P&A transaction subject to this application.

b. Financial and Managerial Resources

The financial and managerial resources of both institutions are presently satisfactory. In addition, NatCity expects to achieve greater efficiencies by operating the Indiana offices of FOA as branches.

The increased geographic diversification of its branches also will strengthen the combined bank. The future prospects of the resulting institution are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the P&A.

c. Convenience and Needs

---

[2] Indiana branching law also requires the applicant to demonstrate that it has adequate capital, sound management, and adequate future earnings. Id. at § 28-2-13-19(b). Even assuming the applicability of this provision to this transaction, these standards are satisfied.

NatCity, the resulting bank, will help to meet the convenience and needs of the communities to be served. NatCity will continue to serve the same areas that it served prior to the acquisition. The addition of FOA branches will allow it to expand its services to other communities in Indiana. There will be no reductions in the banking products or services offered as a result of the P&A; the resulting bank will continue to offer a full line of banking products and services. The acquired branches in Indiana will continue to engage in the same business, serving the same communities in which FOA currently operates.

The combination should permit the resulting bank to better serve its customers at a lower cost. NatCity anticipates that more sophisticated cash management services will be available to corporate customers as well as broader banking, trust, and investment services to the retail customer. The consolidation of branches will benefit the resulting bank through cost savings in the areas of legal, regulatory compliance, tax reporting, human resources, internal audit and compliance as well as the elimination of duplicate computer systems. Due to the proposed cost savings measures and adherence to NatCity policies and procedures, including credit underwriting practices, there should be a positive effect on the resulting bank's earnings. Likewise, NatCity anticipates that it will be more competitive in the marketplace due to these measures.

Three branch closings and seven branch consolidations are contemplated as a result of this business reorganization due to redundancy or profitability goals. None of the offices to be closed is located in low- or moderate-income communities; two of the branches to be consolidated are located in low- or moderate-income communities. All closures and consolidations will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and consideration will be given to the needs of the communities affected. The bank represented that customers of the closed or consolidated branch offices will continue to be served by existing branch offices of the resulting bank without any adverse effect on the banking services now being offered in the communities.

In view of this information, the impact of the P&A on the convenience and needs of the communities to be served is consistent with approval of this application.

2. Compliance with Oakar Amendment

The acquisition of branches of FOA, a SAIF-member with SAIF-insured deposits, by NatCity, a BIF-member institution, through a purchase of assets and acquisition of liabilities, is an Oakar transaction requiring compliance with the provisions of 12 U.S.C. § 1815(d)(3).

a. Compliance with capital requirements

First, an Oakar transaction may not be approved unless the resulting depository institution will meet all applicable capital requirements upon consummation of the transaction. 12 U.S.C. § 1815(d)(3)(E)(iii). The OCC has determined that NatCity, as the resulting institution, will meet all applicable capital requirements. In fact, following this transaction, NatCity will meet all of the tests allowing it to be considered a well-capitalized institutions. See 12 C.F.R. § 6.4(b)(1).

b. Compliance with section 1815(d)(3)(F)

Section 1815(d)(3)(F) provides that:

> A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in [an Oakar transaction] unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

Thus, to determine whether the proposed transaction is consistent with the Oakar Amendment, we must postulate that the bank to be acquired by NCC is a state bank, with branches located solely in Indiana.

Section 1842(d)(1)(A) governs the acquisition by a holding company of all or substantially all of the assets of a "bank *located* in a State other than the home state of such bank holding company . . . . " (emphasis added). It is clear that the "home state" of NCC is Ohio for the purposes of section 1842(d).[3] It is also clear that the hypothetical state bank being acquired is located solely in Indiana -- the site of all of its offices. Consequently, the section 1842(d) analysis of this transaction is based upon Indiana law as it might be applied to a state bank.[4]

Having determined that the hypothetical state bank is located in Indiana for purposes of section 1842(d)(1), we can proceed to apply the standards of that section. Section 1842(d) imposes, or permits the following limitations to be imposed, on acquisitions by out-of-state bank holding companies.

(1) Age requirements

First, section 1842(d) permits the host state -- that is, the state in which the acquisition is being made -- to prohibit acquisitions if the target is less than five years old. 12 U.S.C. §1842(d)(1)(B). Indiana has no age requirements with respect to acquisition of in-state banks by out-of-state holding companies; consequently, this requirement is met.

---

[3] The home state of a bank holding company, for purposes of section 1842(d)(1)(A), is the state in which the total deposits of all of its banking subsidiaries is the largest on the later of July 1, 1966 or the date on which it first becomes a bank holding company. *See* 12 U.S.C. § 1841(o)(4)(C). NCC first became a holding company in 1973. Since most of the deposits of NCC's bank subsidiary at that time were in Ohio, the home state for purposes of the section 1842(d) analysis is Ohio.

[4] See, e.g., Decision of the Office of the Comptroller of the Currency on the Applications of First Bank National Association, Minneapolis, Minnesota, to Acquire First Bank, FSB, North Dakota, and to Engage in Certain Related Transactions (OCC Corporate Decision 97-32, May 31, 1997); Decision of the Office of the Comptroller of the Currency on the Application of Star Bank, National Association, Cincinnati, Ohio, to Purchase and Assume All the Assets and Liabilities of Great Financial Bank, FSB, Louisville, Kentucky (OCC Corporate Decision 98-09, January 28, 1998).

(2) Deposit concentration limits

Second, a purchase and assumption cannot occur if after consummation of the transaction the national bank and all of its insured depository institution affiliates would control (1) more than 10% of the total amount of insured deposits in the United States, or (2) more than 30% of the insured deposits in the state of the bank to be acquired. *See* 12 U.S.C. § 1842(d)(2). NatCity and FOA controlled about $15 billion of insured deposits as of December 31, 1997, significantly less than 1% of total United States deposits. Thus, the national concentration limit is met. The total Indiana deposits of NatCity and FOA were approximately $5 billion as of December 31, 1997. This represents about 10% of the total market share of commercial bank deposits in Indiana. Consequently, the 30% state limitation imposes no obstacle to this transaction.[5]

(3) Community Reinvestment Act

Third, section 1842(d)(3)(A) requires consideration of the bank holding company's compliance with the Community Reinvestment Act of 1977 ("CRA"). That section requires the Board (and, thus, the OCC in this instance), in determining whether to approve an application by a bank holding company to acquire an out-of-state bank, to consider the bank holding company's compliance with CRA under 12 U.S.C. § 2903. Section 2903 requires the "appropriate Federal financial supervisory agency" to take into account an institution's CRA record in its evaluation of an "application for a deposit facility." 12 U.S.C. § 2903(a)(2). An "application for a deposit facility" includes the acquisition of shares of an insured bank requiring approval under section 1842. 12 U.S.C. §§ 1813(a) and (c)(2); and 2902(3)(F). Bank holding company compliance with CRA is evaluated by looking to the CRA record of the bank holding company's subsidiaries that are subject to the law. The applicable regulation of the Federal Reserve Board, 12 C.F.R. § 228.29 (1997), provides:

> (a) *CRA performance*. [T]he Board takes into account the record of performance under the CRA of:
>
> *****
>
> (2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:
>
> *****

[5] We further note that section 1842(d)(2)(C) may permit states to impose their own deposit concentration limits. However, even assuming such state law limitations would be applicable to a purchase and assumption transaction involving two national banks, Indiana law imposes no deposit concentration limits on corporate reorganizations of this type.

> (ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank [or] to cause a bank to become a subsidiary of a bank holding company . . . .[6]

In fulfilling its responsibilities under sections 1815(d)(3)(F) and 1842(d)(3)(A), the OCC has considered the record of performance under the CRA of all NCC's subsidiary depository institutions. This includes the subsidiary depository institutions NCC recently acquired through its acquisitions of FOA Corp and Ft. Wayne National Corporation ("FWNC"). The most recent examinations of all such institutions resulted in CRA performance ratings of Outstanding or Satisfactory. More specifically, all six subsidiary institutions that NCC owned before the FOA Corp and FWNC acquisitions received Outstanding CRA ratings as a result of the most recent CRA examinations of the institutions. The two bank subsidiaries of former FOA Corp were also rated Outstanding at their most recent CRA examinations. Finally, of the seven bank subsidiaries of the former FWNC, two received Outstanding ratings and five received Satisfactory ratings.

In addition to the Oakar requirement for CRA review, the CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications, including purchase and assumption transactions such as those involved in this transaction. See 12 U.S.C. §§ 2903(2), 2902(3)(E); 12 C.F.R. § 25.29(a)(3). In undertaking this evaluation, the OCC considers the CRA performance evaluation of each participating insured depository institution. Under the CRA, the OCC evaluates performance using performance criteria relative to the bank's lending, investment, and services. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries. Additionally, the OCC considers any public comment letter received related to any national bank participant in the transaction. During the period of this application, no public comments were received by the OCC relating to the purchase and assumption transaction.

While the banking subsidiaries of FOA Corp most recently received Outstanding CRA ratings, we note that two organizations, the Woodstock Institute ("Woodstock") and the Central Illinois Organizing Project ("CIOP"), filed letters with the Federal Reserve Bank of Cleveland objecting to the merger of NCC and FOA Corp. In their letters, the commenters questioned the CRA performance of First of America Bank - Illinois, N.A. ("FOA-IL"), and also the OCC's CRA performance evaluation of that bank. CIOP also questioned the CRA performance of National City Mortgage Company ("NCMC"),[7] in selected Indiana cities. In considering Woodstock's and CIOP's concerns about FOA-IL, the OCC reviewed the most recent public information for the

---

[6] The legislative history underlying section 1842(d)(3)(A) explicitly states that the Board, in passing on interstate bank acquisitions, would continue to review these applications in accordance with existing regulations such as 12 C.F.R. § 228, known as Regulation BB. See H.R. Rep. 103-651, 103d Cong., 2d Sess., 48 (1994). This Report also explicitly mentioned the Board's Regulation Y, 12 C.F.R. 225. Id. That regulation, however, with respect to bank acquisitions by bank holding companies, merely states the Board's need to take into account CRA and Regulation BB. 12 C.F.R. § 225.13(b)(3).

[7] NCMC became a subsidiary of NatCity on March 1, 1998. Prior to that date, NCMC was a subsidiary of NCC and not subject to OCC supervision.

bank, including 1995 and 1996 HMDA data for the bank and its mortgage subsidiary, 1996 small business lending data for the bank, the 1996 Performance Evaluation for the bank, and other information available to the OCC.

In its letter, Woodstock notes that: 1) the last CRA performance evaluation of FOA-IL permitted one assessment area for all of the bank's operations; 2) the assessment area excluded the majority of neighborhoods of the City of Chicago located in Cook County; 3) the bank's branch and ATM distribution in the Chicago area excluded a majority of the area's low- and moderate income census tracts; 4) within the Chicago area the bank and its mortgage company originated a disproportionately low percentage of their mortgages to African Americans; and, 5) within the six-county Chicago area, the bank's record of lending to businesses in low- or moderate-income census tracts was poor.

In addressing Woodstock's allegations regarding FOA-IL's assessment area, a national bank examiner, with expertise in CRA and consumer compliance and who was not involved with the 1996 CRA examination of FOA-IL, reviewed the bank's assessment area in effect at the time of the 1996 CRA examination. Based on that review, we found that the assessment area in effect at the time of the 1996 examination was appropriate and did not arbitrarily exclude low- or moderate-income areas. We note that the office of the bank located in the City of Chicago described in the commenter's letter was not established until 1997 and the area surrounding this office is now included in the bank's assessment area. Further, prior to 1977, FOA-IL expanded its branch and ATM network through the purchase of branches. During the 1996 CRA examination of the bank, the OCC reviewed these branch acquisitions to determine whether the bank arbitrarily excluded from its purchases branches located in low- or moderate-income areas or in areas with high minority populations. Based on this, the OCC determined that the bank did not exclude any branches in such areas from its purchases.

Woodstock also alleged that, within the Chicago area, the bank and its mortgage company (FOA-MC) originated a lower percentage of mortgage loans to African Americans compared to all other originations. Based on a review of 1996 HMDA data, the OCC notes that FOA-IL and FOA-MC originated .63 percent of the total originations in Chicago Metropolitan Statistical Area. Of this .63 percent, the bank and mortgage company originated .13 percent to African Americans. The bank and mortgage company received .64 percent of the total number of applications in Chicago. As previously mentioned, the bank operated only one branch in Cook county in 1996 which was located outside of the City of Chicago.

Woodstock also alleged that FOA-IL had a poor geographic distribution of small business lending in the six-county Chicago region particularly to small businesses located in low- or moderate-income census tracts. We reviewed the bank's reported small business lending for 1996. Although 37 percent of the tracts in the six-county Chicago area are low- or moderate income, the bank's small business loans in low- or moderate-income tracts represented 10 percent of the total number of small business loans it originated. It is important to note, however, that the bank did not have a presence in the City of Chicago in 1996 and the City of Chicago accounts for a large number of the total low- or moderate-income tracts in the region. A comparison of the distribution of small business loans originated by the bank to the distribution of tracts throughout

the bank's entire delineated community indicated, however, that the bank's level of small business loans originated in low- and moderate-income tracts is consistent with the distribution of small business loans in low-and moderate-income tracts in the bank's overall lending area. Furthermore, through our review we found that FOA-IL's penetration of lending is better in lower-income tracts than in higher income-tracts. For example, FOA-IL originated small business loans in 70 percent of the low-income tracts in its delineated community whereas it originated loans in only 53 percent of upper-income tracts. Thus, our review indicated that the bank's record of small business lending is not inconsistent with approval of this application.

Additionally, CIOP alleged that FOA-IL failed to ascertain and meet the community credit needs of its low- and moderate-income communities, based on increased loan denial rates and decreased lending for low- and moderate-income borrowers and African Americans. CIOP criticized the bank's performance compared to other lenders in the same market. CIOP's analysis included both FOA-IL and FOA-MC, and focused on the communities of Springfield, Decatur, Bloomington-Normal, and Champaign-Urbana (CIOP cities). CIOP alleged that the OCC did not consider such data and therefore challenged the OCC's CRA rating for FOA-IL.

In considering these allegations, the OCC reviewed 1995 and 1996 HMDA data for FOA-IL and FOA-MC. We concentrated our review on the four communities on which CIOP focused. The OCC reviewed the data for the bank alone, the mortgage company alone, and the bank and mortgage company on a combined basis.

For each community, the OCC reviewed data for low- and moderate-income individuals, low- and moderate-income tracts, African American individuals, and tracts with African American populations of at least 30 percent. We also reviewed data relating to loans to affluent borrowers in low- and moderate-income tracts in the four communities discussed in the CIOP comment.

Our review of 1995 and 1996 HMDA data for the cities of Springfield, Bloomington, Decatur and Champaign indicate that overall, there was a decline in lending activity by FOA-IL between 1995 and 1996. There was also a general decline in the bank's overall market share. The decline in bank activity was system wide and was not concentrated among low- and moderate-income borrowers, African American borrowers, low- and moderate-income tracts or minority tracts.[8] In addition, our review found, in most cases, an increase in FOA-MC lending activity, an increase in the mortgage company's overall market share between 1995 and 1996, and an increase across all categories. However, in most instances, the increase in FOA-MC lending was not enough to offset the decrease in lending activity by the bank resulting, in most cases, in a decrease in applications and originations by the institution on a combined basis.

The OCC also reviewed denial rates for African American applicants, low- and moderate-income applicants, applications from census tracts with 30 percent or more African American population, and applications from low- and moderate-income census tracts from the four communities

[8] Our review indicated that the city of Bloomington does not have any census tracts with an African American population of 30 percent or more and therefore, Bloomington was not considered in our analysis of census tracts with an African American population of 30 percent or more.

discussed in the CIOP comment. Our review generally indicated an increase in denial rates across all categories reviewed. This increase occurred in the bank and the mortgage company. At the same time, however, as compared to most competitors, FOA entities also received generally more applications from low- and moderate-income census tracts and tracts with 30 percent or more African American population, but not the borrower classes, in the communities discussed in the CIOP comment. Although no violations of the fair lending laws have been noted, the OCC will carefully monitor the denial rates of this institution as part of its ongoing supervision.

CIOP also alleged that FOA-IL increased its percentage of lending to affluent whites while decreasing its percentage of lending to lower-income African Americans. In reviewing HMDA data for 1995 and 1996, the OCC found that the number and percentage of loans decreased for both middle- and upper-income whites and low- and moderate-income African Americans in all of the communities discussed in the CIOP comment.

Finally, CIOP alleged that in 1996, affluent borrowers received more housing loans in LMI tracts than did LMI borrowers. Again, reviewing 1996 HMDA data, the OCC found that, in the cities of Bloomington and Springfield, there were more loans originated to middle- and upper-income borrowers than loans originated to low- and moderate-income borrowers. However, the number of loans was not significantly higher. In Champaign, there was an equal number of loans to middle- and upper-income borrowers and low- and moderate-income borrowers and in Decatur, more loans were originated to low- and moderate-income borrowers. In its review, the OCC found nothing in the bank's performance which was inconsistent with the requirements of CRA. FOA-IL is lending within low- and moderate-income areas to borrowers of all income groups including low- and moderate-income persons.

Separately, the OCC assigned a national bank examiner with extensive consumer compliance experience to review the 1996 performance evaluation of FOA-IL. Based on that review, we concluded that the performance evaluation was conducted in conformance with OCC's procedures in effect at the time.[9] The review found nothing inconsistent with the Outstanding rating that the OCC assigned to the bank.

Based upon our review of the Woodstock and CIOP comments as well as our review of FOA-IL's 1996 CRA performance evaluation, we find nothing inconsistent with approval of this application.

With respect to NCMC, CIOP alleges that NCMC's 1996 lending record to African Americans and in lower-income areas in Indianapolis and Kokomo, Indiana, is worse than the record of FOA-MC in these communities. Therefore, the organization questioned whether NCC can address the concerns that it has regarding FOA and FOA-MC, since it underperforms FOA in geographies where they currently compete. CIOP also claimed that, in three major Indiana cities (Indianapolis, Gary, and Ft. Wayne), a high percentage of NCMC's lending to lower-income

[9] The OCC used the former CRA regulation and related examination procedures in conducting the 1996 CRA examination of FOA-IL. Evaluation under the revised CRA regulation and related examination procedures began for all large banks on July 1, 1997.

households was in the form of FHA or government subsidized loans. CIOP stated that such lending showed a lack of commitment to conventional mortgage lending to lower-income households. CIOP also alleged that NCMC underperformed the market in lending to African Americans and lower-income areas in Ft. Wayne and Gary, Indiana.

In light of these concerns, and because NCMC recently became a subsidiary of NatCity, a national bank examiner with extensive consumer compliance experience who was not involved in the most recent CRA or fair lending examination of NatCity conducted a targeted on-site review. The scope of the review included a review of the bank's response to the Federal Reserve Bank of Cleveland regarding CIOP's concerns, and an evaluation of NCMC underwriting and fair lending policies and procedures compared with those used by NCC affiliates.

During its review, the OCC found that NCMC only underwrites loans eligible for sale in secondary markets, such as FHA products, and does not underwrite affordable housing loans.[10] However, affordable housing loans with flexible underwriting criteria are offered by NCMC's bank affiliates. Hence, the OCC found that any analysis of HMDA data for NCMC alone would show a low volume of loans to low- or moderate-income persons because NCMC's HMDA data would not include the affordable housing products offered by its bank affiliates. Therefore, for purposes of its review, the OCC combined the performance of NCMC with that of its bank affiliates in order to analyze fully NatCity and all of its affiliates' performance in the Indiana markets at issue.[11] On such a combined basis, using 1996 HMDA data, the OCC found that NCC provided a substantial volume in conventional home purchase lending within low- and moderate-income areas, and to African Americans. The combined performance in low- and moderate-income areas, to low- and moderate-income persons, and in areas with a high African American population was significantly better than most of its peers, including FOA.

Specifically, the 1996 HMDA data demonstrates that, in Indianapolis, NCC ranked first in lending in each of the following categories: within low- and moderate-income tracts, to low- and moderate-income persons, to African Americans, and within areas having a high African American population. In the same categories, in Indianapolis, FOA ranked tenth, thirteenth, fourth, and third respectively. In Kokomo, again using the same categories, NCC ranked third, second, sixth, and fifth. Correspondingly, in Kokomo, FOA ranked eighteenth, eighteenth, and fourteenth in the first three categories. FOA made no loans in the last category. Additionally, in the State of Indiana, NCC ranked first, fourth, second, and third in the categories listed above, while FOA ranked twentieth, twenty-second, tenth, and sixth. In Gary, where CIOP alleged that NCMC underperformed the market, without referencing FOA's performance, NCC ranked third, twelfth, fourth, and twenty-second in these categories. With regard to Ft. Wayne, where CIOP also alleged that NCMC underperformed the market, NCC had no offices in that market during the period referenced by CIOP in its letter. Indeed, NatCity only recently entered the Ft. Wayne

---

[10] Affordable mortgages may use flexible underwriting criteria, such as not requiring private mortgage insurance (PMI) or accepting higher debt-to-income ratios, that may not meet the standards required by the secondary markets.

[11] For comparative purposes, the OCC similarly combined other banking companies in the market, including those of FOA.

market through the establishment of seven grocery store branches.[12] These rankings are consistent with the relative sizes of the banks. NatCity is the third largest bank in Indiana, while FOA is the twelfth largest (based on deposits as of June 30, 1997).

The OCC also found that NCMC uses fair lending guidelines established by NCC. These same guidelines are used by all NCC affiliate banks. Based on the targeted review, the OCC concluded that NCC's guidelines are consistent with fair lending compliance considerations. However, as NCMC only recently became a subsidiary of NatCity after having been a subsidiary of NCC, it has not been subject to fair lending/CRA examinations.[13] NCMC will be included in the OCC's next fair lending examination of NatCity.

Finally, based on the OCC's review, the transaction is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same Indiana communities that NatCity and FOA currently serve, respectively. Following the P&A, NatCity, the resulting bank, will have the same commitment to help meet the credit needs of all the Indiana communities served by FOA. The purchase and assumption transaction of the FOA branches does not alter the resulting bank's obligation to help meet the credit needs of its communities that it will serve. Therefore, the OCC has concluded that CRA considerations are consistent with approval of the purchase and assumption transaction.

(4) State community reinvestment laws

Fourth, section 1842(d)(3)(B) requires that the bank holding company's record of compliance with applicable state community reinvestment laws be taken into account. No issues arise under state community reinvestment laws that would warrant denial of the pending application and no comments have been received raising concerns under state community reinvestment laws.[14]

Based on the foregoing, we find that the proposed transaction is consistent with the Oakar Amendment.[15]

---

[12] Additionally, on March 4, 1998, the OCC received an application for a corporate reorganization involving the merger of seven banking subsidiaries of the Ft. Wayne National Corporation into NatCity. See OCC corporate application number 98-CE-02-0012. This transaction, if approved, will provide NatCity with a substantial presence in the Ft. Wayne market. The merger of the Ft. Wayne National Corporation and National City Corporation was approved by the Federal Reserve Bank of Cleveland in the first quarter of 1998.

[13] Due to the different composition of NCMC's loan portfolio as compared to its NCC bank affiliates, the OCC did not attempt to draw any conclusions on the fair lending or CRA performance of NCMC based on the fair lending/CRA performance of its affiliate banks.

[14] In this regard, we note that Indiana, the state directly involved in this transaction, and Ohio impose no CRA standards in addition to those imposed under Federal CRA. Illinois, Michigan, Pennsylvania and Kentucky, the other states in which depository institution subsidiaries of NCC are located, have no state CRA laws.

[15] In addition, we note that section 1842(d)(4) provides that no provisions of this section shall be construed as affecting the applicability of Federal or state antitrust laws. As discussed, the purchase and assumption transaction between

3. Community Reinvestment Act

The record of the applicants under the CRA is discussed in section II.B.2.b.(3).[16]

III. CONCLUSION AND APPROVAL

Subject to other appropriate regulatory actions, and based on the representations made by the applicant, National City Bank of Indiana may acquire and operate the Indiana branches of First of America, N.A. through a business reorganization plan structured as a purchase of assets and assumption of liabilities. This reorganization is permitted under the authority of 12 U.S.C. §§ 24(Seventh) and 36(c), and is consistent with the Bank Merger Act, the Oakar Amendment, and the Federal Community Reinvestment Act, as applicable. Accordingly, the purchase and assumption application is hereby approved.

/s/ 06-23-98

Raymond Natter Date
Acting Chief Counsel

Application Control Number: 98-CE-02-0013

affiliates has no competitive impact under Federal antitrust laws. Moreover, even assuming the applicability of state antitrust laws to this transaction, we found no provisions of Indiana antitrust law that this transaction contravenes, particularly since it constitutes the transfer of assets and liabilities between two entities wholly-owned by the same company. Finally, we note that no comments were received about this transaction based on state antitrust grounds.

[16] In addition to this application by NatCity to acquire the Indiana branches of FOA, the OCC is processing an application to merge FOA and FOA-IL. The OCC will further consider NCC's plans to institute its CRA and fair lending policies and procedures at FOA in its analysis of that merger application.