



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**CRA Decision #101
November 1999**

**DECISION OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
SOUTHERN CALIFORNIA BANK, NEWPORT BEACH, CALIFORNIA AND
SANTA MONICA BANK, SANTA MONICA, CALIFORNIA, INTO
U.S. BANK NATIONAL ASSOCIATION, MINNEAPOLIS, MINNESOTA, UNDER
THE CHARTER AND TITLE OF
U.S. BANK NATIONAL ASSOCIATION**

October 29, 1999

A. Introduction

On July 6, 1999, U.S. Bank National Association, Minneapolis, Minnesota ("USBank") filed an application with the Comptroller of the Currency ("OCC") for prior approval to merge Southern California Bank, Newport Beach, California ("SCBank"), and Santa Monica Bank, Santa Monica, California ("SMBank"), California, with and into USBank, under the charter and the title of USBank, under 12 U.S.C. §§ 215a & 1828(c). As part of the merger application, USBank requested approval to retain SCBank's and SMBank's main offices and branches as branches of USBank under 12 U.S.C. § 36(b)(2). This application was based on an agreement entered into between the proponents on July 1, 1999.

At the time of the merger, USBank, SMBank, and SCBank will be wholly-owned subsidiaries of U.S. Bancorp, a multistate bank holding company headquartered in Minneapolis, Minnesota.¹ USBank has its main office in Minneapolis, Minnesota, and operates branches in seventeen states, including California. As of March 31, 1999, USBank had total deposits of \$48 billion. SCBank is a California state-chartered bank which has its main office in Newport Beach, California, and operates branches only in California. SMBank is a California state-chartered bank which has its main office in Santa Monica, California, and also operates branches only in California. As of March 31, 1999, SCBank and SMBank each had total deposits of approximately \$1 billion.

¹ SCBank and SMBank are currently wholly owned by Western Bancorp. However, prior to these banks merging into USBank, Western Bancorp will merge with and into U.S. Bancorp.

The proposed merger is legally permissible under 12 U.S.C. § 215a because USBank has branches in California, and so it may acquire SCBank and SMBank, banks located in California, by merger under section 215a.² USBank may retain the main office and branches of SMBank and SCBank 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.

In Southern California, USBank currently operate branches in San Diego, Riverside and Orange Counties. SCBank operates branches in San Diego, Los Angeles and Orange Counties. SMBank operates branches only in Los Angeles County. While USBank and SCBank both operate branches in San Diego and Orange Counties, both banks have a minimal deposit market share in these highly competitive banking markets. After the merger, the USBank will continue to have minimal deposit market share in these two counties.

2. Financial and Managerial Resources

We find that the financial and managerial resources of SMBank and SCBank and USBank 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

² 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).

The merger will not have an adverse impact on the convenience and needs of the communities to be served. No products and services will be discontinued, and all facilities will remain open after consummation of the merger. In addition, USBank is a full service retail banking institution and will offer a wider variety of consumer banking products and services to the community than are currently offered by SMBank and SCBank.³ Therefore, the resulting bank is expected to have a positive effect on the convenience and needs of the communities to be served.

In connection with the merger application, USBank also submitted a California Community Investment Plan. Under the plan, the bank represented that it intends to annually target 12% of its California domestic deposits through year-end 2002 to lending and investments to low- and moderate-income (LMI) borrowers and in LMI communities within its California assessment areas. Included in this target will be affordable housing programs, down payment and closing cost assistance, loan programs that target home purchases in LMI geographies within the bank's assessment areas, as well as loan products targeted to meet the needs of LMI home buyers, such as home improvement and home equity loans. In addition, the plan includes community development lending and investments, as defined under the CRA, and under the plan, the bank will have a community development specialist located in Los Angeles, California. The bank also commits to aggressively market small business products, particularly loan products of less than \$35,000, and emphasize loan products to women- and minority-owned businesses. Under the plan, the bank's objective is to originate 50% of its small business loans in amounts less than \$50,000. The bank also intends to offer consumer loan products to LMI borrowers and in LMI geographies, provide low-cost and senior checking accounts, offer brochures and fliers for its products and services in Spanish and at least three other languages, and to strive to maintain teller access in branches that serve low-income persons and the elderly. At a meeting with community organizations,⁴ the bank represented that it will review its goals under the plan on an annual basis even after year-end 2002.

The OCC received comments indicating a concern that USBank's Community Investment Plan, which includes Southern California, will result in a decrease in CRA activity in Northern California. The OCC reviewed USBank's performance since its entry into the California market in 1997 and found that USBank has exceeded most of its announced goals in residential lending to LMI borrowers, community development lending, and small business lending annually. Accordingly, we have no basis to conclude that USBank will not meet its performance goals to its existing assessment areas in Northern California after the merger.

The OCC received several written comments and oral statements regarding concerns about the resulting bank's branching network. Concerns were raised that the network of branches being acquired by USBank in the proposed merger include very few branches located in LMI areas.

³ USBank has also represented that the resulting bank's assessment areas will be expanded to include all of Los Angeles County. USBank's assessment areas in California were recently expanded to include all of Orange, Riverside and San Diego counties as a result of its merger with Bank of Commerce, San Diego, CA.

⁴ The meeting is discussed in further detail in the CRA section of this decision document.

Commenters further expressed concern that recent bank mergers affecting Los Angeles have resulted in significant branch closures in LMI and minority areas of the city and county. The commenters alleged that the branching network being acquired by USBank as a result of the proposed merger would neglect these areas of Los Angeles.

The OCC reviewed USBank's record of opening and closing branches since year-end 1997 through September 1, 1999. We found that as of December 31, 1997, 21.3% of the bank's branches were located in LMI geographies. As of September 1, 1999, 21.4% of the bank's branches were located in LMI geographies. Therefore, historically, the bank's branch opening and closing activity has occurred consistently across the income levels of geographies included in the bank's assessment areas, and the bank's record has not had a negative impact on LMI communities relative to higher income areas. Although our review indicated that the number of USBank branches declined by 49 or 4.5% over the two year period, this decrease occurred across all income levels with a 4.8% reduction in branches located in low income areas, 4.2% in moderate income areas, 4.2% in middle income and 5.0% in upper income geographies. Since year-end 1997, only 10 of 234 branches located in LMI areas have been closed. In addition, during this period of time, the bank opened 17 branches in LMI areas.

We also reviewed the bank's branch distribution as a result of the proposed merger with SMBank and SCBank to determine whether the acquisition of these branches would dilute the bank's presence in LMI geographies. Of the 31 offices to be acquired by USBank, 5 are located in LMI geographies. Post-merger, 21.2% of the bank's branches will be located in LMI areas throughout all of the bank's assessment areas. We also note that as of September 1, 1999, 22% of the bank's branches in California were located in LMI geographies and post-merger, 20.3% of the bank's branches will be located in LMI geographies.

USBank has also represented to the OCC and in its California Investment Plan that it will, on an annual basis, give formal consideration to opening branch facilities in LMI sections of Los Angeles as part of any future expansion plans in that area.⁵ In addition, the bank has represented that prior to reaching a decision to close a LMI branch, the bank will analyze the demographics of the affected geography, gather input from a specific California community organization (which commented on this application) and the affected community, and consider alternatives to closure. If the bank does decide to close a branch located in a LMI area, the bank will also consider alternative delivery options to minimize any adverse impact from a branch closure.

Thus, we conclude that the merger will not have an adverse impact on the convenience and needs of the communities to be served.

⁵ The bank has also represented that it will open or acquire one branch located in a LMI section of Los Angeles within the next two years.

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 its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications, including mergers. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance of each institution involved in the transaction. Under the CRA regulations, effective July 1, 1997, the OCC evaluates performance of most large banks under 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.

USBank received a “Satisfactory” CRA rating dated April 8, 1998.⁶ SMBank received a “Satisfactory” CRA rating from the Federal Deposit Insurance Corporation (“FDIC”) dated December 14, 1998. SCBank received a “Satisfactory” CRA rating from the Federal Reserve Bank of San Francisco dated August 17, 1998.

During the comment period, the OCC received comments from several California-based community organizations and public officials. The comments received related to SMBank, SCBank and USBank’s CRA performance in California. In order to review and investigate the concerns raised, the OCC removed the application from its expedited review procedures on July 30, 1999.

Many of the commenters also requested that the OCC conduct a public hearing to discuss the concerns raised by the commenters. In response, the OCC convened a meeting in Los Angeles, California on September 27, 1999 to hear the concerns of the commenters.⁷ The meeting included representatives from over twenty-five organizations, the banks proposing to merge, and the OCC. In addition, representatives from the Los Angeles Housing Department participated in the meeting and representatives of three public officials attended the meeting. Among the issues discussed at the

⁶ The Performance Evaluation of USBank covered only those assessment areas that were merged into the bank on June 1, 1997. Accordingly, the California assessment area was 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 to form the current USBank. United States National Bank of Oregon had an “Outstanding” CRA rating when it merged with First Bank National Association to form the current USBank. The OCC issued a Public Evaluation of U.S. Bank National Association on April 8, 1998 which only included the former First Bank, National Association entities and rated that institution, based on 1995 and 1996 data, a “Satisfactory.” However, the OCC also conducted a limited review of USBank’s 1998 CRA performance in California in connection with USBank’s application to merge with Bank of Commerce, San Diego, California. Based on that limited review, the OCC concluded that approval of the bank’s application was consistent with the Community Reinvestment Act. See, Decision on the Application to Merge Bank of Commerce, San Diego, California, into U.S. Bank National Association, Minneapolis, Minnesota (OCC CRA Decision No. 96, June 30, 1999) (“OCC CRA Decision No. 96”). The OCC expects to conduct a CRA examination of USBank in the year 2000 which will include the resulting bank’s California assessment areas for the evaluation period to be reviewed.

⁷ Although the OCC did not grant the requests for a public hearing and requests for an extension of the comment period, it did receive a number of written comments after the comment period was closed and included all substantive issues raised in those letters and at the meeting, which was also held subsequent to the close of the comment period, in its investigation and review of the application.

meeting were branching, the banks' CRA performance, and USBank's proposed Community Investment Plan for California.⁸

Many of the concerns raised in written comments and at the meeting were previously investigated by the OCC as part of its review of USBank's application to merge with Bank of Commerce. However, new issues raised in connection with this merger were investigated by OCC examiners and other personnel with extensive consumer compliance experience and who were not involved in the last CRA or fair lending examinations of USBank. In addition, several of the comments raised concerns with the banks' CRA ratings, stating that SMBank and SCBank received "Low Satisfactory" ratings in the lending, investment, and service test and that USBank received an overall "Satisfactory" rating.⁹ The OCC reviewed the examination findings to determine whether they revealed any weaknesses that would raise concerns regarding this merger. Based on the OCC's investigation, we find that approval of the proposed transaction is consistent with the Community Reinvestment Act.¹⁰ The findings of the OCC's review and investigation are presented below.

CRA Record of SMBank and SCBank

Commenters expressed concern about the CRA performance of the two institutions to be acquired as a result of the proposed merger. The commenters alleged that both banks made little effort in the areas of outreach, marketing, service, lending, and investments for LMI areas. The commenters also alleged that the banks have done a poor job in lending to minority small businesses, and that the banks excluded minority non-profit corporations from the banks' investment, special service strategies, and philanthropic investments.

The commenters also stated that both banks' loan originations were insufficient in terms of number and dollar amount within LMI census tracts in the institutions' assessment areas. They further alleged that both banks' record of charitable contributions was weak. In addition, the commenters stated that SCBank made a disproportionate number of loans outside of its assessment area in 1998.

⁸ The transcript of the meeting is part of the public file for this application and may also be found on the OCC's website (www.occ.treas.gov).

⁹ The OCC received many comments expressing concern that USBank's "Satisfactory" rating indicated poor performance in the California market because most of its competitors in California received "Outstanding" ratings.

¹⁰ The OCC also received comments raising concerns regarding USBank's diversity program for employment and board membership. These issues are generally under the jurisdiction of other Federal agencies and not factors generally evaluated during CRA examinations. Thus, the OCC did not investigate the concerns in this regard. Commenters also expressed concern regarding USBank's minority contract program. This matter was previously addressed by the OCC in its review of the bank's application to merge with Bank of Commerce. *See*, CRA Decision No. 96.

In considering the CRA performance of the target banks (over which the OCC does not have examination authority), the OCC relied primarily on the August and December 1998 Public Evaluations issued by other Federal supervisory agencies.

Lending in LMI Areas

A review of the Public Evaluation of SMBank indicated that the distribution of the bank's small business loans within LMI census tracts was low in comparison to the number of LMI tracts within the bank's assessment area. However, 71.8% of the bank's overall small business loans were for amounts less than \$100,000 and 59% of total lending was to businesses with less than or equal to \$1 million or less in revenues. In addition, a limited review of the bank's loans performed by the FDIC indicated that the distribution of HMDA loans in different income census tracts was comparable to the percentage of owner-occupied housing units in the bank's assessment area by income level of the census tract.¹¹

The Public Evaluation of SCBank indicated that the bank's distribution of small business loans reflected the location of small businesses within the bank's assessment areas, and that most of the small businesses were located in moderate- and middle-income census tracts. In addition, the bank made a small percentage of consumer loans in low-income census tracts compared to the number of tracts within its assessment area, however its lending was found to be commensurate with the number of families located in the tracts. Furthermore, although the bank's percentage of consumer loans in moderate-income tracts was less than the percentage of such tracts within its assessment area and the percentage of families located in those tracts, the Public Evaluation indicated that there were fewer lending opportunities within those tracts. The Public Evaluation stated that the bank had a strong record of lending to low- and moderate-income borrowers.

Geographic Distribution of Loans

The Public Evaluation of SCBank indicated that the bank's business focus is commercial, comprising 68% of its lending. Ninety percent of the bank's small business loans were originated within its assessment area. In addition, the bank originated 64% of consumer loans and 77% of "other secured loans to benefit small businesses" within its assessment area. In fact, the Public Evaluation states the bank has a high percentage of loans originated within its assessment area.

CRA Investments

¹¹ According to the Public Evaluation, the FDIC did not consider the bank's HMDA reportable lending in the overall CRA lending rating due to the small number of loans originated by the bank.

A review of the Public Evaluations of the SMBank and SCBank indicated that each bank made \$36,000 and \$8,500 in charitable contributions, respectively. In addition, SMBank also made a \$15,000 grant during the evaluation period to a local social service organization. SMBank also made an additional \$8.7 million in other qualified investments, the majority of which provided low-income housing in the bank's assessment area. SCBank made \$1 million in other qualified investments, the majority of which was dedicated to low-income housing. These qualified investments and the banks' charitable contributions formed the basis for the analysis under the investment test described in the Public Evaluations for each bank.

Services

The Public Evaluations indicated that both banks offer full service branches which are accessible to their assessment areas. SMBank offered a variety of alternative delivery systems and provides community development services by providing technical expertise to non-profit and community organizations. The Public Evaluation of SCBank stated that the bank offered a limited level of community development services.

Fair Lending Practices

Although the Public Evaluations did not specifically address each bank's lending to minorities and minority-owned businesses, they did state that no fair lending concerns were identified at either bank.

USBank's HMDA Lending

Several commenters raised concerns regarding USBank's lending to LMI borrowers and in LMI geographies, particularly in the Sacramento MSA. Similar concerns were raised in connection with the bank's application to acquire Bank of Commerce.¹² In connection with that application, the OCC investigated USBank's performance within its California assessment areas including the Sacramento MSA, using 1998 HMDA data. During that review, the OCC looked at the bank's distribution of loans across all income segments of its assessment area and to borrowers of all income levels. This review did not raise concerns or identify weaknesses in the bank's performance that would be inconsistent with approval of the Bank of Commerce application or the application at issue currently.

USBank's Small Business Lending

Many commenters expressed concern about USBank's record of small business lending to minorities. The commenters alleged that only a small percentage of small business loans originated by the Bank were to minorities. Information on the racial profile of USBank's small business loans is not available, due to the prohibition on the collection of such information in Regulation B (Equal Credit Opportunity Act). However, using the bank's 1998 CRA data, OCC examiners reviewed the geographic

¹² See, CRA Decision No. 96.

distribution of USBank's loans within its assessment area in geographies with minority concentrations. Based on this review, the OCC found that the bank was originating loans consistently throughout all areas of its assessment area. In geographies with 20-49% minority populations, the bank originated 37.7% of the bank's small business loans. These geographies contained 36.6% of the total number of businesses in the bank's assessment area. In geographies with 50-79% minority populations and 11.5% of the total number of businesses within its assessment area, the bank originated 8.3% of its total small business loans. In geographies with 80-100% minority population and 4.2% of the total number of businesses, the bank originated 1.3% of its total small business loans in these geographies.

USBank also originated loans in California which were outside of the bank's assessment areas in that state. Therefore, looking at the bank's small business lending statewide, the OCC found that in geographies with 20-49% minority populations and 37.5% of the total number of businesses, the bank originated 40.4% of its small business loans. In geographies with 50-79% minority populations and 18.6% of the total number of businesses, the bank originated 15.1% of its small business loans. In geographies with 80-100% minority population and 10.4% of the total number of businesses, the bank originated 6.1% of its small business loans.

The OCC also reviewed USBank's distribution of small business loans in different income level census tracts compared to institutions with the largest market share in California.¹³ Based on volume, we found that USBank's distribution of small business loans was greater in low- and moderate-income areas than the other institutions. USBank originated approximately 22% of its small business loans in LMI census tracts, whereas the other institutions used for comparison originated loans in a range from 21% to 16% in LMI tracts.

We also found that USBank has a comprehensive marketing plan for small business loans which includes targeted marketing and direct mail to minority and women-owned businesses throughout its California assessment areas and workshops and seminars focused on minority-owned businesses.

Commenters also expressed concern with the average loan size of small business loans of the three banks party to the merger. Commenters allege that the average loan size of USBank's small business loans exceeds that of its competitors in the Los Angeles market. The OCC previously determined that the average loan size of small business loans originated by the bank within its assessment area was \$68,000.¹⁴ However, the OCC also found that 71% of the reported small business loans were for amounts of \$50,000 or less. Based on this information, the OCC finds that the bank's performance in this area is not inconsistent with approval of the application.

Subprime Lending

¹³ The review included data from the following Metropolitan Statistical Areas (MSAs) where the four institutions overlap: Butte, Sacramento, Shasta, Stanislaus, Sutter and Yolo.

¹⁴ See, CRA Decision No. 96.

Commenters expressed concern that U.S. Bancorp (USBank's holding company) made an investment in a lender that offers subprime loans, New Century Mortgage Corporation (NC), and that the loans originated by NC could undermine USBank's efforts to offer affordable mortgage loans in the same communities. Specifically, one commenter provided data demonstrating that NC exceeded industry averages in the percentage of loans it originated to African-Americans and Hispanics.¹⁵ The commenter further stated that NC focuses its lending on LMI communities. The commenters also expressed concerns regarding possible business relationships between NC and USBank.

The investment in NC by U.S. Bancorp is currently a 23% non-controlling investment. NC is not a subsidiary of the holding company or the bank. Furthermore, the investment by the holding company in NC is subject to the supervisory authority of the Federal Reserve Board.

The OCC asked USBank to describe its relationship with NC, if any. The bank stated that it is testing an "Alternative Loan Program," whereby USBank will offer NC products to its customers using NC underwriting standards if a USBank applicant does not meet the bank's underwriting standards. If such a customer qualifies for and is granted an NC product, the loan is funded by USBank, N.A., North Dakota. The Alternative Loan Program is a pilot program and the bank has represented in its California Investment Plan that it will establish policies and procedures to ensure that NC products offered pursuant to the program will be made in compliance with fair lending and other applicable laws; credit criteria will be consistently applied based on factors predictive of risk; and pricing will be consistent among all borrowers for the same product. The OCC will monitor the relationship, including the offering of NC products to USBank applicants that are denied under USBank's underwriting standards, between USBank and NC as part of its supervisory responsibilities over USBank. The loans originated under the "Alternative Loan Program" will be subject to review during the next fair lending examination of USBank.¹⁶

Charitable Contributions

Several commenters expressed concern with the level of USBank's charitable contributions and philanthropic investments, stating that USBank only gave a very small percentage of its pre-tax earnings to charity. In 1998, USBank made \$243,000 in charitable contributions in the state of California. This represented approximately .085% of the portion of USBank's Tier 1 capital that could be attributed to its activities in California. The bank also made over 35 other qualifying investments for a total \$29 million in California during 1998, which represented approximately 10% of the portion of the bank's Tier 1 capital attributed to its activities in California. In addition, under the bank's California Investment

¹⁵ The commenters also expressed concern with the percentage of USBank's originated loans that did not contain race information. This issue was raised in connection with USBank's merger with Bank of Commerce and has been previously investigated by the OCC and the OCC determined that USBank's practice were permissible under law. See, CRA Decision No. 96.

¹⁶ The OCC also notes that USBank recently purchased \$20 million in subordinated debt in NC. This is not an equity investment and ownership of NC has not changed.

Plan, USBank has represented that it intends to annually contribute an amount equal to or in excess of .0175% of its domestic deposits in California in charitable contributions.¹⁷ The bank also represented that it intends to make investments that qualify for consideration under the CRA investment test criteria in an amount equal to or in excess of .15% of its domestic deposits in California annually.

In summary, based on our investigation and analysis of the issues raised, the OCC finds that the banks' CRA performance is not inconsistent with the approval of this application.

D. Conclusion and Approval

For the reasons set forth above, including the representations and commitments of the applicants, we find that the proposed merger between USBank, SCBank and SMBank is authorized, that it will not lessen significantly competition in any relevant market, and that other factors considered in evaluating this proposal are satisfactory. Accordingly, this merger application is approved.

/s/
Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

10-29-99
Date

Application Control Number: 1999-MW-02-0025

¹⁷ Although a bank receives favorable consideration under the investment test for qualifying charitable contributions, charitable contributions are only one way a bank may demonstrate its performance under the investment test. The CRA regulations do not require an institution to make charitable contributions or to make charitable contributions that equal a certain percentage of its pre-tax earnings.