



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #2000-05
April 2000**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS BY
NBC BANK, FSB, KNOXVILLE, TENNESSEE,
TO CONVERT TO A NATIONAL BANK CHARTER
AND BY
NATIONAL BANK OF COMMERCE, MEMPHIS, TENNESSEE,
TO ACQUIRE THE CONVERTED BANK THROUGH MERGER**

March 28, 2000

I. INTRODUCTION

On February 22, 2000, NBC Bank, FSB, Knoxville, Tennessee (“FSB”), filed an application with the Office of the Comptroller of the Currency (“OCC”) for approval to convert to a national banking association, NBC National Bank, Knoxville, Tennessee, and to retain its main office and branches after the conversion. FSB operates 23 branches in North Carolina, 11 branches in Georgia, eight branches in West Virginia, and 13 branches in Virginia. On the same day, National Bank of Commerce, Memphis, Tennessee (“NBC”) filed an application to acquire, through merger under NBC’s title and charter, NBC National Bank (“NBC National”). NBC operates 79 branches in Tennessee and four branches in Arkansas. Following the merger, it seeks to operate the main office and branches of NBC National, as well as its own branches, as branches.

FSB and NBC are members of the Bank Insurance Fund (“BIF”), though FSB’s deposits are partially insured by the Savings Association Insurance Fund (“SAIF”) as a result of the prior acquisition of its Virginia branches from an affiliated SAIF-member federal savings bank. Both are wholly-owned subsidiaries of National Commerce Bancorporation, Memphis, Tennessee (“Holding Company”). Following the conversion, NBC National also will be a BIF member and a wholly-owned subsidiary of the Holding Company.

The OCC received no protests or comments during the public comment period.

II. LEGAL AUTHORITY

A. Conversion of FSB

FSB may convert into a national bank. Regulations of both the OCC and the Office of Thrift Supervision (“OTS”) permit the direct conversion of a federal savings bank to a national bank.¹ In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws. 12 C.F.R. 5.24(d). A review of the application for the proposed conversion demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation, or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. 12 C.F.R. 5.13 & 5.24(d). A review of the record discloses nothing that indicates that these factors provide a basis for denial of the application.

FSB currently operates branches in North Carolina, Georgia, West Virginia, and Virginia. It has requested OCC approval to retain these branches after its conversion. FSB’s authority to retain branches after the conversion is expressly permitted in a provision in the Gramm-Leach-Bliley Act (“GLBA”):

Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State bank supervisor into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.

12 U.S.C. 1464(i)(5)(A), as added by the GLBA 739.

This provision directly permits a national bank resulting from the conversion of a federal savings association to retain its branches, without regard to the geographic branching limits of 12 U.S.C. 36,²

¹ 12 C.F.R. 5.24; 12 C.F.R. 552.2-7. The OCC has approved many such conversions. *See, e.g.*, Decision on the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-13, February 24, 1997). Recently, Congress added a provision to the Home Owners’ Loan Act that confirmed this authority, while also addressing branch retention, for those federal savings association into national bank conversions covered by the new provision. *See* 12 U.S.C. 1464(i)(5), as added by the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 739, 113 Stat. 1338, 1480 (November 12, 1999) (discussed further below).

provided the federal savings association is covered by the provision and the resulting national bank meets the listed requirements. FSB is covered by section 1464(i)(5) because it was chartered and in operation since before the date of enactment of the GLBA and it has had branches in operation in one or more states since before the date of enactment.³ The resulting bank will encompass one or more of the branches in operation before such date in one or more states. The OCC has determined that NBC National, the national bank resulting from this conversion, will meet all applicable financial, management, and capital requirements, and that it will meet the capital requirements for branches contained in 12 U.S.C. 36(c). Thus, NBC National may retain the branches in North Carolina, Georgia, West Virginia and Virginia.

Accordingly, we conclude that FSB's application to convert into a national bank and to retain its branches after the conversion is legally authorized.⁴

B. The merger

In this transaction, NBC National, an interstate national bank whose home state is Tennessee, will merge into another interstate national bank, NBC, whose home state also is Tennessee. Thus, while this merger includes two interstate banks, and an interstate resulting bank, it does not come under the interstate merger provisions of 12 U.S.C. 1831u because it is not a merger between banks with different home states.⁵ However, mergers between an acquiring national bank and a target national bank in one

² Decision of the Office of the Comptroller of the Currency on Applications involving Family Bank, FSB, Haverhill, Massachusetts; First Massachusetts Bank, N.A., Worcester, Massachusetts; Bank of New Hampshire, Manchester, New Hampshire; Farmington National Bank, Farmington, New Hampshire; Granite Savings Bank and Trust Company, Barre, Vermont; The Howard Bank, N.A., Burlington, Vermont; Franklin LaMoille Bank, St. Albans, Vermont; and First Vermont Bank and Trust Company, Brattleboro, Vermont (March 8, 2000) (the "Family Bank Decision"). As discussed in the Family Bank Decision, the branch retention authority of section 1464(i)(5) is clearly intended to operate independently of section 36. In particular, with respect to FSB's branches in North Carolina, Georgia, West Virginia, and Virginia, the resulting national bank's retention of branches in a conversion under section 1464(i)(5) is not affected by section 36(e)(1), which states that a national bank may not acquire, establish, or operate a branch in a new state unless it is authorized under one of the provisions listed in section 36(e)(1). First, a converting institution's retention of its own branches does not fall within section 36(e)(1) because it does not constitute the acquisition or establishment of a branch in a new state; the converting institution already has the branch in that state. Second, if such branch retention would fall within section 36(e)(1), then there is a conflict between section 36(e)(1) and section 1464(i)(5). We believe that, in the event of such conflict, section 1464(i)(5) controls because it was later in time and is more specifically addressed to retention of existing branches in a conversion. In effect, section 1464(i)(5) is an implied amendment of section 36(e)(1), such that branches allowed under section 1464(i)(5) are added to the section 36(e)(1) list.

³ FSB was chartered and has been in operation since 1994 and has had branches since then.

⁴ FSB has several subsidiaries that it will retain after the conversion. These subsidiaries will become subsidiaries of NBC as a result of the immediately following merger. They are discussed below in connection with the merger.

⁵ Section 1831u(a) provides:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. 1828(c), the Bank Merger Act] between insured banks

of the states in which the acquiring bank has offices are authorized under 12 U.S.C. 215a, and the resulting bank may retain the offices of the banks under 12 U.S.C. 36(b)(2). The OCC previously has considered many such applications under sections 215a and 36(b) both before and after the Riegle-Neal Act. Accordingly, the merger does not raise new issues, but only the application of established precedent for applying sections 215a and 36(b) to interstate national banks.

1. NBC National may merge into NBC under 12 U.S.C. 215a

Mergers of national banks, and of state banks into national banks, generally are authorized under 12 U.S.C. 215a. Section 215a provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association *located within the same State*, under the charter of the receiving association.

12 U.S.C. 215a(a) (emphasis added). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied section 215a in the context of a merger involving an existing interstate national bank and concluded that a national bank, with its main office and branch offices in more than one state, is “located” in each such state for the purpose of mergers with other banks in that state under section 215a.⁶ Here, NBC has its main office and branches in Tennessee, as well as in Arkansas, and NBC National has its main office in Tennessee and branches in North Carolina, Georgia, West Virginia, and Virginia.

Accordingly both NBC National and NBC are located in Tennessee for purposes of section 215a, and so the merger is authorized under section 215a.

with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. 1831u(a)(1) (section 44 of the Federal Deposit Insurance Act, as added by section 102(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (“the Riegle-Neal Act”).

⁶ 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) (“*OCC Texas Merger Decision*”); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), *reprinted in* Fed. Banking L. Rep. (CCH) & 90,474 (“*OCC Bank Midwest Decision*”); other OCC decisions cited in the *OCC Texas Merger Decision*. In litigation challenging the *OCC Texas Merger Decision*, the federal district court agreed with the OCC’s position that the merger was authorized under 12 U.S.C. 215a and that such mergers continue to be authorized after the Riegle-Neal Act and independently of that Act. See *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).

2. The resulting bank may retain the offices of both banks after the merger

NBC also has requested OCC approval for the bank resulting from the merger (referred to in this subsection as “NBC-Resulting” to distinguish it from NBC prior to the merger) to retain and operate the main office and branches of NBC National in Tennessee, North Carolina, Georgia, Virginia, and West Virginia, and the branches of NBC in Tennessee and Arkansas as branches of NBC-Resulting after the merger. Branch retention in a merger under section 215a is covered by 12 U.S.C. 36(b)(2). Section 36(b)(2) applies different standards for the resulting bank’s retention of the main office and branches of the bank being acquired in the merger (target bank) and for its retention of the branches of the bank under whose charter the merger is effected (the acquiring bank). In the merger, the banks are combining under the charter of NBC, and so NBC National is the target bank and NBC is the acquiring bank. Applying the various provisions of section 36(b)(2) to the groups of branches involved in this merger, we find that NBC-Resulting is legally authorized to retain all the offices as branches.

a. NBC-Resulting may retain and operate the main office and branches of NBC National under subsection 36(b)(2)(A)

NBC-Resulting may retain and operate the main office and branches of NBC National under subsection 36(b)(2)(A). Under this section, a resulting bank may retain the branches or the main offices of the target bank if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank is “situated” in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks.⁷ Thus, in order to apply the branch retention provisions of section 36(b)(2)(A) in the context of mergers involving interstate banks, it is necessary to determine in which state(s) *the resulting bank* is “situated.” The OCC previously concluded that, for section 36(b) purposes, the resulting bank is situated in all of the states in which the participating banks were situated in order to then apply the section 36(b)(2)(A) and 36(c) standard for the retention of the target bank’s branches, using each state’s law for the retention of branches for the branches in that state.⁸ This necessarily follows from the courts’ holdings regarding section 36(c) and the fact that section 36(b)(2)(A) refers to section 36(c).⁹ In essence, we determined that, when an interstate

⁷ See *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974) (an interstate national bank is “situated” in each state in which it has offices for purposes of establishing additional branches under section 36(c)). See also *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) (“*Sun World*”) (same, agreeing with *Seattle Trust*).

⁸ For purposes of section 36(b) and section 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state’s banks within the state. State laws pertaining to the activities of the state’s banks outside the state or to the activities of out-of-state banks within the state are not the state laws these sections of the McFadden Act refer to. See, e.g., *OCC Bank Midwest Decision* (Parts II-B, II-C-2, II-D, III-B-1-b).

⁹ See, e.g., *OCC Texas Merger Decision* (Part II-A-2-a) (pages 9-10); *OCC Bank Midwest Decision* (Part II-C-2-a). See also *Ghiglieri v. NationsBank of Texas, N.A.*, *supra* note 6, slip op. at p. 7

national bank merges with another national bank in the same home state, the resulting bank is authorized to continue to operate its predecessor banks' branches, including interstate branches, provided the retention was permitted under section 36(b) and no other federal law required otherwise.

We first considered the statute in this type of interstate context and applied it in this way in 1990 in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank with the same home state as the interstate bank and in other decisions before the Riegle-Neal Act.¹⁰ We have continued to apply it in many subsequent merger decisions involving interstate banks after the Riegle-Neal Act.¹¹ Thus, the power of the resulting bank to retain the target bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state.

In a merger under section 215a, the resulting bank is situated in each state in which the participating banks had a main office or branches for purposes of applying the branch retention provisions of sections 36(b)(2)(A) & 36(c). Thus, in the merger at issue, NBC-Resulting is situated in Tennessee, Arkansas, North Carolina, Georgia, West Virginia, and Virginia and it may retain, as branches, NBC National's main office and branches in each state in the same way that other national banks situated in each state could retain branches in that state in a merger there under sections 36(b)(2)(A) & 36(c). Tennessee, North Carolina, Georgia, West Virginia, and Virginia each permit their state-chartered banks to acquire branches in a merger, or to establish branches *de novo*, without geographic limit within the state.¹² Thus, a national bank situated in Tennessee could acquire through merger, and retain

¹⁰ See Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991 (approved December 14, 1990)) ("*OCC Shawmut Decision*") (both banks owned by Shawmut National Corporation; at the time of conversion, State Savings Bank had branches in Rhode Island). See also Decision on the Applications of First Fidelity Bank, N.A. (Pennsylvania) and First Fidelity Bank, N.A. (New Jersey) (OCC Corporate Decision No. 94-04, January 10, 1994) (also included grandfathered branches); Decision on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994) (also included grandfathered branches); Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) (Part II-B-2) (same).

¹¹ See, e.g., Decision on the Applications of First Fidelity Bank, N.A. (New York) and First Fidelity Bank, N.A. (OCC Corporate Decision No. 94-42, October 20, 1994); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995); Decision on the Application to Merge First Bank N.A., Minneapolis, Minnesota, and First National Bank of East Grand Forks, East Grand Forks, Minnesota (OCC Corporate Decision No. 97-68, July 10, 1997). Cf. Decision on the Application of Republic Bank for Savings, New York, New York (OCC Corporate Decision No. 95-32, July 25, 1995) (in conversion of state-chartered savings bank with branches in New York and Florida, resulting national bank is considered "situated" in both states for purposes of applying branch retention provisions of 12 U.S.C. 36(b)(1)).

¹² Ga. Code Ann. 7-1-601, 7-1-602(f) (1997 & Supp. 1999); N.C. Gen Stat. 53-62(b) (1994 & Supp. 1998); Tenn. Code Ann. 45-2-614 (1993 & Supp. 1999); Va. Code Ann. 6.1-39.3 (1999); W.Va. Code 31A-8-12(c)(2) (1996 &

as branches under sections 36(b)(2)(A) and 36(c), the locations of the target bank's main office and branches in Tennessee; and a national bank situated in, for instance, North Carolina, could acquire through merger, and retain as branches under sections 36(b)(2)(A) and 36(c), the locations of the target bank's branches in North Carolina; and so forth for each of the states involved in this merger. Therefore, NBC-Resulting may retain NBC National's main office and all its branches in Tennessee, North Carolina, Georgia, West Virginia, and Virginia as branches under sections 36(b)(2)(A) and 36(c).

b. NBC-Resulting may retain and operate the branches of NBC under subsection 36(b)(2)(C)

In this merger, NBC is the acquiring bank. Section 36(b)(2)(C) authorizes the national bank resulting from a merger to retain and operate as a branch any branch the acquiring bank had prior to the merger, unless a state bank resulting from a merger in the state would be prohibited by state law from retaining as a branch an identically situated office of a state bank. Here, the acquiring bank's branches are in Tennessee and Arkansas. In prior merger decisions involving interstate national banks, both before and after the Riegle-Neal Act, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to acquiring banks that have offices in more than one state.¹³

We determined that the resulting national bank is situated in each state in which it operates for purposes of applying section 36(b)(2)(C). In this way, the three related subsections of section 36 -- subsection 36(c), 36(b)(2)(A), and 36(b)(2)(C) -- will be interpreted consistently. And, just as with respect to the state law incorporated in subsections 36(b)(2)(A) and 36(c), as discussed, the state law incorporated into subsection 36(b)(2)(C) is -- for each state in which the acquiring bank has branches -- the state's law for the retention of branches by a lead state bank in a merger within that state. The state bank parity comparison used in applying paragraph (C) is a comparison, within each state, to the state law for that state's banks. Thus, the power of the resulting bank to retain the acquiring bank's branches in each state is determined by reference to that state's laws for in-state bank mergers.

Therefore, under subsection 36(b)(2)(C), for each state, the resulting bank may retain the branches of the acquiring bank unless the state has expressly prohibited branch retention for identically situated offices in a merger between its state banks. With respect to NBC's branches in Tennessee and Arkansas, there are no provisions in the laws of these jurisdictions that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Indeed, these jurisdictions permit banks to retain branches after an in-state

Supp. 1999).

¹³ See, e.g., OCC Texas Merger Decision (Part II.A.2.b.), OCC Bank Midwest Decision (Part II.C.2.b.)

merger and, in fact, permit statewide branching.¹⁴ Therefore, NBC-Resulting may retain the branches of NBC under section 36(b)(2)(C).

Accordingly, NBC-Resulting may retain and operate as branches the main office and branches of NBC National and the branches of NBC.¹⁵

3. The authority for national banks for mergers and branch retention under 12 U.S.C. 215a & 36(b) continues after the Riegle-Neal Act

The authority for the merger and branch retention, as discussed above, is based on longstanding provisions governing national banks, 12 U.S.C. 215a & 36(b). The Riegle-Neal Act did not change existing authority under sections 215a and 36(b). The Riegle-Neal Act created a new merger authority that allows mergers between banks with different home states. However, in this merger, the banks have the same home state, and so the Riegle-Neal Act's merger provisions do not apply to this merger. Yet, each of the banks has interstate branches. More generally, the Riegle-Neal Act did not directly address retention of a bank's existing interstate branches when it participates in a merger with another bank that is not a Riegle-Neal Act merger.¹⁶

Only one provision in the Riegle-Neal Act addresses the question of exclusivity of branching authority and relationship to other laws and could be thought to supersede other law for national banks regarding mergers and branching.¹⁷ Thus, a branching transaction that is authorized under other authority clearly

¹⁴ Ark. Code Ann. 23-48-702(b)(3)(A), (C) (1994 & Supp. 1999); Tenn. Code Ann. 45-2-614 (1993 & Supp. 1999).

¹⁵ NBC also intends, pursuant to 12 U.S.C. 24(Tenth), to retain two subsidiaries of FSB as operating subsidiaries. The two will become subsidiaries of NBC National after the conversion and then will become subsidiaries of NBC after the merger. The subsidiaries are J&S Leasing, Inc., and Kenesaw Leasing, Inc., both with offices in Tennessee and both engaged in a commercial equipment leasing business targeting corporate and commercial customers. The leased equipment includes fork lifts, small construction equipment, and over-the-road tractor-trailer trucks. The OCC has determined that the proposed activity of these operating subsidiaries qualifies for preapproved notice procedures under 12 C.F.R. 5.34(e)(5)(v)(M) (as revised 65 Fed. Reg. 12,905, 12912 (March 10, 2000)).

¹⁶ It may be addressed for some banks in some situations in 12 U.S.C. 1831u(d)(2). Section 1831u(d)(2) addresses the authority of a Riegle-Neal Act interstate bank to establish or acquire additional branches. Among other things, it in effect codifies the *Seattle Trust* case's approach and the OCC's related interpretation of sections 215a and 36(b) and 36(c) for Riegle-Neal interstate national banks for situations covered by the provision. *See also* 12 U.S.C. 36(g)(2)(B) (applying section 1831u(d)(2) for subsequent branches when a national bank entered a state initially with a Riegle-Neal *de novo* branch). Thus, it is consistent to also apply sections 215a, 36(b), and 36(c) in interstate transactions that the Riegle-Neal Act does not expressly address.

¹⁷ *See* Riegle-Neal Act 102(b)(1)(B) (adding new subsection 12 U.S.C. 36(e)(1) on exclusive authority for additional branches for national banks). Section 36(e)(1) provides:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a State in which the

continues to be authorized under that authority, if it is consistent with section 36(e). Such is the case here. In the merger, section 36(e) is complied with because NBC-Resulting retains and operates its branches under the authority of section 36(b), a part of Athis section” referred to in section 36(e)(1).

4. Conclusion

The legal authority for the merger is similar to the analysis in many prior OCC decisions. The merger is authorized under 12 U.S.C. 215a, and NBC-Resulting may retain and operate the branches under the authority of 12 U.S.C. 36(b)(2) and consistent with 12 U.S.C. 36(e)(1). Accordingly, the merger is legally authorized.¹⁸

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. 1828(c), requires the OCC’s approval for any 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 that the merger may be approved under section 1828(c).

1. Competitive analysis

Because NBC and NBC National are affiliated institutions wholly-owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and managerial resources

bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under *this section* or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.

12 U.S.C. 36(e)(1) (emphasis added). The term “this section” refers to Revised Statutes 5155, 12 U.S.C. 36. A similar provision was added for state banks. *See* 12 U.S.C. 1828(d)(3). In addition, subsection 36(e)(2) (along with new subsection 30(c)) affects prior law regarding branch retention in interstate main office relocations. The merger does not involve a relocation, and so that provision is not involved here.

¹⁸ In addition, we note, because a portion of the deposits of NBC National, though a BIF member, are insured by the SAIF as a result of a prior transaction, this transaction satisfies the requirements of 12 U.S.C. 1815(d)(3). The resulting bank will meet all applicable capital requirements. Moreover, the requirements of section 1815(d)(3)(F) are inapplicable because no SAIF member is involved in the transaction.

The financial and managerial resources of each of the merging banks are satisfactory. The applicant expects to achieve administrative efficiencies by operating the offices of FSB, following its conversion to a national bank charter and the merger into NBC, as branches of NBC rather than as a separate corporate entity. The future prospects of the institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger application.

3. Convenience and needs

NBC, the resulting bank at the end of these applications, will help to meet the convenience and needs of the communities to be served. NBC will continue to serve the same areas it currently serves in the United States, and, following the proposed transactions, it will add the communities currently served by FSB. There will be no reductions in the products or services as a result of the transactions and customers of FSB will be able to access the full range of NBC's products and services not previously offered at that institution. No branches will be closed as a result of the transactions. The combination of the two institutions with offices in Tennessee, Georgia, Arkansas, North Carolina, West Virginia, and Virginia into one bank with branches in each state will particularly benefit business customers with operations in several of these states and retail customers who travel between the states. The combined bank will have the same commitment to helping meet the credit needs of the communities serviced currently by NBC and FSB as separate entities.

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the merger application.

B. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including conversions and mergers. *See* 12 U.S.C. 2903; 12 C.F.R. 25.29. The OCC considers the CRA performance evaluation of each depository institution involved in the transaction. Under the CRA regulation, the OCC evaluates performance of most large banks using criteria relative to the bank's lending, investments, 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.

A review of the record of these applications and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. We further note that the institutions involved in these transactions received Satisfactory ratings as of their most recent examinations. No public comments were received by the OCC relating

to these applications, and the OCC has no other basis to question the applicants' performance in complying with the CRA.

The transactions are not expected to have an adverse effect on the CRA performance of the resulting bank. The resulting bank will continue to serve the same communities that its predecessor institutions served. Following the merger, the assessment area of the target bank will be added to that of the resulting bank. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as the parties have today as separate institutions. Moreover, the resulting bank's operation of interstate branches does not alter its obligation to help meet the credit needs of its communities in each of the states it serves. We find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the conversion of FSB and the merger of the converted bank, NBC National, into NBC are legally authorized, the resulting bank in each transaction may retain and operate branches as described in the analysis above, each transaction meets the other statutory criteria for approval, and there are no supervisory or policy concerns. Accordingly, these applications are hereby approved.

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

03-28-00_____
Date

Application Control Numbers: 2000-SE-01-0003, 02-0004