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2014 Compilation

Board of Governors of the Federal Reserve System

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Preface

The *Federal Reserve Bulletin* was introduced in 1914 as a vehicle to present policy issues developed by the Federal Reserve Board. Throughout the years, the *Bulletin* has been viewed as a journal of record, serving to provide the public with data and research results generated by the Board.

Authors from the Board's Research and Statistics, Monetary Affairs, International Finance, Banking Supervision and Regulation, Consumer and Community Affairs, Reserve Bank Operations, and Legal divisions contribute to the content published in the *Bulletin,* which includes topical research and analysis and quarterly "Legal Developments."

Starting in 2004, the *Bulletin* was published quarterly rather than monthly. In 2006, in response to the increased use of the Internet—and in order to release articles and reports in a more timely fashion—the Board discontinued the quarterly print version of the *Bulletin* and began to publish the contents of the *Bulletin* on its public website as the information became available. All articles, orders on banking applications, and enforcement actions that were published in the online *Bulletin* in 2010 are included in this print compilation.

The tables that appeared in the Financial and Business Statistics section of the *Bulletin* from 1914 through 2003 were removed and published monthly as a separate print and online publication, the *Statistical Supplement to the Federal Reserve Bulletin,* from 2004 to 2008. Effective with the publication of the December 2008 issue, the Federal Reserve Board discontinued both the print and online versions.

The majority of data published in the *Statistical Supplement* are available elsewhere on the Federal Reserve Board's website at www.federalreserve.gov/econresdata/statisticsdata.htm. The Board has created a webpage that provides a detailed list of links to the most recent data on its site and links to other data provided by the Federal Reserve Bank of New York, the U.S. Treasury, and the Federal Financial Institutions Examination Council.

Online access to the *Bulletin* is free. A free e-mail notification service (www.federalreserve.gov/generalinfo/subscribe/notification.htm) is available to alert subscribers to the release of articles and orders in the *Bulletin,* as well as press releases, testimonies, and speeches. The notification message provides a brief description and a link to the recent posting.

- *Federal Reserve Bulletin*: www.federalreserve.gov/pubs/bulletin
- Data sources for the tables in the discontinued *Statistical Supplement to the Federal Reserve Bulletin*: www.federalreserve.gov/pubs/supplement/statsupdata/statsupdata.htm

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Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances

Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson, and Richard A. Windle of the Board's Division of Research and Statistics, prepared this article with assistance from Sebastian Devlin-Foltz and Jacob Krimmel.

The Federal Reserve Board's triennial Survey of Consumer Finances (SCF) collects information about family incomes, net worth, balance sheet components, credit use, and other financial outcomes.[1] The 2013 SCF reveals substantial disparities in the evolution of income and net worth since the previous time the survey was conducted, in 2010.[2]

During the three years between the beginning of the 2010 and 2013 surveys, real gross domestic product grew at an annual rate of 2.1 percent, the civilian unemployment rate fell from 9.9 percent to 7.5 percent, and the annual rate of change in the consumer price index (CPI) averaged 2.3 percent.[3] Although aggregate economic performance improved substantially relative to the period between the 2007 and 2010 surveys, the effect on incomes for different types of families was far from uniform. Several observations from the SCF about family incomes stand out:[4]

- Between 2010 and 2013, mean (overall average) family income rose 4 percent in real terms, but median income fell 5 percent, consistent with increasing income concentration during this period (figure 1).
- Some of the 2010 to 2013 growth differential reflected a return to trend, after the cyclical narrowing of the income distribution between 2007 and 2010, when large decreases in top incomes associated with the recent financial crisis reduced mean family income more than median family income.
- Families at the bottom of the income distribution saw continued substantial declines in average real incomes between 2010 and 2013, continuing the trend observed between the 2007 and 2010 surveys.[5]

[1] See box 1, "The Data Used in This Article," for a general description of the SCF data. The appendix to this article provides a summary of key technical aspects of the survey.

[2] For a detailed discussion of the 2010 survey as well as references to earlier surveys, see Jesse Bricker, Arthur B. Kennickell, Kevin B. Moore, and John Sabelhaus (2012), "Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances," *Federal Reserve Bulletin*, vol. 98, pp. A1–A80, www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf.

[3] Changes in aggregate statistics reported here are measured from March to March or first quarter to first quarter of the respective survey years, just prior to the beginning of the field period for each survey.

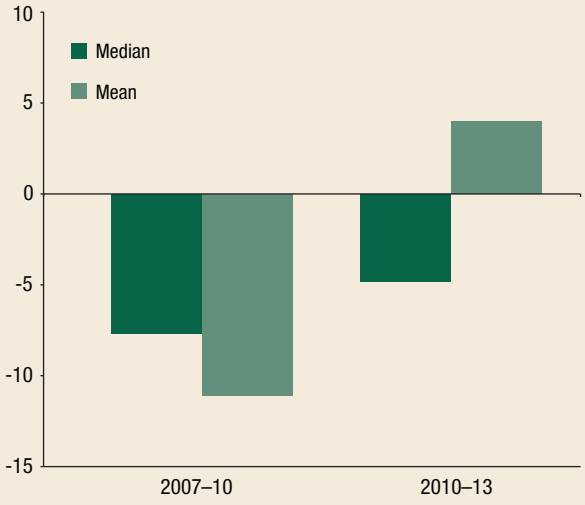
[4] Income is measured for the year prior to the survey.

[5] The income measure used to group families for distributional purposes here and throughout most of this article is based on the SCF concept of "usual" income. See box 2, "Usual versus Actual Income," for an explanation and example of why the usual income measure is preferable for grouping families.

Note: This article was republished on October 24, 2014. *Please see the Errata on page 40.*

- Families in the middle to upper-middle parts (between the 40th and 90th percentiles) of the income distribution saw little change in average real incomes between 2010 and 2013 and thus have failed to recover the losses experienced between 2007 and 2010.
- Only families at the very top of the income distribution saw widespread income gains between 2010 and 2013, although mean and median incomes were still below 2007 levels.
- The differentials in average income growth between 2010 and 2013 are also observed for other family groupings in which large differences in income levels are observed, notably across education groups, by race and ethnicity, homeownership status, and levels of net worth.

Figure 1. Change in median and mean family incomes, 2007–13 surveys



Note: Changes are based on inflation-adjusted dollars.
Source: Federal Reserve Board, Survey of Consumer Finances.

The improvements in economic activity along with changes in house and corporate equity prices combined to effectively stabilize average and median family net worth (wealth) between 2010 and 2013 after both measures fell dramatically between 2007 and 2010. The CoreLogic national house price index increased at an annual rate of 2.0 percent between early 2010 and early 2013, just below the rate of consumer price inflation. The value of corporate equity holdings, as measured by major stock price indexes, grew at just over a 10 percent annual rate between the two surveys, leading to large inflation-adjusted increases in equity holdings.[6] These differential price trends had predictable effects on the distribution of changes in net worth across the population:

- Overall, between 2010 and 2013 there was little movement in median and mean net worth, as the median fell a modest 2 percent and the mean increased slightly (figure 2).
- Consistent with income trends and differential holdings of housing and corporate equities, families at the bottom of the income distribution saw continued substantial declines in real net worth between 2010 and 2013, while those in the top half saw, on average, modest gains.
- Ownership rates of housing and businesses fell substantially between 2010 and 2013.
- Retirement plan participation in 2013 continued on the downward trajectory observed between the 2007 and 2010 surveys for families in the bottom half of the income distribution. Participation rebounded slightly for upper-middle income families, but it did not move back to the levels observed in 2007.

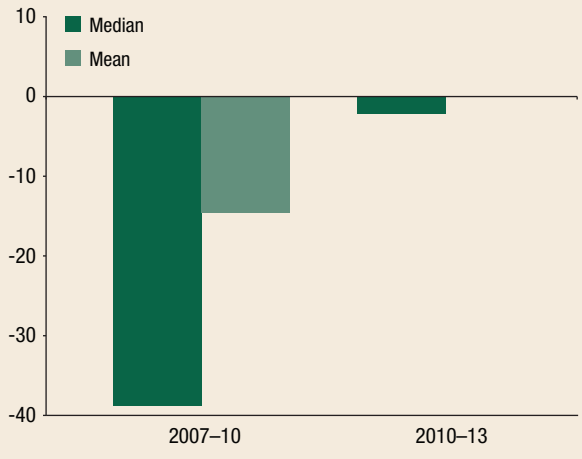
[6] In the year following the beginning of the 2013 survey, between March 2013 and March 2014, the CoreLogic national house price index surged 10.9 percent, greatly surpassing the rate of consumer price inflation. In the same period the Standard and Poor's S&P 500 stock price index increased more than 20 percent. These price changes emphasize the need to evaluate SCF findings in the appropriate time frame; both median and mean net worth rose substantially between the beginning of the 2013 survey and the publication of this report.

- The value of direct and indirect holdings of corporate equities increased between 2010 and 2013 though the ownership rate fell. The decrease in stock ownership rates was most pronounced for the bottom half of the income distribution.
- The decrease in ownership rates for housing and corporate equity holdings was concentrated in the bottom and upper-middle parts of the income distribution, though the decrease in business ownership was concentrated among higher-income families.

Between 2010 and 2013, interest rates fell on most types of consumer debt: Typical fixed-rate 30-year mortgage interest rates fell from 5.3 percent to 3.5 percent, new vehicle loan interest rates fell from 6.5 percent to 4.7 percent, and credit card interest rates fell from 14.3 percent to 11.9 percent. At the same time, debt holdings of families decreased, and many aspects of families' debt circumstances improved:

- Overall, debt obligations fell between 2010 and 2013: Median debt declined 20 percent, and mean debt decreased 13 percent for families with debt.
- For the median family with debt, debt burdens also fell between 2010 and 2013: Leverage ratios, debt-to-income ratios, and payment-to-income ratios all fell. The fraction of families with payment-to-income ratios greater than 40 percent declined below the level seen in 2001.
- Much of the decline in debt can be explained by a large decline in the fraction of families with home-secured debt, which fell from 47.0 percent to 42.9 percent, a decline that is only partly explained by the much smaller drop in homeownership.

Figure 2. Change in median and mean family net worth, 2007–13 surveys



Note: Changes are based on inflation-adjusted dollars.
Source: Federal Reserve Board, Survey of Consumer Finances.

- Between 2010 and 2013, the fraction of families with credit card debt also decreased. Median and mean balances for families with credit card debt fell 18 percent and 25 percent, respectively, and the fraction of families that pay off credit cards every month increased.
- The fraction of families considered credit constrained—those who reported being denied credit, as well as those who did not apply for credit for fear of being denied—declined slightly from 28.3 percent in 2010 to 27.6 percent in 2013.
- Although many measures of debt and debt obligations indicate that debt has fallen, education debt increased substantially between 2010 and 2013.

Income

Median and mean inflation-adjusted before-tax family incomes moved in different directions between 2010 and 2013.[7] Overall, median income fell 5 percent between 2010 and 2013, from $49,000 to $46,700 (table 1). Mean income increased 4 percent, from $84,100 to $87,200. The decline in median income coupled with the rise in mean income is consistent with a widening income distribution during this period.[8]

Over the preceding three-year period, 2007–10, median and mean income both fell sharply (8 percent and 11 percent, respectively). The changes for both the 2007–10 and 2010–13 periods stand in stark contrast to a pattern of substantial increases in both the median and the mean dating back to the early 1990s.[9]

Some predictable patterns in income levels across demographic groups are observed in the 2013 SCF, and those patterns are largely consistent with prior surveys.[10] Across age groups, median and mean incomes show a life-cycle pattern, rising to a peak in the middle age groups and then declining for groups that are older and increasingly more likely to be retired. Income also shows a strong positive association with education; in particular, incomes for families headed by a person who has a college degree tend to be substantially higher than for those with lower levels of schooling. Incomes of white non-Hispanic families are substantially higher than those of other families.[11] Income is also higher for homeowners than for other families, and income is systematically higher for groups with greater net worth.[12]

Changes in Income by Family Characteristics

Changes in median and mean incomes between 2010 and 2013 varied substantially across different types of families, whether grouped by economic characteristics such as income, wealth, and homeowner status, or by purely demographic variables such as age, education, or race and ethnicity. Patterns are generally consistent with the overall widening of the income distribution, as reflected in the differential growth of overall median and mean family income.

For a given family, income at a particular time may not be indicative of its "usual" income. Unemployment, a bonus, a capital loss or gain, or other factors may cause income to

---

[7] To measure income, the interviewers request information on the family's cash income, before taxes, for the full calendar year preceding the survey. The components of income in the SCF are wages, self-employment and business income, taxable and tax-exempt interest, dividends, realized capital gains, food stamps and other related support programs provided by government, pensions and withdrawals from retirement accounts, Social Security, alimony and other support payments, and miscellaneous sources of income for all members of the primary economic unit in the household.

[8] Box 3, "Recent Trends in the Distribution of Income and Wealth," discusses trends in income and wealth shares, as measured by the SCF, since 1989.

[9] Between 1992 and 2007, mean and median income generally increased between survey waves. Mean income increased, on average, 8.0 percent between survey waves, and median income increased, on average, 4.2 percent between survey waves. The 2001–04 period is the only exception, when mean income fell modestly.

[10] Tabulated data from the survey beyond that presented in this article are available at www.federalreserve.gov/econresdata/scf/scfindex.htm. This information includes some alternative versions of the tables in this article, including tables that match the structure used in earlier versions of this publication. For those who wish to make further alternative calculations, this website provides a variety of data files as well as access to online tabulation software that may be used to create customized tables based on the variables analyzed in this article.

[11] See the appendix for a discussion of racial and ethnic identification in the SCF.

[12] In this article, a family is considered a homeowner if at least one person in the family owns at least some part of the family's primary residence.

Box 1. The Data Used in This Article

Data from the Survey of Consumer Finances (SCF) are the basis of the analysis presented in this article. The SCF is a triennial interview survey of U.S. families sponsored by the Board of Governors of the Federal Reserve System with the cooperation of the U.S. Department of the Treasury. Since 1992, data for the SCF have been collected by NORC, a research organization at the University of Chicago, roughly between May and December of each survey year.

The majority of statistics included in this article are related to characteristics of "families." As used here, this term is more comparable with the U.S. Census Bureau definition of "households" than with its use of "families," which excludes the possibility of one-person families. The appendix provides full definitions of "family" for the SCF and the associated family "head."

The survey collects information on families' total income before taxes for the calendar year preceding the survey. But the bulk of the data cover the status of families as of the time of the interview, including detailed information on their balance sheets and use of financial services as well as on their pensions, labor force participation, and demographic characteristics. Except in a small number of instances (see the appendix and the main text for details), the survey questionnaire has changed in only minor ways relevant to this article since 1989, and every effort has been made to ensure the maximum degree of comparability of the data over time.

The need to measure financial characteristics imposes special requirements on the sample design for the survey. The SCF is expected to provide reliable information both on attributes that are broadly distributed in the population (such as homeownership) and on those that are highly concentrated in a relatively small part of the population (such as closely held businesses). To address this requirement, the SCF employs a sample design, essentially unchanged since 1989, consisting of two parts: a standard, geographically based random sample and a special oversample of relatively wealthy families. Weights are used to combine information from the two samples to make estimates for the full population. In the 2013 survey, 6,026 families were interviewed, and in the 2010 survey, 6,492 were interviewed.

This article draws principally upon the final data from the 2013 and 2010 surveys. To provide a larger context, some information is also included from the final versions of earlier surveys.[1] Differences between estimates from earlier surveys as reported here and as reported in earlier *Federal Reserve Bulletin* articles are attributable to additional statistical processing, correction of minor data errors, revisions to the survey weights, conceptual changes in the definitions of variables used in the articles, and adjustments for inflation. In this article, all dollar amounts from the SCF are adjusted to 2013 dollars using the "current methods" version of the consumer price index for all urban consumers (CPIURS). The appendix provides additional detail on the adjustments.

The principal detailed tables (tables 1 through 4) describing income, net worth, and asset and debt holdings focus on the percentage of various groups that have such items and/or the median and mean holding for those who have them.[2] Generally, when one deals with data that exhibit very large values for a relatively small part of the population—as is the case for many of the items considered in this article—estimates of the median are often statistically less sensitive to such outliers than are estimates of the mean. At the same time, means are generally more useful for comparing across population subgroups because every member of the group contributes equally to the overall average.

One liability of using the median as a descriptive device is that medians are not additive—that is, the sum of the medians of two items for the same population is not generally equal to the median of the sum (for example, median assets less median liabilities does not equal median net worth). In contrast, means for a common population are additive. Where a comparable median and mean are given, the gain or loss of the mean relative to the median may usually be taken as indicative of the relative change at the top of the distribution; for example, when the mean decreases more rapidly than the median, it is typically

continued on next page

Box 1. The Data Used in This Article—*continued*

taken to indicate that the values in the upper part of the distribution fell more than those in the lower part of the distribution.

To provide a measure of the significance of the developments discussed in this article, standard errors caused by sampling and imputation for missing data are given for selected estimates. Space limits prevent the inclusion of the standard errors for all estimates. Although the statistical significance of the results is not directly addressed, the article highlights findings that are significant or are interesting in a broader context.

[1] Additional information about the survey is available on the Board's public website at www.federalreserve.gov/econresdata/scf/scfindex.htm.

[2] The median of a distribution is defined as the value at which equal parts of the population considered have values that are larger or smaller.

deviate temporarily from the usual amount.[13] Across the distribution of families grouped by usual income, all but the highest quintile saw declines in median income between 2010 and 2013, with second and third quintiles seeing the largest declines (7 percent and 6 percent, respectively).[14] Median income increased 2 percent for the top income decile. Mean income declined strongly for the bottom two quintiles and barely budged for those between the 40th and 90th percentiles, whereas the mean income of the top decile increased 10 percent between 2010 and 2013.

Nearly all age groups experienced declines in median income, with the exception of families headed by those age 35 to 44 (6 percent increase) and age 65 to 74 (no change). Mean incomes increased 18 percent for ages 35 to 44 and 22 percent for ages 65 to 74. Unlike for median incomes, the mean income of the oldest households increased about 7 percent. For every age group, mean incomes declined by less than median incomes or rose by more than median incomes.

Between 2010 and 2013, both median and mean income changes were positively associated with educational attainment. The median income of households with a high school diploma or less fell between 6 and 9 percent, whereas the mean income of those without a high school diploma fell much more than that of those who graduated from high school (a 17 percent decline versus a 2 percent decline). The median income of those with some college decreased 11 percent, whereas the median income of those with a college degree *increased* 1 percent. Mean income for those with a college degree increased 5 percent.

Over the 2010–13 period, median income for white non-Hispanic families decreased modestly, 1 percent, whereas their mean income increased 8 percent. Their incomes in both years were much higher than non-white or Hispanic families, who saw declines in median income of 9 percent and declines in mean income of 11 percent.

For homeowners, median income fell 1 percent between 2010 and 2013, while mean income increased 7 percent during this period. Median and mean incomes for renters and other families declined very modestly, 1 percent for both measures.

By percentile of net worth measured concurrently in the SCF, both mean and median income fell for those in the bottom three quartiles, while both measures rose for the top

[13] Box 2, "Usual versus Actual Income," discusses income variability and the implications of categorizing families by the two income measures.

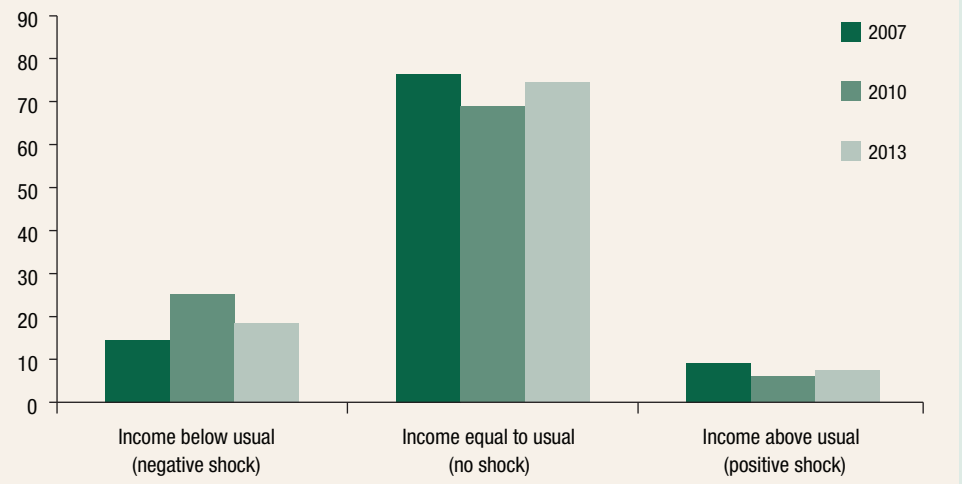
[14] Each quintile represents 20 percent of the population. See the appendix for information about distribution group cutoffs.

Box 2. Usual versus Actual Income

The income classifier used throughout this report is the Survey of Consumer Finances respondent-reported measure of "usual" income. This classifier is designed to capture a version of household income with transitory fluctuations smoothed away in order to approximate the economic concept of "permanent" income. Usual income differs from actual income when the respondent reports that the family experienced a negative or positive income "shock" that is transitory in nature, say from a temporary unemployment spell or an unexpected salary bonus. Usual income is measured in the survey after actual income has been reported, when respondents were given the option to report their usual income if they believe they experienced a temporary deviation.[1]

The fraction of families with actual income deviating from usual income varies over the business cycle, and grouping families by actual income can bias estimates of changes in economic outcomes across groups, particularly in volatile periods. In 2007, 14.4 percent of families reported that their actual income was temporarily below their usual income (figure A). The fraction reporting unusually low income surged to 25.2 percent in 2010 and then fell back to 18.4 percent in 2013.

Figure A. Families with positive and negative income shocks, 2007–13 surveys



The potential for bias arises because average net worth, portfolio composition, borrowing, and spending behavior for wealthy families with temporarily low incomes are all very different from families whose income is usually lower. Consider, for example, the first quintile of families sorted by actual income. This actual income group includes some families whose income is usually low and some families whose income is temporarily low. In 2007, the fraction of families in the bottom actual income quintile whose usual income would put them in a higher group was 23.5 percent (table B). That fraction surged to 38.8 percent in 2010 before falling back to 31.2 percent in the most recent survey, 2013.

Table B. Effect of grouping by actual income on average net worth for bottom 20 percent, 2007–13 surveys

Thousands of 2013 dollars except as noted

	2007	2010	2013
Percent of families in "usually higher" income group	23.5	38.8	31.2
Average net worth of…			
All families, bottom 20 percent by actual income	118.2	125.1	86.1
Families usually in bottom 20 percent	101.6	81.8	64.6
Families with income usually above bottom 20 percent	232.0	318.6	216.4

continued on next page

Box 2. Usual versus Actual Income—*continued*

If families had been grouped by actual income, instead of usual income, the estimates of average net worth would have been severely biased. Looking at all families in the bottom 20 percent by actual income, one would come away with the impression that average net worth increased between 2007 and 2010, from $118,200 to $125,100, before falling to $86,300 in 2013. Among those families in the bottom quintile whose income is usually low, average net worth fell from $101,600 to $81,800 between 2007 and 2010, and then fell further, to $64,600 in 2013. Grouping families by usual income provides a much more accurate representation of the changes in net worth experienced across income groups.

[1] Specifically, after the data on actual income are collected, respondents were asked, "Is this income unusually high or low compared to what you would expect in a 'normal' year, or is it normal?" If the respondent answered that income was unusually high or low, the follow-up question is, "About what would your total income have been if it had been a normal year?"

quartile. For households in the lowest quartile of net worth, median income declined 7 percent and mean income fell 10 percent. Households in the second and third quartile saw smaller declines in income (5 percent for both groups for median income, and 3 to 4 percent for mean income, for both groups). However, both mean and median income increased for the top quartile. For those households in the 75th to 90th percentile of net worth, median income rose 10 percent, while it rose 5 percent for the top decile. The largest increase was in mean income for the top decile of net worth, an increase of 13 percent.

Net Worth

Median and mean inflation-adjusted net worth—the difference between families' gross assets and their liabilities—were both little changed between 2010 and 2013 (table 2). Overall, the median net worth of all families fell a modest 2 percent to $81,200, while mean net worth was effectively unchanged at $534,600. In contrast, the 2010 SCF showed dramatic *decreases* in median and mean net worth in the 2007–10 period, while the 2007 survey showed substantial *increases* relative to 2004.[15] These patterns in net worth over the past decade were largely driven by the boom and bust in house and other asset prices. The bust, in particular, had a disproportionate effect on families in the middle of the net worth distribution, whose wealth portfolio is dominated by housing. Divergent trends in median and mean net worth over the past few surveys suggest substantial heterogeneity in wealth changes across families.[16]

The median and mean values of wealth rise systematically with usual income, a relationship reflecting a higher level of saving among higher-income families, and the feedback effect of higher incomes from the accumulated assets.[17] Median and mean family net worth generally increase with age, with a plateau or modest decreases for the oldest age groups relative to the near-retirement age groups. This pattern reflects both life-cycle saving behavior and a historical pattern of long-run growth in inflation-adjusted wages, as younger cohorts have generally had higher lifetime earnings than preceding cohorts. Wealth shows strong differentials across groups defined in terms of education, racial or ethnic background, and housing status; these differentials generally mirror those for income, but the wealth differences are larger.

[15] Between the 2004 and 2007 surveys, mean net worth increased 13.0 percent and median net worth increased 17.9 percent.

[16] Box 3, "Recent Trends in the Distribution of Income and Wealth," discusses shares of income and wealth, as measured by the SCF, since 1989.

[17] See box 4, "Saving Behavior," for a discussion of patterns of saving by usual income, and box 5, "Shopping for Financial Services," for a discussion of the resources that families use when making investment and borrowing decisions.

Table 1. Before-tax median and mean family income, by selected characteristics of families, 2010 and 2013 surveys

Thousands of 2013 dollars except as noted

Family characteristic	Median income			Mean income		
	2010	2013	Percent change 2010–13	2010	2013	Percent change 2010–13
All families	**49.0**	**46.7**	**-5**	**84.1**	**87.2**	**4**
	(.6)	(.6)		(1.2)	(1.5)	
Percentile of usual income						
Less than 20	15.8	15.2	-4	16.5	15.2	-8
20–39.9	32.7	30.4	-7	32.4	30.5	-6
40–59.9	51.8	48.7	-6	49.9	49.6	-1
60–79.9	79.5	77.9	-2	78.9	80.0	1
80–89.9	125.3	121.7	-3	124.3	123.5	-1
90–100	217.9	223.2	2	361.5	397.5	10
Age of head (years)						
Less than 35	37.6	35.3	-6	51.1	48.7	-5
35–44	57.7	60.9	6	86.8	102.0	18
45–54	65.4	60.9	-7	109.5	103.8	-5
55–64	59.0	55.1	-7	113.4	110.1	-3
65–74	45.8	45.9	0	81.2	98.8	22
75 or more	31.2	28.5	-9	49.4	53.1	7
Education of head						
No high school diploma	24.6	22.3	-9	36.1	30.0	-17
High school diploma	39.2	37.0	-6	51.6	50.7	-2
Some college	46.0	40.9	-11	63.0	61.3	-3
College degree	79.1	80.0	1	138.1	145.4	5
Race or ethnicity of respondent						
White non-Hispanic	56.6	55.8	-1	96.6	104.5	8
Nonwhite or Hispanic	37.1	33.6	-9	58.3	51.6	-11
Housing status						
Owner	63.8	63.4	-1	105.3	112.4	7
Renter or other	28.0	27.8	-1	40.6	40.1	-1
Percentile of net worth						
Less than 25	25.4	23.7	-7	35.0	31.4	-10
25–49.9	40.6	38.6	-5	48.8	46.9	-4
50–74.9	58.8	55.8	-5	67.8	65.8	-3
75–89.9	79.9	87.5	10	95.4	100.0	5
90–100	174.9	183.4	5	319.2	361.2	13

Note: Income is measured for the year prior to the survey. See the appendix for details on standard errors (shown in parentheses below the first row of data for the means and medians).

Changes in Net Worth by Family Characteristics

Families with higher levels of usual income reported greater levels of net worth, but changes in net worth varied substantially across the usual income distribution. Median net worth decreased between 2010 and 2013 for most usual income groups, falling between 10 and 17 percent, with the exception of the fourth quintile. Those in the lowest usual income quintile saw small decreases in median net worth (12 percent, from $7,300 to $6,400), but they also saw the largest proportional decrease in mean net worth (21 percent, from $81,800 to $64,600). Households in the second and third quintile of usual income saw large declines in median net worth (10 percent and 17 percent, respectively), as well as mean

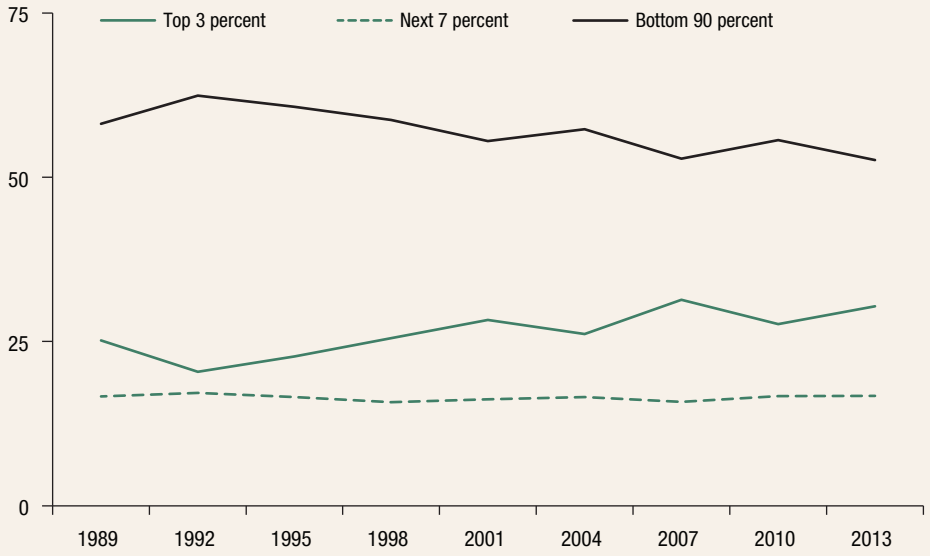
Box 3. Recent Trends in the Distribution of Income and Wealth

Income inequality, particularly the share of income received by the top 1 percent of the income distribution, has received increased attention in recent years.[1] The Survey of Consumer Finances (SCF) is uniquely capable of contributing to our understanding of trends in income and wealth inequality because the survey collects data on net worth in addition to income, and it also effectively samples affluent families.[2]

Data from the 2013 SCF confirm that the shares of income and wealth held by affluent families are at modern historically high levels. Also, the gains in income and wealth shares have been concentrated among the top few percentiles of the distribution. Contrary to some analysis of Internal Revenue Service data indicating wealth gains are isolated to the top 1 percent, or even 0.5 percent, data from the SCF show that the top few percent of families have experienced rising shares of income and wealth.

The share of income received by the top 3 percent of families was 31.4 percent in 2007 but fell to 27.7 percent in 2010 as business and asset income declined particularly sharply in the recession and financial crisis (figure A). Since that time, the income share of the top 3 percent has rebounded, climbing to 30.5 percent in 2013. The share of income received by the next highest 7 percent of the distribution (percentiles 90 through 97) has not changed over the past quarter of a century, sitting slightly below 17 percent in 1989 and 2013. Correspondingly, the rising income share of the top 3 percent mirrors the declining income share of the bottom 90 percent of the distribution, which fell to 52.7 percent in 2013.

Figure A. Income shares by income percentile, 1989–2013 surveys



Changes in the shares of wealth held by different segments of the wealth distribution have been less cyclical than income. The wealth share of the top 3 percent climbed from 44.8 percent in 1989 to 51.8 percent in 2007 and 54.4 percent in 2013 (figure B). As with income, the shares of wealth held by the next 7 highest percent of families changed very little, hovering between 19 and 22 percent over the past 25 years, and registering 20.9 percent in 2013. Similar to the situation with income, the rising wealth share of the top 3 percent of families is mirrored by the declining share of wealth held by the bottom 90 percent. The share of wealth held by the bottom 90 percent fell from 33.2 percent in 1989 to 24.7 percent in 2013.

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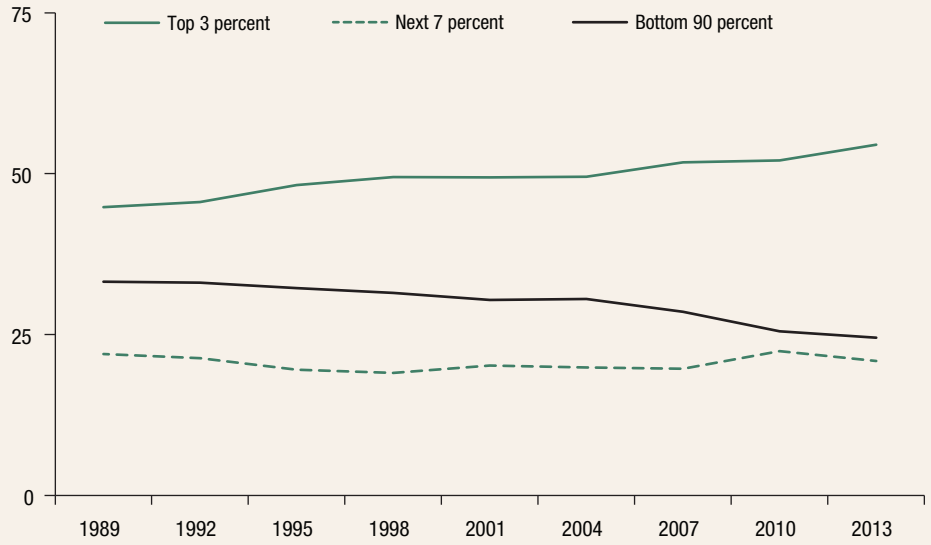
Box 3. Recent Trends in the Distribution of Income and Wealth—*continued*

Figure B. Wealth shares by wealth percentile, 1989–2013 surveys



[1] See, for example, Facundo Alvaredo, Anthony B. Atkinson, Thomas Piketty, and Emmanuel Saez (2013), "The Top 1 Percent in International and Historical Perspective," *Journal of Economic Perspectives*, vol. 27 (Summer), pp. 3–20.

[2] See the sampling techniques section of the appendix for further discussion of the SCF's ability to capture affluent families.

net worth (16 percent and 13 percent). The fourth income quintile was the only group that experienced increases in both median and mean net worth: 16 percent for median net worth and 14 percent for mean net worth. Those at the top of the income distribution experienced decreases in median net worth, while mean net worth was little changed.

Different age groups experienced very different trends in net worth between 2010 and 2013. Both mean and median net worth increased for those under age 45, decreased for those between age 45 and 64, increased for those between age 65 and 74, and decreased for the oldest group. Increases were generally larger for mean net worth than for median net worth, while declines were similar in magnitude for the two measures. Gains in median net worth ranged between 3 and 5 percent, while declines ranged between 14 and 17 percent.

From 2010 to 2013, net worth followed different patterns for different education groups. Those without a high school diploma saw no change in median net worth between 2010 and 2013, but their mean net worth fell 9 percent. Those with high school diplomas or some college both saw 14 percent declines in median net worth; the former saw a 15 percent decline in mean net worth, while those with some college had 9 percent higher mean net worth in 2013. Median net worth increased 5 percent for those with college degrees, while their mean net worth declined 2 percent.

Mean and median net worth of non-Hispanic white families changed similarly, a 1 percent mean increase and 2 percent median increase, with median net worth reaching $142,000 and mean net worth reaching $705,900 in 2013. However, the median net worth of non-white or Hispanic families fell 17 percent to $18,100, and mean net worth fell 2 percent to $183,900.

Table 2. Family median and mean net worth, by selected characteristics of families, 2010 and 2013 surveys

Thousands of 2013 dollars except as noted

Family characteristic	Median net worth			Mean net worth		
	2010	2013	Percent change 2010–13	2010	2013	Percent change 2010–13
All families	**82.8**	**81.2**	**-2**	**534.5**	**534.6**	**0**
	(2.6)	(2.8)		(10.0)	(9.3)	
Percentile of usual income						
Less than 20	7.3	6.4	-12	81.8	64.6	-21
20–39.9	31.0	27.9	-10	134.7	113.1	-16
40–59.9	66.6	55.4	-17	189.5	164.8	-13
60–79.9	138.6	161.3	16	306.8	350.9	14
80–89.9	321.7	287.9	-11	645.0	631.4	-2
90–100	1,275.7	1,125.9	-12	3,274.6	3,327.3	2
Age of head (years)						
Less than 35	10.0	10.4	4	70.0	75.5	8
35–44	45.2	46.7	3	233.0	347.2	49
45–54	126.3	105.3	-17	614.1	530.1	-14
55–64	192.3	165.9	-14	943.6	798.4	-15
65–74	221.5	232.1	5	909.2	1,057.0	16
75 or more	232.3	194.8	-16	726.5	645.2	-11
Education of head						
No high school diploma	17.2	17.2	0	118.6	108.3	-9
High school diploma	60.7	52.5	-14	233.8	199.6	-15
Some college	54.5	46.9	-14	291.7	317.9	9
College degree	209.2	219.4	5	1,047.8	1,031.6	-2
Race or ethnicity of respondent						
White non-Hispanic	139.9	142.0	2	701.4	705.9	1
Nonwhite or Hispanic	21.9	18.1	-17	188.5	183.9	-2
Housing status						
Owner	187.0	195.4	4	764.6	783.0	2
Renter or other	5.4	5.4	0	61.3	70.3	15
Percentile of net worth						
Less than 25	†	†	…	–13.7	–13.4	2
25–49.9	34.5	31.3	-9	38.2	35.9	-6
50–74.9	168.5	168.1	0	181.0	177.7	-2
75–89.9	517.3	505.8	-2	565.7	546.2	-3
90–100	1,997.8	1,871.8	-6	3,982.8	4,024.8	1

† Less than 0.05 ($50).

... Not applicable.

Note: Net worth is the difference between families' gross assets and their liabilities. See the appendix for definitions of asset and liability categories used in the SCF, as well as details on standard errors (shown in parentheses below the first row of data for the means and medians).

The median net worth of homeowners increased 4 percent between 2010 and 2013, whereas that of renters or other non-homeowners did not change. The mean net worth of homeowners increased 2 percent compared with the 15 percent increase for renters.

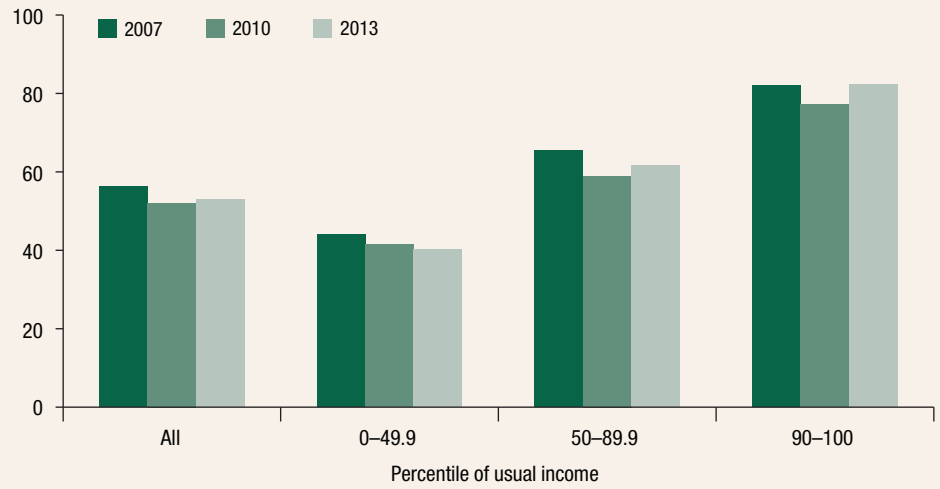
Median net worth fell for all percentile groups of the distribution of net worth, with the largest decreases in proportional terms being for the second quartile (9 percent decline) and the top decile (6 percent) of the net worth distribution. For the lowest quartile, median net worth was less than $50 in both 2010 and 2013, while mean net worth increased 2 percent

Box 4. Saving Behavior

Because saving out of current income is an important determinant of family net worth, the Survey of Consumer Finances (SCF) asks respondents whether, over the preceding year, the family's spending was less than, more than, or about equal to its income. Though only qualitative, the answers are a useful indicator of whether families are saving.

Between 2010 and 2013, the proportion of all families that saved remained basically constant, rising only slightly from 52.0 percent to 53.0 percent (figure A). The fraction of families who reported saving in the 2013 SCF is still lower than it was in the 2007 survey, when the fraction of families that saved was 56.4 percent.

Figure A. Families that saved by usual income, 2007–13 surveys



Across families grouped by usual income there are large differences in the fraction of families who save, and the fraction saving increases with usual income (figure A).[1] In fact, in 2013, the fraction of families in the top income group that saved was 82.4 percent. This percentage was more than double the 40.2 percent that saved in the lowest income group.

Between 2007 and 2010, the fraction of families that saved fell in each of the three groupings of usual income, while between 2010 and 2013, the fraction of families that saved fell for the lowest income group, but rose for the other two groups. The fraction of families who saved in the bottom 50 percent and the next 40 percent of the income distribution have yet to regain the level of savings found in the 2007 survey, and for those families in the top 10 percent of the income distribution, the fraction saving now exceeds that found in 2007.

[1] For a description of the usual income measure, see box 2, "Usual versus Actual Income."

from negative $13,700 to negative $13,400. While the second quartile experienced the largest declines in mean and median net worth, median net worth of the third quartile was virtually unchanged between 2010 and 2013 at approximately $168,100 and mean net worth declined 2 percent to $177,700. Families between the 75th and 90th percentile of net worth saw a 2 percent decline in median net worth, reaching $505,800 in 2013, and a 3 percent decline in mean net worth. While the median net worth of the top decile dropped 6 percent to $1,871,800 in 2013, the group's mean net worth rose slightly and exceeded $4 million in 2013.

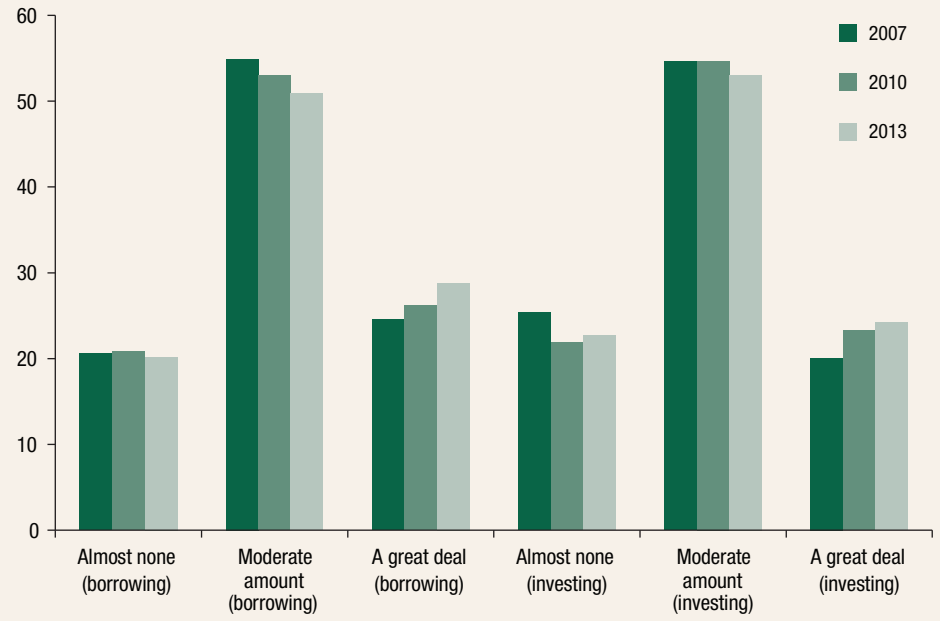
Box 5. Shopping for Financial Services

As a normal part of their financial lives, families make a variety of decisions to select investment products for any savings they may have, or loan products for any credit they may use. To the extent that families devote more or less attention to such decisions, or are better or worse informed, the wealth of otherwise comparable families may differ substantially over time.

The Survey of Consumer Finances (SCF) contains a self-assessment of families' intensity of shopping for borrowing or investing services. Note that although the survey questions are intended to elicit a description of behavior in general, the responses could also reflect short-term needs for such services and therefore the immediate need for shopping.

In 2013, only 29 percent of families reported shopping "a great deal" for loan terms, and 24 percent "a great deal" for investment terms (figure A). However, the rate of shopping "a great deal" for both loan and investment terms has increased in each wave of the SCF from 2007 to 2013. The percent of families who reported shopping either "a moderate amount" or "almost none" declined from 2010 to 2013.

Figure A. Intensity of shopping for borrowing or investing, 2007–13 surveys



In 2013, for the first time, more families turned to the Internet than to any other source for information about borrowing (table B). The fraction of families who reported using the Internet for information about borrowing reached 47 percent in 2013, well over the 41.7 percent who reported doing so in 2010. The share reporting that they used the Internet as a source of information for investing also rose between 2010 and 2013, from 33.0 percent to 35.3 percent.

continued on next page

Box 5. Shopping for Financial Services—*continued*

Table B. Information used for decisions about borrowing or investing, 2007–13 surveys

Percent

Source	Type of service					
	Borrowing			Investing		
	2007	2010	2013	2007	2010	2013
Calling around	33.4	27.0	24.7	18.0	15.7	13.2
Advertisements and media	43.0	34.2	29.0	29.9	26.1	21.3
Internet	38.4	41.7	47.0	28.3	33.0	35.3
Friends, relatives, associates	45.9	43.9	46.1	42.3	40.8	40.8
Bankers, brokers, and other sellers of financial services	39.2	39.5	41.5	38.3	39.1	38.3
Lawyers, accountants, and other financial advisors	19.5	19.5	21.5	29.3	31.1	31.8
Does not borrow or invest	9.6	14.6	13.7	10.2	11.7	13.2

Friends, relatives, and associates remained very common sources for information used to make borrowing and investing decisions in 2013 (46.1 percent for borrowing and 40.8 percent for investing), suggesting that there may be feedback effects in financial outcomes; those who know relatively well-informed people may obtain better services.

Sellers of financial services also remained commonly reported sources of information in 2013 (41.5 percent for borrowing, 38.3 percent for investing). For both types of decisions, fewer families reported consulting print media or material in the mail in 2013 than in 2010.

Assets

Between 2010 and 2013, ownership of any type of asset changed little, rising slightly from 97.4 percent to 97.9 percent in 2013 (table 3). At the same time, ownership rates of nearly every type of individual asset fell between 2010 and 2013. This finding indicates that while most families continue to hold some type of asset, many more families now hold fewer different types of assets.

Conditional on holding any assets, the median family's total asset holdings fell 11 percent, from $200,600 in 2010 to $177,900 in 2013. The conditional mean value of total assets also fell, although the drop was more modest, at 3 percent. Much of this decline in the conditional median and mean value of total assets held can be explained by declines in homeownership and stagnant real home prices between 2010 and 2013. The larger drop in median—versus mean—asset holdings indicates that losses in asset values were spread unequally across families and asset types.

Financial Assets

Overall, ownership of any financial assets—which includes transaction accounts, certificates of deposit, savings bonds, other bonds, stocks, pooled investment funds, retirement accounts, cash value life insurance, and other managed assets—remained high in 2013, at 94.5 percent.[18] This finding represented almost no change from the level seen in 2010 (94.0 percent). However, the conditional median value of all financial assets held by families fell 8 percent, from $23,000 in 2010 to $21,200 in 2013. Conditional mean values, by contrast, rose 5 percent, from $257,800 to $270,100. This increase indicates that some

[18] See the appendix for detailed definitions of SCF asset and liability categories.

Table 3. Holding and values of assets, 2010 and 2013 surveys
Thousands of 2013 dollars except as noted

Balance sheet item	Percent holding		Conditional median value			Conditional mean value		
	2010	2013	2010	2013	Percent change 2010–13	2010	2013	Percent change 2010–13
Any Asset	**97.4**	**97.9**	**200.6**	**177.9**	**-11**	**656.2**	**638.9**	**-3**
Types of financial asset								
Any financial asset	**94.0**	**94.5**	**23.0**	**21.2**	**-8**	**257.8**	**270.1**	**5**
Transaction accounts	92.5	93.2	3.8	4.1	9	34.8	36.3	4
Certificates of deposit	12.2	7.8	21.4	16.0	-25	77.8	64.5	-17
Savings bonds	12.0	10.0	1.1	1.0	-7	6.6	6.4	-3
Bonds	1.6	1.4	146.8	94.5	-36	659.1	581.7	-12
Stocks	15.1	13.8	21.4	27.0	26	224.8	294.3	31
Pooled investment funds	8.7	8.2	85.7	80.0	-7	416.4	462.9	11
Retirement accounts	50.4	49.2	47.2	59.0	25	183.4	201.3	10
Cash value life insurance	19.7	19.2	7.8	8.0	2	30.4	35.3	16
Other managed assets	5.7	5.2	75.0	100.0	33	265.7	370.6	39
Other	8.0	6.9	5.4	4.0	-25	68.5	55.1	-20
Types of nonfinancial asset								
Any nonfinancial asset	**91.3**	**91.0**	**165.6**	**148.4**	**-10**	**434.6**	**407.2**	**-6**
Vehicles	86.7	86.3	16.3	15.8	-4	23.7	22.6	-5
Primary residence	67.3	65.2	182.2	170.0	-7	280.1	262.6	-6
Other residential property	14.3	13.2	128.6	123.8	-4	309.7	316.3	2
Equity in nonresidential property	7.7	7.2	69.7	60.0	-14	344.6	268.0	-22
Business equity	13.3	11.7	84.4	67.5	-20	844.8	973.9	15
Other	7.0	7.3	16.1	13.0	-19	71.3	72.2	1

Note: See the appendix for definitions of asset categories used in the SCF.

families experienced large gains in the values of their financial assets, but the median family experienced a loss in financial asset values.

Although overall ownership rates of any financial asset remained unchanged, ownership rates of almost every specific type of financial asset fell (with the exception of transaction accounts), suggesting families now hold fewer different types of financial assets.

Transaction accounts—which include checking, savings, money market, and call accounts—remained the most commonly held type of financial asset in 2013, with an ownership rate of 93.2 percent, a slight increase from the 92.5 percent of families that held a transaction account in 2010. The conditional median and mean values of those accounts also rose between 2010 and 2013, 9 percent and 4 percent, respectively. In 2013, median transaction account holdings were $4,100, and mean holdings were $36,300.

Rates of ownership of certificates of deposits fell markedly between 2010 and 2013, from 12.2 percent to 7.8 percent. The amount held in those accounts also fell, with the median declining 25 percent and the mean declining 17 percent. These declines are, at least in part, attributable to low interest rates over this period, which reduced the advantage of certificates of deposit over transaction accounts.

Ownership of savings bonds, other bonds, directly held stocks, and pooled investment funds sustained sizable drops in ownership rates between 2010 and 2013, although none of the four types of assets are commonly held, with ownership rates in 2013 varying between 1.4 percent (other bonds) and 13.8 percent (directly held stocks). The conditional median and mean value of most of these assets also fell between 2010 and 2013, with the exception

of pooled investment funds and stocks. The median value of stocks rose 26 percent, from $21,400 in 2010 to $27,000 in 2013. The growth in median and mean holdings of stocks is largely explained by the widespread increase in stock market indexes between 2010 and 2013.[19] However, some of the increase in conditional holdings might be due to exits from ownership, if those who exited tended to have stock holdings of lower value.[20]

Ownership of retirement accounts—including individual retirement accounts (IRAs), Keogh accounts, and certain employer-sponsored accounts, such as 401(k), 403(b), and thrift savings accounts—fell below 50 percent in 2013, continuing the downward trend also observed between the 2007 and 2010 surveys. Median and mean values of retirement accounts, however, rose substantially. The conditional median value of retirement accounts rose 25 percent from $47,200 in 2010 to $59,000 in 2013; and the mean value rose 10 percent, from $183,400 in 2010 to $201,300 in 2013. This growth is likely explained by a combination of resurgent stock markets and increased contributions by those who participated in retirement plans.[21]

The percent of families owning the remaining financial asset categories—cash value of life insurance, other managed assets, and the catch-all "other" category—declined between 2010 and 2013. The median and mean values of other managed assets moved in line with stocks and retirement accounts, and they reflected the positive effect of the stock market on the value of assets in these portfolios.

Nonfinancial Assets

Ownership of nonfinancial assets—including vehicles, residential and nonresidential property, and business equity—remained high in 2013 at 91.0 percent, falling only slightly from 2010. For every separate category of nonfinancial assets except "other," however, ownership rates fell. These patterns indicate that most families still hold a nonfinancial asset, but they hold fewer types than were held in 2010.

The most commonly held type of nonfinancial asset in 2013 was vehicles, a very broad category that includes cars, vans, sport utility vehicles, trucks, motor homes, recreational vehicles, motorcycles, boats, airplanes, and helicopters. Between 2010 and 2013, the fraction of families owning a vehicle declined slightly from 86.7 percent to 86.3 percent. The median and mean value of vehicles owned by families also fell between 2010 and 2013. The median value decreased from $16,300 to $15,800, and the mean declined from $23,700 to $22,600 between 2010 and 2013.[22]

Housing ownership also fell, both for primary residences and for other residential property. Ownership declined from 67.3 percent of families owning a primary residence in 2010 to 65.2 percent owning a primary residence in 2013. This decrease represented a continued decline since the 2004 SCF was conducted, when the homeownership rate was 69.1 percent.[23]

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[19] For comparison, the March 2010 to March 2013 increases in the S&P 500, the Dow Jones Industrial Index, and the Wilshire 5000 indexes were 34.6 percent, 35.0 percent, and 36.3 percent, respectively. In real terms, these correspond to increases of 25.9 percent, 26.3 percent and 27.4 percent, respectively.

[20] See box 6, "Direct and Indirect Holdings of Publicly Traded Stock," for more details on patterns in stock holding.

[21] See box 7, "Retirement Accounts and Plan Participation," for more details.

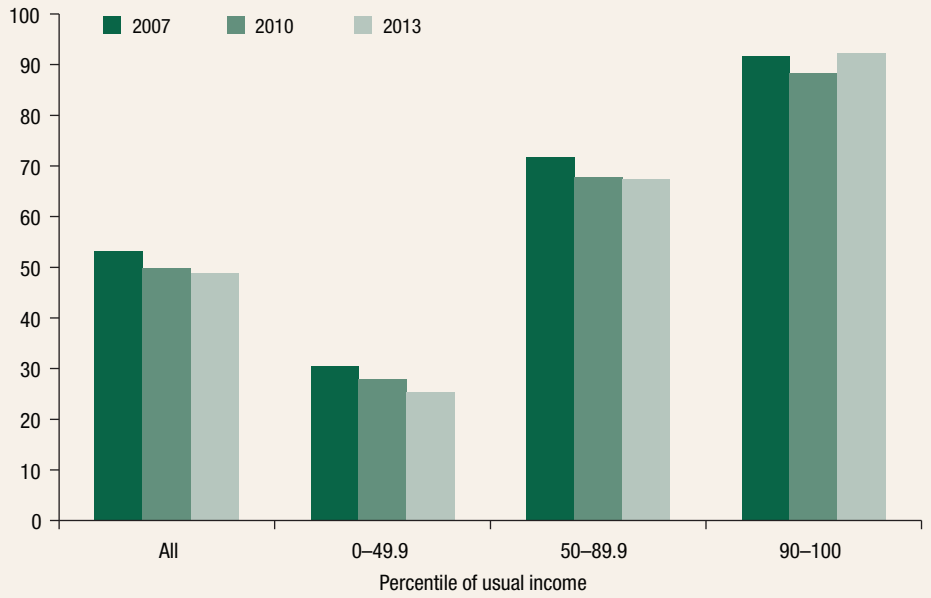
[22] Survey respondents were asked to provide the year, make, and model of each of their cars, vans, sport utility vehicles, and trucks. This information was used to obtain market prices from data collected by the National Automobile Dealers Association and a variety of other sources. For other types of vehicles, the respondent was asked to provide a best estimate of the current value.

[23] See box 8, "Homeownership and Net Housing Wealth," for more details.

Box 6. Direct and Indirect Holdings of Publicly Traded Stock

Families may hold stocks in publicly traded companies directly or indirectly, and information about each of these forms of stock holding is collected separately in the Survey of Consumer Finances.[1] When direct and indirect forms of stock holdings are combined, the 2013 data show a further decline in stock ownership over the most recent period. The level of stock ownership in 2013, at 48.8 percent, reflects a continued decline from the peak level of 53.2 percent reported in the 2007 survey (figure A). Grouping families by their location in the usual income distribution reveals that the lowest income group experienced further declines in stock ownership from 2010 to 2013, while the ownership rate for the upper-middle income group remained about the same over the most recent period.[2] For the top income group, the rate of ownership increased 3.9 percentage points from 2010 to 2013, reaching 92.1 percent, slightly above the 91.7 percent found in the 2007 survey.

Figure A. Families with direct and indirect holdings of stock, 2007–13 surveys



In contrast to the decline in stock ownership, the mean value of stock holdings increased from $228,300 in 2010 to $269,900 in 2013, exceeding the mean value of $254,000 in 2007 (table B). Across all usual income groups, the mean value of stock holdings increased from 2010 to 2013, with the mean value for the upper-middle and top income groups rising above the 2007 level. For the lowest income group, the mean value in 2013 remained slightly below the level attained in 2007. The value of stock holdings varies substantially across usual income groups, with mean holdings for the top group about seven times the size of mean holdings of the upper-middle income group.

Table B. Mean levels for direct and indirect holdings of stock, 2007–13 surveys

Thousands of 2013 dollars

	Conditional mean value		
	2007	2010	2013
All	**254.0**	**228.3**	**269.9**
Percentile of usual income			
0–49.9	53.8	36.1	53.6
50–89.9	127.8	113.0	132.3
90–100	982.0	885.9	969.3

continued on next page

Box 6. Direct and Indirect Holdings of Publicly Traded Stock—*continued*

Among families that held stock, either directly or indirectly, in 2013, ownership through a tax-deferred retirement account was the most common (87.0 percent), followed by direct stock (28.2 percent), direct holdings of pooled investment funds (16.0 percent), and managed investment accounts or an equity interest in a trust or annuity (8.2 percent). From 2010 to 2013, ownership of stock through a tax-deferred retirement account or managed investment account increased slightly, while ownership through all other types declined or remained the same. The fraction of families that owned stock through multiple types declined to 31.6 percent in 2013, down from 32.8 percent in 2010.

[1] Indirect stock holdings are those in pooled investment funds, retirement accounts, and other managed assets.
[2] For a description of the usual income measure, see box 2, "Usual versus Actual Income."

The conditional median and mean value of primary residences also fell in real terms, 7 percent and 6 percent, respectively. Among families who are homeowners, the median family's home was worth $170,000 in 2013, down from $182,200 in 2010. The decline in respondent-reported home values between the two most recent surveys is a little surprising, given the widespread perception that house values have stabilized and partially recovered in most areas. However, inflation-adjusted national home price indexes showed slight declines over the period between the onsets of field work for the two most recent surveys.[24] In addition, the divergence in house price trends is well within empirical estimates of homeowner reporting bias in house values, and it may reflect a correction in perceived values following the housing boom period, during which houses may have been overvalued by respondents.[25] It is also worth noting that since the 2013 survey was administered, house price indexes have increased substantially.

Ownership and median values of other residential property, which includes residences such as second homes and time shares, also fell between 2010 and 2013. Mean values of other residences increased slightly.

The largest relative drop in ownership rates of any type of nonfinancial asset was in the category of business equity, where ownership rates fell from 13.3 percent to 11.7 percent. The median family with business equity also experienced a decline of 20 percent in value, with median business equity falling from $84,400 to $67,500 between 2010 and 2013. The mean value of business equity rose 15 percent. This change indicates that losses in business equity were not equally distributed, and many business-owning families experienced large gains, while the median business-owning family experienced a loss.[26]

[24] The CoreLogic national house price index increased at an annual rate of 2.0 percent between early 2010 and early 2013, and the Federal Housing Finance Agency (FHFA) index rose at an annual rate of 0.7 percent over the same period. Both are below the rate of consumer price inflation used to index SCF asset values, which ran 2.3 percent during that period (see the appendix for details on inflation-adjusting SCF values). Therefore, real house prices measured by either index fell between the two surveys. In the year following the beginning of the 2013 survey field period, the CoreLogic index increased 10.9 percent, and the FHFA index increased 6.6 percent, while consumer prices were little changed.

[25] See Alice M. Henriques (2013), "Are Homeowners in Denial about Their House Values? Comparing Owner Perceptions with Transaction-Based Indexes," Finance and Economics Discussion Series 2013-79 (Washington: Board of Governors of the Federal Reserve System, September), www.federalreserve.gov/pubs/feds/2013/201379/201379pap.pdf.

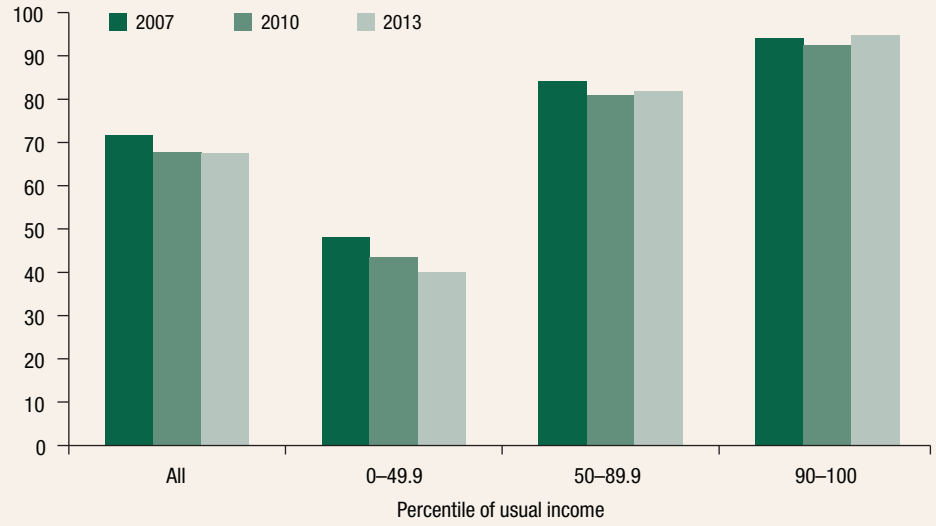
[26] See box 9, "Holdings of Business Equity," for more details.

Box 7. Retirement Accounts and Plan Participation

Ownership of retirement accounts and participation in retirement plans can both increase families' net worth and provide security to families as they approach retirement. A family is considered a participant in retirement plans if it has any of the following: an individual retirement account (IRA); an account-type job pension (defined contribution, known as DC), including 401(k)s; or a defined benefit (DB) pension. The following discussion focuses on prime-age families, those whose head is between ages 35 and 64, as these families have generally finished their education and are established in their careers but are generally too young for full retirement.

Grouping families by usual income indicates that those in the bottom half of the usual income distribution saw overall declines in retirement plan participation between 2007 and 2010 and then again between 2010 and 2013, from 48.2 percent in 2007 to 40.2 percent in 2013 (figure A).[1] This overall decline was driven by declines in both IRA and DC coverage, as there was little change in the fraction of families with a DB plan. Those families in the next 40 percent of the income distribution saw only a slight net decline in overall retirement plan participation between 2007 and 2013 and, between 2010 and 2013, experienced a slight increase in participation driven by increases in participation for all three classes of retirement assets. Families in the top 10 percent of the income distribution saw a slight increase in retirement plan participation from 2007 to 2013, reaching 94.6 percent in 2013, just topping the 94.1 percent seen in 2007.

Figure A. Participation in any retirement plan for families ages 35–64, 2007–13 surveys



The value of assets held within IRAs and DC plans are among the most significant components of many families' balance sheets and are a significant determinant of their future retirement security. The average combined IRA and DC pension balance for families owning those assets in the lowest income group was $39,100 in 2013. That figure is close to the 2010 average balance of $40,500 but down more than 20 percent from the 2007 value of $50,600 (table B). Those in the upper-middle income group saw an increase in their average total balance between 2007 and 2010. While there was little change in average balance from 2007 to 2010, between 2010 and 2013, the average balance for this group increased by approximately $20,000, or 16 percent, from $126,900 to $147,300. Average balances fell for those in the top income group, and particularly for those at the very top. For example, the fraction of families in the top 10 percent of the income distribution with retirement account balances exceeding $1,000,000 fell from 14 percent in 2010 to 9 percent in 2013.

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Box 7. Retirement Accounts and Plan Participation—*continued*

Table B. Mean retirement savings among those with an IRA or DC pension, families ages 35–64, 2007–13 surveys

Thousands of 2013 dollars

	Conditional mean value		
	2007	2010	2013
All	**184.4**	**198.4**	**194.8**
Percentile of usual income			
0–49.9	50.6	40.5	39.1
50–89.9	125.6	126.9	147.3
90–100	485.0	539.3	446.1

[1] For a description of the usual income measure, see box 2, "Usual versus Actual Income."

Debt, Debt Burden, and Credit Market Experiences

The fractions of families holding any type of debt fell slightly between 2010 and 2013, from 74.9 percent to 74.5 percent, representing a continued decline in debt holding since 2007 (table 4).[27] The conditional median and mean value of debt held also fell between 2010 and 2013. The conditional median fell 20 percent, from $75,800 in 2010 to $60,400 in 2013. The conditional mean also fell, from $140,000 in 2010 to $122,300 in 2013, a decline of 13 percent.

Debt Holdings by Type

Between 2010 and 2013, the mix of debt held by families also changed. Fewer families held debt secured by a primary residence, and those that did have such types of debt owed smaller amounts. However, more families held education loans in 2013 than in 2010, and those with education loans owed larger amounts on the loans.

Paralleling the drop in homeownership, rates of holding of debt secured by a primary residence (hereafter, home-secured debt) fell between 2010 and 2013. The fraction of families with mortgages and other home-secured debt fell from 47.0 percent in 2010 to 42.9 percent in 2013. This decline was much larger than the 3.3 percent decrease in homeownership noted previously.

However, home-secured debt continued to be the most common type of debt held by families. The conditional median and mean values of home-secured debt also fell between 2010 and 2013. The conditional median value of home-secured debt fell 2 percent, from $117,500 to $115,000. The conditional mean value of home-secured debt fell 5 percent, from $165,400 to $156,700. The declines in holding and the conditional mean and median values of home-secured debt represented a continuation of declines seen between 2007 and 2010.[28] These declines also parallel the declines in home values seen between 2010 and 2013 (table 3), although the declines in the value of debt are much smaller than the declines in home values (2 percent versus 7 percent).

[27] See the appendix for a detailed definition of SCF liability categories.

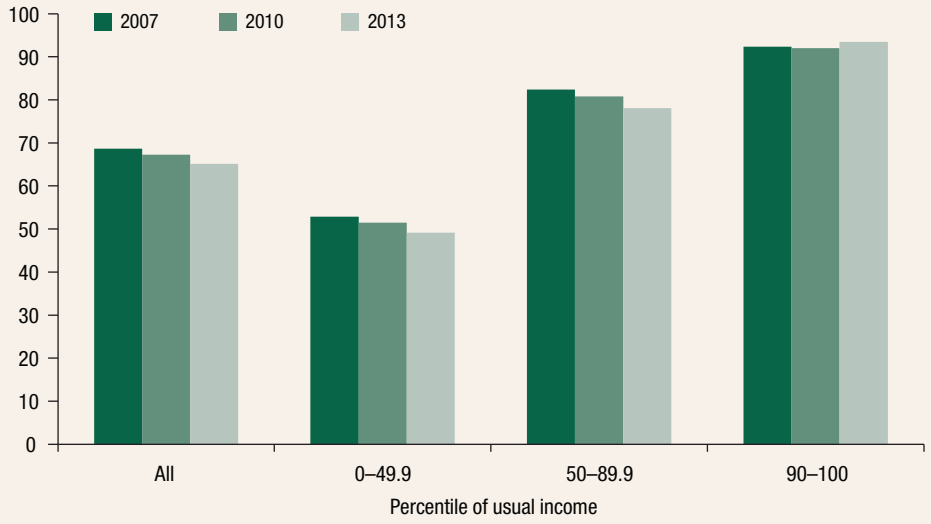
[28] Between 2007 and 2010, the fraction of respondents holding debt secured by a primary residence fell from 48.7 percent to 47.0 percent. Between 2007 and 2010, the conditional median value of home-secured debt fell 2.2 percent, and the conditional mean fell 1.2 percent.

Box 8. Homeownership and Net Housing Wealth

The percentage of families that owned their primary residence fell from 68.6 percent in 2007 to 65.2 percent in 2013 (figure A). The most recent time the Survey of Consumer Finances recorded a homeownership rate this low was 1995.[1] Across families grouped by percentile of usual income, there are large differences in homeownership rates, which tend to increase with usual income.[2] For families in the bottom half of the income distribution, the homeownership rate was 49.2 percent in 2013; for those in the top 10 percent by income, the homeownership rate was 93.5 percent in 2013.

Between 2007 and 2010, the homeownership rate fell across all usual income groups. Between 2010 and 2013, homeownership rates continued to fall for the bottom two income groups, however, for the top income group, homeownership rates rose between 2010 and 2013.

Figure A. Home Ownership Rate, 2007–13 surveys



For families that own their primary residence, mean net housing value—defined as the home's value less any debts on the home—declined between 2007 and 2013 (table B).[3] In 2007, among home-owning families, the average net housing wealth (value of the home minus outstanding mortgages) was $221,000. In 2013, that number had fallen to $159,400, a decline of 3.1 percent since 2010.

Across usual income groups, the mean net value of housing tends to increase as usual income rises. In 2013, the mean value of net housing wealth among homeowners in the bottom half of the income distribution was $92,400. For the top income group, the mean net value of housing was roughly five times larger, at $446,500.

Between 2007 and 2010, the mean net value of housing fell between 20 and 32 percent for all three usual income groups. Between 2010 and 2013, mean net housing value continued to fall for all three groups, but the magnitudes of the declines differed substantially. For the upper-middle income group, mean net housing was essentially unchanged between 2010 and 2013, falling just $600. For the bottom income group, net housing value fell 11 percent between 2010 and 2013, and for the top income group, net housing value fell 4 percent.

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Box 8. Homeownership and Net Housing Wealth—*continued*

Table B. Mean net housing value for homeowners, 2007–13 surveys

Thousands of 2013 dollars

	Conditional mean value		
	2007	2010	2013
All	**221.0**	**164.5**	**159.4**
Percentile of usual income			
0–49.9	131.6	103.8	92.4
50–89.9	186.2	126.7	126.1
90–100	600.8	467.0	446.5

[1] The homeownership rate in 1995 was 64.7 percent; it rose to a peak of 69.1 percent in 2004.
[2] For a description of the usual income measure, see box 2, "Usual versus Actual Income."
[3] Survey of Consumer Finances respondents were asked to report the value of their home. Only primary residences were included. Debts on the home include any mortgages or home equity loans against the primary residence.

Lines of credit not secured by residential property were not widely held by families in either the 2010 or 2013 surveys, at around 2 percent of families. The decline in conditional debt outstanding among those with such debts are quite substantial, with both the median and mean values falling by about one-third between 2010 and 2013.

The fraction of families with education loans, and the conditional median and mean value of education loans, increased between 2010 and 2013, representing a continuation of the long-term trend of rising education debt. In 2010, 19.2 percent of families had an education loan. This share rose to 20.0 percent of families in 2013. The conditional median value of education loans rose 15 percent, from $13,900 in 2010 to $16,000 in 2013. The mean rose 5 percent, from $27,500 to $28,900.[29]

As discussed earlier, the fraction of families owning a vehicle fell slightly between 2010 and 2013, to 86.3 percent. At the same time, the fraction of families with vehicle loans increased slightly, and in 2013, 30.9 percent of families had vehicle loans. This finding represented a reversal of the trend between 2007 and 2010, when the fraction of families with a vehicle loan fell. Between 2010 and 2013, the conditional median value of vehicle loans rose 11 percent and the conditional mean fell 4 percent. This movement indicates that although fewer families have vehicles overall, families are beginning to take out more loans on vehicles.

Other installment loans, often associated with purchases of furniture, appliances, and other durable goods, were held by 11.5 percent of families in 2010, falling to 10.1 percent of families in 2013. The median balances on such loans decreased 9 percent between the two surveys, and the mean was effectively unchanged.

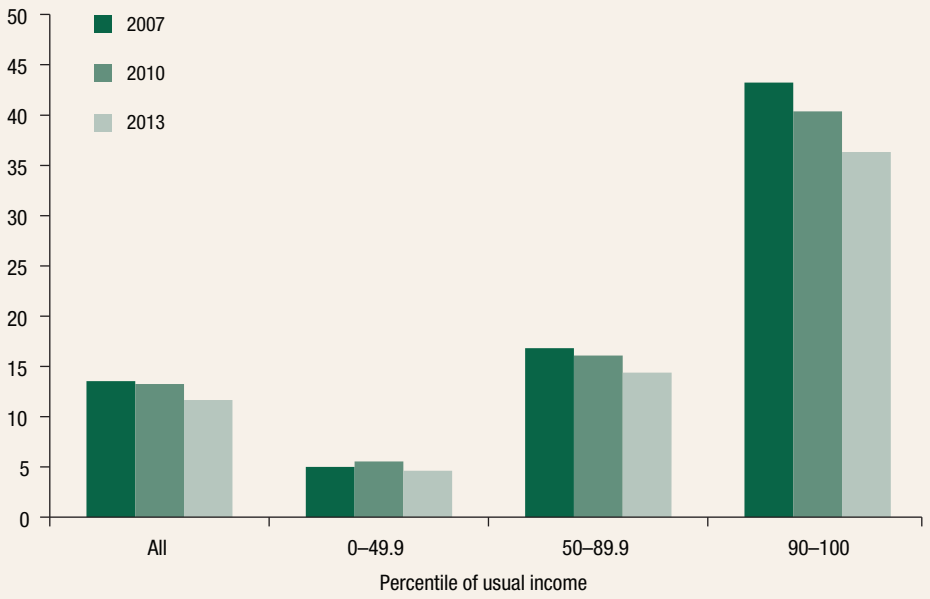
The fraction of families with outstanding balances on their credit cards fell between 2010 and 2013, representing a continuation of declines seen between 2007 and 2010. In 2010, 39.4 percent of families held credit card debt, while in 2013, 38.1 percent of families held credit card debt. The median family with a credit card balance carried $2,300 in 2013, down

[29] See box 10, "Education Debt," for more details.

Box 9. Holdings of Business Equity

The fraction of families that owned a privately held business fell 1.6 percentage points between 2010 and 2013, to 11.7 percent (figure A).[1] This level is the lowest ever recorded in the Survey of Consumer Finances, dating back to the 1989 survey. Ownership of business equity also decreased across all usual income groups between 2010 and 2013.[2] For the top two income groups, this decrease was a continuation of a decline from the levels in the 2007 survey. Families in the top income group saw the largest percentage point decline in business ownership, but the ownership level for this group, 36.3 percent, remains substantially higher than for other groups.

Figure A. Families with holdings of business equity, 2007–13 surveys



For families with business equity, the mean value increased substantially, going from $844,800 in 2010 to $973,900 in 2013, but it remained below the 2007 level (table B). Although the overall mean value of business equity increased from 2010 to 2013, a different picture emerges across usual income groups. Only families in the top income group experienced an increase in the mean value of business equity. The mean value of business equity for the upper-middle income group was approximately unchanged, while the bottom income group experienced a substantial decline in the mean value.

Table B. Family holdings of business equity, 2007–13 surveys

Thousands of 2013 dollars

	Conditional mean value		
	2007	2010	2013
All	**1062.5**	**844.8**	**973.9**
Percentile of usual income			
0–49.9	248.9	198.0	152.7
50–89.9	330.2	276.8	274.7
90–100	2672.5	2196.0	2604.0

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Box 9. Holdings of Business Equity—*continued*

[1] The forms of business in this category are sole proprietorships, limited partnerships, other types of partnerships, S corporations and other types of corporations that are not publicly traded, limited liability companies, and other types of private businesses. If the surveyed family lived on a farm or ranch that was used at least in part for agricultural business, the value of that part, net of the corresponding share of associated debts, is included with other business assets.

[2] For a description of the usual income measure, see box 2, "Usual versus Actual Income."

18 percent from $2,800 in 2010. The mean balance fell from $7,600 in 2010 to $5,700 in 2013, a 25 percent drop.

Debt Burden

The ability of individual families to service their loans is a function of two factors: the level of their loan payments and the income and assets they have available to meet those payments. In planning their borrowing, families make assumptions about their future ability to repay their loans. Problems may occur when events turn out to be contrary to those assumptions. If such misjudgments are sufficiently large and prevalent, a broad pattern of default, restraint in spending, and financial distress in the wider economy might ensue (such as was seen in the period after the 2007 survey).

The SCF data can be used to construct three measures of debt burdens: leverage ratios, debt-to-income ratios, and payment-to-income ratios. Leverage ratios compare debts to assets, debt-to-income ratios compare total debt to income, and payment-to-income ratios compare total payments made on debt to income. All three ratios can be constructed either in aggregate or as a median for debtors.[30]

Table 4. Holding and values of debt items, 2010 and 2013 surveys
Thousands of 2013 dollars except as noted

Types of debts	Percent holding		Conditional median value			Conditional mean value		
	2010	2013	2010	2013	Percent change 2010–13	2010	2013	Percent change 2010–13
Any debt	**74.9**	**74.5**	**75.8**	**60.4**	**-20**	**140.0**	**122.3**	**-13**
Secured by residential property								
Primary residence	47.0	42.9	117.5	115.0	-2	165.4	156.7	-5
Other	5.3	5.2	105.0	90.0	-14	192.4	156.1	-19
Lines of credit not secured by residential property	2.1	1.9	6.4	4.4	-32	52.7	35.2	-33
Installment loans								
Education loans	19.2	20.0	13.9	16.0	15	27.5	28.9	5
Vehicle loans	30.2	30.9	10.7	11.9	11	15.2	14.6	-4
Other installment loans	11.5	10.1	3.6	3.3	-9	15.9	15.9	0
Credit card balances	39.4	38.1	2.8	2.3	-18	7.6	5.7	-25
Other	6.4	6.6	4.8	4.0	-17	18.0	14.6	-19

Note: See the appendix for definitions of liability categories used in the SCF.

[30] The aggregate is defined as the total amount of debt held/payments divided by the total assets held or income among all survey respondents. The median for debtors is defined as the median of each individual families' ratio among those carrying debt only.

Box 10. Education Debt

The level of education loan debt held by U.S. families has increased dramatically over the past decade. In the 2010 Survey of Consumer Finances (SCF), education loan debt surpassed vehicle loan debt as the largest source of nonmortgage debt owed by U.S. families, a trend that continues in the 2013 SCF (see table 4). The SCF provides the data necessary to look at the growth of education loans between the 2001 and 2013 surveys across income and education groups. The analysis presented here will focus on "young families," defined as those with a head of household younger than age 40 at the time of the survey.[1]

The fraction of young families with education debt increased from 22.4 percent to 38.8 percent between 2001 and 2013 (table A). Conditional on having education debt, the mean and median levels of education debt also increased substantially between 2001 and 2013.

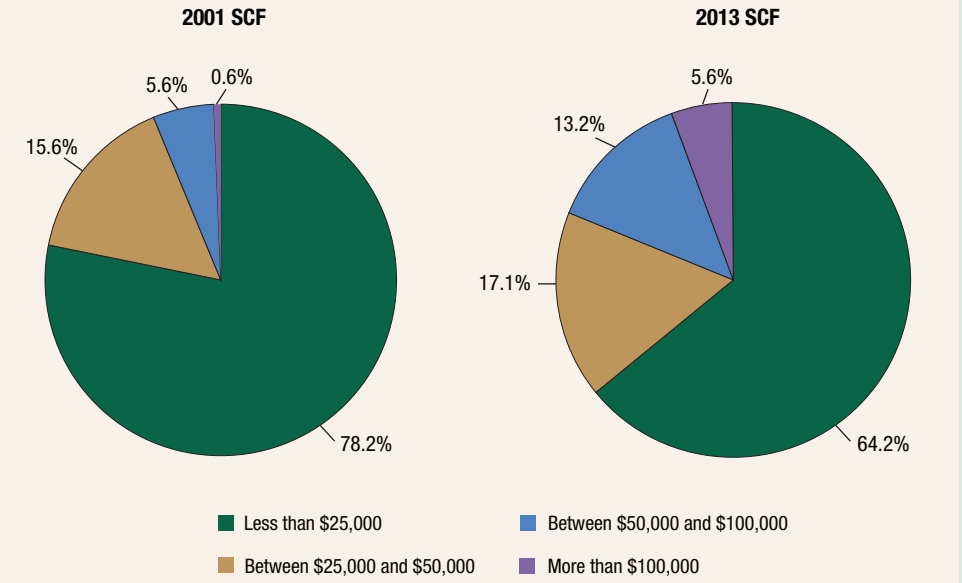
Table A. Education debt outstanding among young families, 2001 and 2013 surveys

Thousands of 2013 dollars except as noted

	2001	2013
Percent with education debt	22.4	38.8
Conditional mean education debt	16.9	29.8
Conditional median education debt	10.5	16.8

Despite this growth in education debt, the majority of young families with education debt owed less than $25,000 in both 2001 and in 2013 (figure B), and the share of families with large balances, though growing, is still relatively small.

Figure B. Distribution of education loan balances of young families, 2001 and 2013 surveys



In 2013, nearly 50 percent of the education debt of young SCF families was held by families with usual income more than $60,000 (figure C), a share that was mostly unchanged between 2001 and 2013. However, compared with the 2001 survey, in 2013, a larger share of education debt was held by young SCF families with incomes of less than $30,000. About 24 percent of young families' education debt is held by those making less than $30,000, nearly double the share that these families held in 2001.[2]

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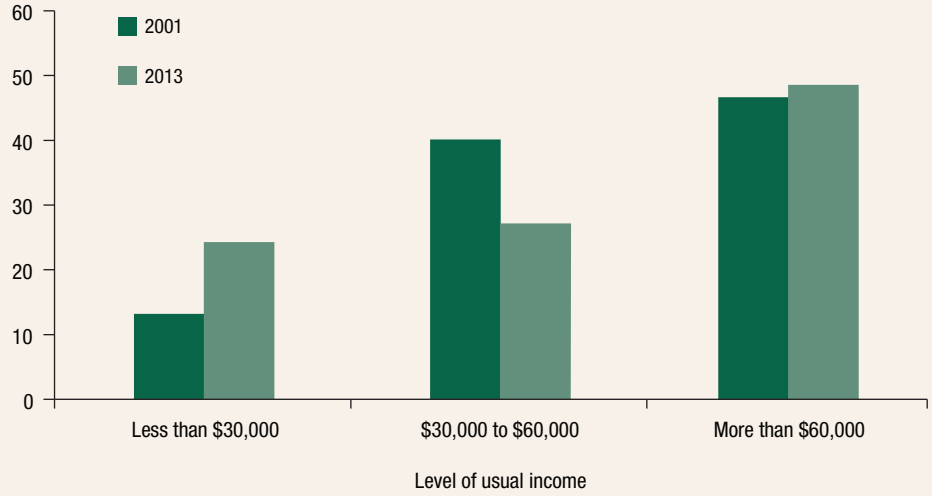
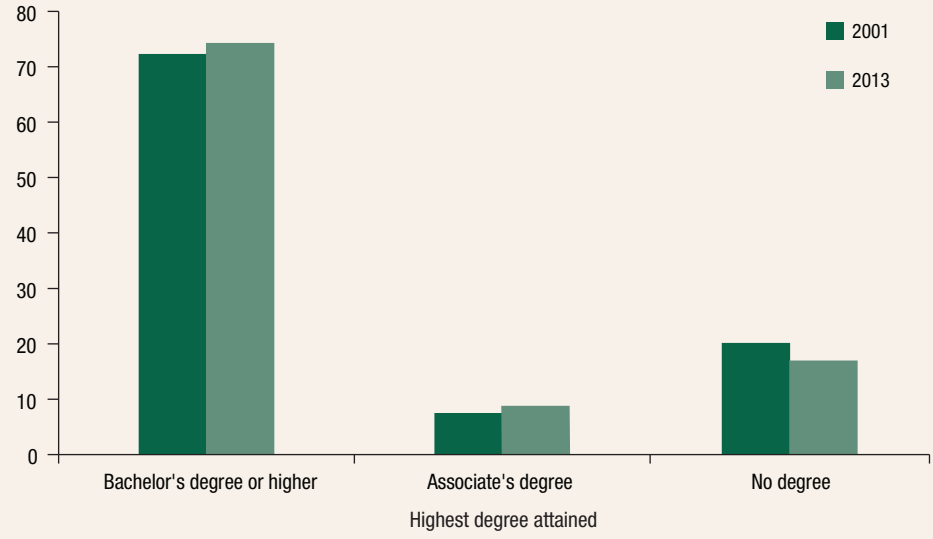
Box 10. Education Debt—*continued*

Figure C. Share of young families' education loan debt, by income group, 2001 and 2013 surveys



Highly educated young families continue to hold the majority of education debt in 2013 (figure D). Nearly three-fourths of young families' education debt is held by families where at least one member has a bachelor's degree or higher.

Figure D. Share of young families' education loan debt, by highest degree attained, 2001 and 2013 surveys



Although families without a degree in the 2013 SCF held roughly the same share of education debt that they did in 2001, the overall amount of debt that they held increased. At the same time, incomes for many families in this group (and other groups) were lower (see table 1). To get a sense of how these trends might affect repayment, it is useful to consider debt payment to income ratios for young families with and without degrees.

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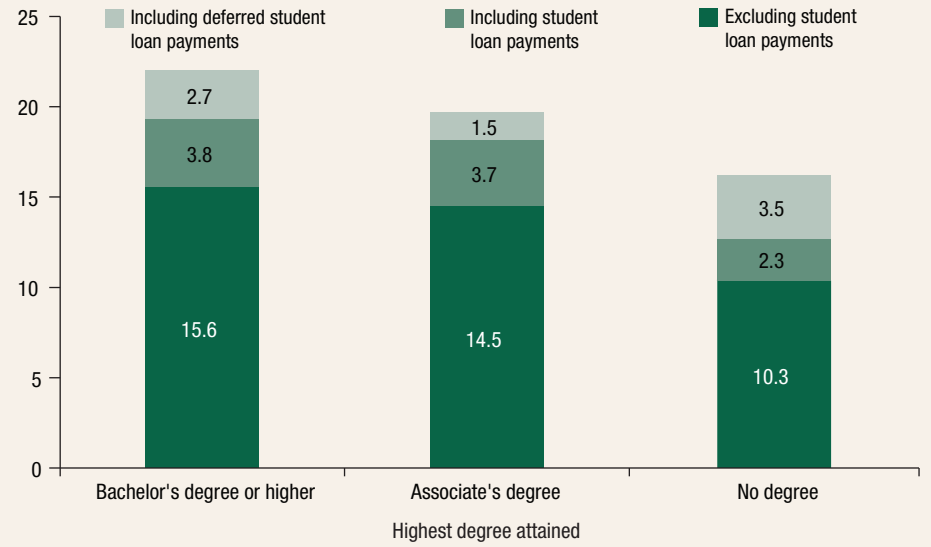
Box 10. Education Debt—*continued*

Young SCF families with education debt and with a bachelor's degree or higher use about 3.8 percent of their income to repay education debt (figure E). Debt payments are relatively low even though debt levels are increasing because a typical education loan repayment length is much longer than other debt terms (the mean repayment term in the 2013 SCF is 13 years). Debt payments are also low because families can defer education loans, a status that allows a temporary halt to payments on the loan.[3] If these families had to start paying on these deferred loans, they would use another 2.7 percent of income to repay education debt.[4]

Young families without a college degree use 2.3 percent of income to repay education debt. However, if those families had to start repaying their deferred loans, then they would use an additional 3.5 percent of income on education debt repayment. The use of deferments is currently helping these families to manage their education debt during tough economic times. However, because education loans are not generally dischargeable in bankruptcy, these debts will eventually have to be repaid.

Figure E. Average debt payment-to-average income, by highest degree attained, 2013 survey



[1] Note that the SCF does not sample institutional populations, such as college dorms, and thus it is not possible to track what is happening to education debt in situations where a non-primary economic unit child is solely responsible for the education debt.

[2] Young families with education debt in this income group generally have no college degree, though about one-fourth of these families held a bachelor's degree or higher in both the 2001 and 2013 SCF.

[3] There are several reasons why a borrower may be relieved from making current payments on an education loan, though the specific criteria vary across types of loans. For example, deferment is generally granted when the borrower is continuing his or her education. Deferment is often granted when the borrower is experiencing particular types of financial hardship, such as unemployment. There are also special categories of public service, such as the Peace Corps, the military, or selected medical and teaching positions, which qualify the borrower for relief from making current payments and sometimes ultimately qualify the borrower for loan forgiveness.

[4] A payment is not reported for most deferred loans in the SCF.

Table 5. Debt burdens and credit market experiences, 2001–13 surveys
Percent or thousands of 2013 dollars

Measure of debt burden/interaction with credit markets	2001	2004	2007	2010	2013
Debt burden					
Leverage ratio					
Aggregate	12.0	15.0	14.8	16.4	14.6
Median for debtors	29.4	34.7	34.8	41.3	38.6
Debt to income ratio					
Aggregate	80.1	111.6	115.2	124.7	104.6
Median for debtors	76.7	107.0	111.1	118.8	107.4
Payment to income ratio					
Aggregate	12.9	14.4	14.6	14.7	12.0
Median for debtors	16.7	18.1	18.7	18.1	15.9
Fraction with payment to income ratio greater than 40%	8.8	9.4	11.4	10.4	8.2
Credit market experiences					
Credit constrained					
Turned down for credit	17.0	17.5	16.7	17.4	16.4
Did not apply for credit for fear of being turned down	15.5	15.8	15.3	18.5	19.0
Either turned down for credit or feared denial	24.9	25.6	24.5	28.3	27.6
Late on payments					
Late on payments	14.0	16.3	20.8	17.3	14.9
Late on payments 60 days or more	5.3	6.9	5.5	8.1	6.9
Took out a payday loan in past year	n.a.	n.a.	2.4	3.9	4.2
Declared bankruptcy in past 5 years	4.3	4.4	3.8	3.6	4.1
Use credit cards for convenience only/do not carry a balance	57.9	56.6	56.2	63.0	64.0

n.a. Not available (relevant data not collected).
Note: See the appendix for a description of measures of debt burden and credit market experiences.

Leverage ratios, debt-to-income ratios, and payment-to-income ratios all rose between 2001 and 2010 and then fell between 2010 and 2013 (table 5).[31] Leverage ratios and debt-to-income ratios have not fallen back to levels seen in 2001, but payment-to-income ratios are lower than levels seen in 2001.

In 2013, the median leverage ratio for debtors was 38.6 percent, down from 41.3 percent in 2010 but still higher than the medians of 29.4 percent in 2001 or 34.8 percent in 2007. In aggregate, the leverage ratio in 2013 was 14.6 percent, higher than 2001 but lower than the 2004–10 period.

In 2013, the median debt-to-income ratio for debtors was 107.4 percent, down from the level seen in 2010 (118.8 percent). The level in 2013 is similar to that witnessed in 2004, and similar trends can be seen for the aggregate.

Payment-to-income ratios for the median debtor fell from 18.1 percent to 15.9 percent between 2010 and 2013.[32] The 2013 level is lower than what was observed in any of the survey years between 2001 and 2010. Similar trends held in the aggregate payment-to-income ratios.

[31] For definitions of the components of table 5, see the appendix.

[32] An alternative aggregate version of payment-to-income ratios is the debt service ratio. See Karen Dynan, Kathleen Johnson, and Karen Pence (2003), "Recent Changes to a Measure of U.S. Household Debt Service," *Federal Reserve Bulletin*, vol. 89 (October), pp. 417–26, www.federalreserve.gov/pubs/bulletin/2003/1003lead.pdf. A discussion of how this measure compares with the one presented here can be found in the appendix.

A limitation of using measures of debt burdens for the median debtor is that they may not be indicative of distress because they reflect the situation of a typical family. Unless errors of judgment by both families and lenders are pervasive, one would not expect to see signs of financial distress at the median. Thus, a more compelling indicator of distress is the proportion of families with unusually large debt burdens. In 2013, 8.2 percent of debtors had payment-to-income ratios greater than 40 percent. This value represents a decrease from 2010, when 10.4 percent of debtors had payment-to-income ratios of over 40 percent. The levels in 2013 are lower than those witnessed at any time between 2001 and 2010.

Credit Market Experiences

The SCF also collects various measures of respondents' recent experiences with credit markets, such as information on credit applications and payment behavior. Overall, SCF respondents' experiences with credit markets display a mixed picture. The fraction of respondents who were late on payments fell, while the fraction who took out a payday loan rose, and credit constraints eased slightly.

The SCF asks two questions intended to capture whether or not families are likely credit constrained: first, if the family was turned down for credit, and, second, if the family did not apply for credit for fear of being turned down. Overall, between 2010 and 2013, the fraction of families that responded "yes" to one or both of these questions fell from 28.3 percent in 2010 to 27.6 percent in 2013. This decrease indicates that, by this measure, fewer families were credit constrained in 2013 than in 2010. There was also a change in composition within this category between 2010 and 2013: More families reported not applying for fear of being turned down in 2013 than in 2010, while fewer families reported being turned down for credit in 2013 than in 2010. In fact, 2010 and 2013 were the first survey years that more families reported not applying for fear of being turned down (19 percent in 2013) than reported being turned down (16.4 percent in 2013).

The SCF also asks respondents if they have taken out a payday loan in the past year. Payday loans are unsecured loans that are typically small and short-term. Because these loans generally carry interest rates that far exceed those for conventional forms of credit, usage of payday loans is often a signal that an individual cannot obtain credit by other means. In 2013, 4.2 percent of families reported taking out a payday loan, up from 3.9 percent in 2010 and 2.4 percent in 2004, the first year the SCF asked respondents about usage of payday loans.

The SCF also collects information on families' debt payment behavior. Families that have any debt at the time of their interview are asked whether they were behind on any of their loan payments in the preceding year. In 2013, 14.9 percent of families reported being late on payments at all, down from 17.3 percent in 2010. The percent of families who reported being late on payments 60 or more days declined from 8.1 percent in 2010 to 6.9 percent. Compared with 2001, more families reported being late on payments at all in 2013, and more reported being late 60 or more days.

An additional measure of financial distress and problems managing debt is bankruptcy. The SCF asks respondents if they have declared bankruptcy in the past five years. In 2013, 4.1 percent of families reported having declared bankruptcy in the past five years, up from 3.6 percent in 2010 but down from 4.3 percent in 2001.

A final measure of debt payment behavior covered in the SCF is whether a family uses credit cards for convenience only, or carries a balance month to month. In 2013, 64 percent of families reported using credit cards for convenience only (not carrying a balance), up from 57.9 percent in 2001 and 63 percent in 2010.

Appendix: Survey Procedures and Statistical Measures

The 2013 data used here are derived from the final internal version of the survey information. Data from this survey, suitably altered to protect the privacy of respondents, along with additional tabulations of data from the surveys beginning with 1989, are expected to be available in September 2014 on the Federal Reserve Board's website.[33]

As part of the general reconciliations required for this article, the survey data were compared with many external estimates. One particularly important comparison is between the Survey of Consumer Finances (SCF) and the Federal Reserve's Statistical Release Z.1, Financial Accounts of the United States, for the household sector.[34] This comparison suggests that when the definitions of the variables in the two sources are adjusted to a common conceptual basis, the estimates of totals in the two systems tend to be close. The data series in the SCF and in Statistical Release Z.1 usually show very similar growth rates.[35] In general, the income and net worth data from the SCF can be compared with those of other surveys only in terms of the medians because of the special design of the SCF sample.[36]

Adjustment for Inflation

In this article, all dollar amounts from the SCF are adjusted to 2013 dollars using the "current methods" version of the CPI for all urban consumers. In an ongoing effort to improve accuracy, the Bureau of Labor Statistics has introduced several revisions to its CPI methodology. The current-methods index attempts to extend these changes to earlier years to obtain a series as consistent as possible with current practices in the official CPI.[37] To

[33] Data from the 2013 SCF as well as links to the data used in this article for earlier periods and links to working papers describing statistical methodologies are available on the Board's public website at www.federalreserve.gov/econresdata/scf/scfindex.htm.

Results reported in this article for earlier surveys may differ from the results reported in earlier articles because of additional statistical processing, correction of data errors, revisions to the survey weights, conceptual changes in the definitions of variables used in the articles, and adjustments for inflation.

[34] See Board of Governors of the Federal Reserve System (2014), Statistical Release Z.1, "Financial Accounts of the United States" (June 5), www.federalreserve.gov/releases/z1.

[35] For details on how these comparisons are structured and the results of comparisons for earlier surveys, see Alice M. Henriques and Joanne W. Hsu (2013), "Analysis of Wealth Using Micro and Macro Data: A Comparison of the Survey of Consumer Finances and Flow of Funds Accounts," Finance and Economics Discussion Series 2013-46 (Washington: Board of Governors of the Federal Reserve System, May), www.federalreserve.gov/pubs/feds/2013/201346/201346pap.pdf.

[36] Family incomes are a good example of issues that arise when comparing SCF means and medians against other survey estimates. Over the 2010–13 period, estimates of inflation-adjusted household income for the previous year from the Current Population Survey (CPS) of the U.S. Census Bureau show a decrease in both the median (negative 7.3 percent) and the mean (negative 5.7 percent). The change in median is slightly larger in absolute terms than the corresponding decline in the SCF, though the SCF shows an increase in the mean. The medians for 2013 are similar in the SCF ($46,700) and the CPS ($51,000). Typically, the SCF shows a higher level of mean income than does the CPS; for 2013, the SCF yields an estimate of $87,200, while the CPS yields an estimate of $71,000. The two surveys differ in their definitions of the units of observation and in other aspects of their methodologies. Most relevant is the fact that a CPS household can contain more people than a corresponding SCF family. If the SCF measure is expanded to include the income of household members not included in the SCF definition of a family, the median falls 5.1 percent over the period (from $52,400 in 2010 to $49,700 in 2013), while the mean rises 3.2 percent (from $86,900 in 2010 to $89,700 in 2013). The substantial difference in mean levels is likely the result of the truncation of large values in the CPS data above a certain amount, which is done with the intent of minimizing the possibility that participants in that survey might be identifiable.

[37] For technical information about the construction of this index, see Kenneth J. Stewart and Stephen B. Reed (1999), "Consumer Price Index Research Series Using Current Methods, 1978–98," *Monthly Labor Review*, vol. 122 (June), pp. 29–38.

adjust assets and liabilities to 2013 dollars and to adjust family income for the preceding calendar year to 2013, the figures given in the following table were applied:

Survey year	Adjustment factor for assets and debts in the survey year	Adjustment factor for income in the calendar year before the survey year
2001	1.3132	1.3501
2004	1.2331	1.2665
2007	1.1228	1.1546
2010	1.0717	1.0894
2013	1.0000	1.0145

Definition of "Family" in the Survey of Consumer Finances

The definition of "family" used throughout this article differs from that typically used in other government studies. In the SCF, a household unit is divided into a primary economic unit (PEU)—the family—and everyone else in the household. The PEU is intended to be the economically dominant single person or couple (whether married or living together as partners) and all other persons in the household who are financially interdependent with that economically dominant person or couple.

This report also designates a head of the PEU, not to convey a judgment about how an individual family is structured but as a means of organizing the data consistently. If a couple is economically dominant in the PEU, the head is the male in a mixed-sex couple or the older person in a same-sex couple. If a single person is economically dominant, that person is designated as the family head in this report.

Asset and Liability Categories in the Survey of Consumer Finances

The specific concepts of asset and liability categories in the SCF are necessarily tied to the survey question wording and associated field interviewer instructions, both of which can be found in the SCF codebook for the year(s) in question.[38] What follows is a general exposition of the asset and liability categories reported in the tables.

Transaction accounts include checking, savings, and money market deposit accounts; money market funds; and call or cash accounts at brokerages. Call accounts include those that hold money received from the sale of securities until the money is reinvested. The savings account category includes a relatively small number of tax-preferred accounts such as medical or health savings accounts and Coverdell or 529 education accounts.

Certificate of deposits are accounts that are held for a set period of time that must be cashed or renewed at the maturity date. Savings bonds include only U.S. government issues; recent series include EE, HH, and I, and older bonds may be series E and H. Other bonds include only those held directly (not part of a managed investment account or bond fund) and include corporate and mortgage-backed bonds; federal, state, and local government bonds; and foreign bonds. Stocks include publicly traded stocks that are directly held—that is, corporate equities not held as part of a managed investment account or mutual fund.

Pooled investment funds include stock funds, tax-free bond funds, government bond funds, other bond funds, and any combinations thereof, but exclude money market funds and indirectly held mutual funds. These funds include all other types of directly held pooled investments, such as traditional open-end and closed-end mutual funds, real estate investment trusts, and hedge funds.

[38] Codebooks for each SCF wave can be found at www.federalreserve.gov/econresdata/scf/scfindex.htm.

Retirement accounts include IRAs, Keogh accounts, and certain employer-sponsored accounts, such as 401(k), 403(b), and thrift savings accounts from current or past jobs; other current job plans from which loans or withdrawals can be made; and accounts from past jobs from which the family expects to receive the account balance in the future. This definition of employer-sponsored plans is intended to confine the analysis to accounts that are portable across jobs and for which families will ultimately have the option to withdraw the balance. Usually, such accounts may be invested in virtually any asset, including stocks, bonds, pooled investment funds, options, and real estate. In principle, employer-sponsored plans may be invested in a similarly broad way, but, in practice, a person's choices for investment are sometimes limited to a narrower set of assets.[39]

Cash value life insurance is the current (nonzero) value of any life insurance policies with a cash value that can be withdrawn. The survey measures the value of such policies according to their current cash value, not their death benefit. In this article, the cash value is included as an asset only when the cash value at the time of the interview was nonzero. This designation excludes term life insurance policies, which only provide a death benefit.

Other managed assets include personal annuities and trusts with an equity interest and managed investment accounts. Annuities may be those in which the family has an equity interest in the asset or in which the family possesses an entitlement only to a stream of income. The wealth figures in this article include only the annuities in which the family has an equity interest.[40] The trusts or managed investment accounts included in other managed assets are those in which families have an equity interest and for which components were not separately reported. Typically, such accounts are those in which the ownership is complicated or the management is undertaken by a professional.[41]

Other financial assets include oil and gas leases, futures contracts, royalties, proceeds from lawsuits or estates in settlement, and loans made to others. One specific financial asset excluded from this category and any other is employment-related stock options. Because such options are typically not publicly traded, or their execution is otherwise constrained, their value is uncertain until the exercise date; until then, meaningful valuation would require complex assumptions about the future behavior of stock prices.

[39] Although tax-deferred retirement assets are clearly an important element in retirement planning, families may hold a variety of other assets that are intended, at least in part, to finance retirement. Two common and often particularly important types of retirement plans are not included in the assets described in this section: Social Security (the federally funded Old-Age and Survivors' Insurance program (OASI)) and employer-sponsored defined-benefit plans. OASI is well described elsewhere, and it covers the great majority of the population (See Social Security Administration, "Online Social Security Handbook: Your Basic Guide to the Social Security Programs," Publication 65-008, www.ssa.gov/OP_Home/handbook.) The retirement income provided by defined-benefit plans is typically based on workers' salaries and years of work with an employer, a group of employers, or a union. Unfortunately, future income streams from OASI and defined-benefit plans cannot be translated directly into a current value because valuation depends critically on assumptions about future events and conditions—work decisions, earnings, inflation rates, discount rates, mortality, and so on—and no widely agreed-upon standards exist for making these assumptions.

[40] In 2013, 4.8 percent of families reported having any type of annuity, and of these families, 80.7 percent reported having an equity interest.

[41] In 2013, 81.5 percent of families with trusts or managed investment accounts had an equity interest in such an account. The survey encourages respondents who have trusts or managed investment accounts that are held in relatively common investments to report the components separately. Of the 4.3 percent of families that reported having any kind of trust or managed investment account in 2013, 54.9 percent of them reported at least one of the component assets separately. Of families that detailed the components in 2013, 88.5 percent reported some type of financial asset, 10.8 percent reported a primary residence, 11.0 percent reported other real estate, 7.5 percent reported a business, and 0.1 percent reported another type of asset. The fraction of these families reporting the primary residence as a component of a trust decreased 0.5 percentage points between 2010 and 2013, and the fraction reporting a business increased 2.5 percentage points.

Vehicles include cars, vans, sport utility vehicles, trucks, motor homes, recreational vehicles, motorcycles, boats, airplanes, and helicopters.[42] Primary residences include mobile homes and their sites, the parts of farms and ranches not used for farming or ranching business, condominiums, cooperatives, townhouses, other single-family homes, and other permanent dwellings. Other residential property includes second homes, time-shares, one- to four-family rental properties, and other types of residential properties. It also includes outstanding balances on loans that the family may have made to finance the sale of properties they previously owned and which are still owed to the family.

Nonresidential real estate includes the following types of properties unless they are owned through a business: commercial property, rental property with five or more units, farm and ranch land, undeveloped land, and all other types of nonresidential real estate. Most often, nonresidential real estate properties are functionally more like a business than a residential property. They may have several owners, they are typically worth a considerable amount, and they often carry large mortgages, which appear to be paid using the revenues from the property, not the family's other income. As in the case of privately owned businesses, the value of the property in this analysis is taken to be the net value.

Business equity includes net worth in the following forms of business: sole proprietorships, limited partnerships, other types of partnerships, S corporations and other types of corporations that are not publicly traded, limited liability companies, and other types of private businesses. If the family lived on a farm or ranch that was used at least in part for agricultural business, the value of that part, net of the corresponding share of associated debts, is included with other business assets. In the survey, self-employment status and business ownership are independently determined.[43]

Debt secured by residential property consists of first-lien and junior-lien mortgages and home equity lines of credit (HELOCs) secured by the primary residence. For purposes of this article, first- and junior-lien mortgages consist only of closed-end loans—that is, loans typically with a one-time extension of credit, a set frequency of repayments, and a required repayment size that may be fixed or vary over time in accordance with a pre-specified agreement or with changes in a given market interest rate.[44] As a type of open-ended credit, HELOCs typically allow credit extensions at the borrower's discretion subject to a prearranged limit and allow repayments at the borrower's discretion subject to a prearranged minimum size and frequency.

Lines of credit not secured by residential property are any lines of credit except HELOCs and borrowing on credit cards.

The term "installment loan" describes closed-end consumer loans—that is, loans that typically have fixed payments and a fixed term. The most common examples are education loans; automobile loans; and loans for furniture, appliances, and other durable goods. Other installment loans include all closed-end consumer loans that are not for education or a vehicle—that is, loans that typically have fixed payments and a fixed term. Examples include loans for furniture, appliances, and other durable goods.

[42] Of families owning any type of vehicle in 2013, 99.7 percent had a car, van, sport utility vehicle, motorcycle, or truck. The remaining types of vehicles were held by 12.7 percent of families.

[43] Among the 11.7 percent of families with a business in 2013, 68.3 percent had a family head or the spouse or partner of the head who was self-employed; among the 11.3 percent of families in which either the head or the spouse or partner of the head was self-employed, 70.5 percent owned a business.

[44] Of all families, 41.0 percent had a first-lien mortgage in 2013 (44.6 percent in 2010), 2.7 percent had a junior-lien mortgage (3.9 percent in 2010), 7.5 percent had a HELOC (10.3 percent in 2010), and 5.0 percent had a HELOC with an outstanding balance (7.2 percent in 2010).

Credit card balances consist of balances on bank-type cards (such as Visa, MasterCard, and Discover as well as Optima and other American Express cards that routinely allow holders to carry a balance), store cards or charge accounts, gasoline company cards, so-called travel and entertainment cards (such as American Express cards that do not routinely allow holders to carry a balance and Diners Club), other credit cards, and revolving store accounts that are not tied to a credit card. Balances exclude purchases made after the most recent bill was paid.

The "other" debt category comprises loans on cash value life insurance policies, loans against pension accounts, borrowing on margin accounts, and a miscellaneous category largely comprising personal loans not explicitly categorized elsewhere.

Finally, the SCF measure of liabilities excludes debt owed by family-owned businesses and debt owed on nonresidential real estate; in this article, such debt is netted against the corresponding assets.

Measures of Debt Burden and Credit Market Experiences in the Survey of Consumer Finances

The SCF includes several questions designed to capture information about respondents' debt burdens and interactions with credit markets. The specific concepts addressed in the SCF are necessarily tied to the survey question wording and associated field interviewer instructions, which can be found in the SCF codebook for the year(s) in question.[45] What follows is a general exposition of the debt burden and credit market experience measures reported in the tables.

Leverage ratios compare the total of all debts to the total of all assets. The aggregate version of this measure is the sum of all debts for all SCF respondents, divided by the sum of all assets for SCF respondents. The median for debtors is the median of each individual family's leverage ratio and is calculated for those with positive values of total debt only.

The aggregate debt-to-income ratio is the sum of liabilities for all SCF respondents, divided by the total income for all SCF respondents. The median for debtors is the 50th percentile of an individual family's debt-to-income ratios and is calculated for those with positive values of total debt only.

Payment-to-income ratios measure total debt payments relative to total income.[46] The aggregate version of this measure is the sum of all debt payments for all SCF respondents, divided by total income for all SCF respondents. The median for debtors is the 50th percentile of an individual family's payment-to-income ratios and is calculated for those with positive values of total debt only.

It should be recognized that the aggregate measure of payment-to-income ratios that is referenced in this article can differ from aggregate measures constructed from other sources such as the debt service ratio.[47] The survey measure of payments relative to income can differ from the aggregate-level measure for several reasons. First, the debt payments included in each measure are different. The aggregate-level measure includes only debts originated

[45] Codebooks for each SCF wave can be found at www.federalreserve.gov/econresdata/scf/scfindex.htm.

[46] The definition of debt payments in the SCF does not include payments on leases or rental payments. The survey collects information on vehicle lease payments and rent on primary residences, and, thus, in principle a broader measure of debt payments could be constructed, one that would be similar to the "financial obligations ratio" estimated by the Federal Reserve staff.

[47] See Dynan and others, "U.S. Household Debt Service," in note 32.

by depositories, finance companies, and other financial institutions, whereas the survey includes, in principle, debts from all sources. Second, the aggregate-level measure uses an estimate of disposable personal income from the national income and product accounts for the period concurrent with the estimated payments as the denominator of the ratio, whereas the survey measure uses total before-tax income reported by survey families for the preceding year; the differences in these two income measures are complex. Third, the payments in the aggregate-level measure are estimated using a formula that entails many assumptions about minimum payments and the distribution of loan terms at any given time; the survey measure of payments is directly asked of the survey respondents but may also include payments of taxes and insurance on real estate loans. Fourth, because the survey measures of payments and income are based on the responses of a sample of respondents, they may be affected both by sampling error and by various types of response errors. As mentioned earlier in this article, the survey income measure tracks the most comparable measure of income in the Census Bureau's Current Population Survey (CPS).

The SCF asks two questions that are intended to capture whether or not families are credit constrained, which is broadly defined as having difficulty accessing credit. The first question asks the respondent if the family was turned down for credit at any point in the past year. The second asks if, within the past year, the family did not apply for credit for fear of being turned down. A combination of these two questions is used to measure overall credit constraints.

Delinquency on debt obligations is captured by asking families that have any debt at the time of their interview whether or not they have been behind in any of their loan payments in the preceding year. The survey asks if respondents have been behind at all and if they have been behind in payments for 60 or more days.

Payday loans are defined as loans that are meant to be repaid in full out of the respondent's next paycheck; they are unsecured loans that are typically small, short-term, and carry above-average interest rates.

Bankruptcy behavior is a retrospective question in which the respondent reports whether or not he had declared bankruptcy at any time in the past five years.

Finally, convenience use of credit cards is determined using questions on whether or not a respondent had positive balances after the most recent payment for bank-type cards (such as Visa, MasterCard, and Discover as well as Optima and other American Express cards that routinely allow holders to carry a balance), store cards, gasoline company cards, so-called travel and entertainment cards (such as American Express cards that do not routinely allow holders to carry a balance and Diners Club), and other credit cards.

Percentiles of the Distributions of Income and Net Worth

Throughout this article, references are made to various percentile groups of the distributions of income or net worth. For a given characteristic, a percentile can be used to define a family's rank relative to other families. For example, the 10th percentile of the distribution of usual income is the amount of income received by a family for whom less than 10 percent of other families have lower incomes and 90 percent have higher incomes. The

percentiles of the distributions of income and net worth used to define the income and net worth groups in table 1 and table 2 in the article are given in the following table:

Item	Survey year				
	2001	2004	2007	2010	2013
Percentile of usual income					
20	24,300	25,800	25,200	26,200	23,300
40	43,200	44,300	43,300	43,600	40,500
60	67,500	69,700	69,300	67,500	63,100
80	108,000	112,700	110,200	108,900	104,500
90	155,300	164,600	155,900	163,400	154,600
Percentile of net worth					
25	16,800	16,400	15,900	8,900	8,800
50	113,700	114,800	135,400	82,800	81,200
75	377,000	405,900	418,600	323,300	317,300
90	972,000	1,028,400	1,022,100	1,020,800	941,700

The groups that are created when a distribution is divided at every 10th percentile are commonly referred to as deciles. Similarly, when a distribution is divided at every 20th (25th) percentile, the groups are known as quintiles (quartiles). Families in the first income decile, for example, are those with income below the 10th percentile.

Racial and Ethnic Identification

In this article, the race and ethnicity of a family in the SCF are classified according to the self-identification of that family's original respondent to the SCF interview. The questions underlying the method of classification used in the survey were changed in both 1998 and 2004. Starting in 1998, SCF respondents were allowed to report more than one racial identification; in surveys before then, only one response was recorded. For maximum comparability with earlier data, respondents reporting multiple racial identifications were asked to report their strongest racial identification first. In the 2013 SCF, 6.1 percent of respondents reported more than one racial identification, up from 5.4 percent in 2007 and 2.3 percent in 2004.

Beginning with the 2004 survey, the question on racial identification is preceded by a question on whether respondents consider themselves to be Hispanic or Latino in culture or origin; previously, such ethnic identification was captured only to the extent that it was reported as a response to the question on racial identification. The sequence of these two questions in the 2004 SCF is similar to that in the CPS. When families in the March 2004 CPS are classified in a way that is most compatible with the SCF, the proportion of Hispanic families is 10.5 percent; the 2004 SCF estimate is 11.2 percent. Differences in these proportions are attributable to sampling error and possibly to differences in the wording and context of the questions.

For greater comparability with earlier SCF data, the data reported in this article ignore the information on ethnic identification available in the surveys since 2004, but respondents reporting multiple racial identifications in the surveys starting with 1998 are classified as "non-white or Hispanic." Of those who responded affirmatively to the question on Hispanic or Latino identification in 2013, 88.1 percent also reported "Hispanic or Latino" as one of their racial identifications, and 80.1 percent reported it as their primary racial identification. Because the question on Hispanic or Latino ethnicity precedes the one on racial

identification in the surveys from 2004 through 2013, the answer to the second of these two questions may have been influenced by the answer to the first.[48]

The Sampling Techniques

The survey is expected to provide a core set of data on family income, assets, and liabilities. The major aspects of the sample design that address this requirement have been constant since 1989. The SCF combines two techniques for random sampling. First, a standard multistage area-probability sample (a geographically based random sample) is selected to provide good coverage of characteristics, such as homeownership, that are broadly distributed in the population.

Second, a supplemental sample is selected to disproportionately include wealthy families, which hold a relatively large share of such thinly held assets as noncorporate businesses and tax-exempt bonds. Called the "list sample," this group is drawn from a list of statistical records derived from tax returns. These records are used under strict rules governing confidentiality, the rights of potential respondents to refuse participation in the survey, and the types of information that can be made available. Persons listed by *Forbes* magazine as being among the wealthiest 400 people in the United States are excluded from sampling.

Of the 6,026 interviews completed for the 2013 SCF, 4,568 were from the area-probability sample, and 1,458 were from the list sample; for 2010, 5,012 were from the area-probability sample, and 1,480 were from the list sample. The number of families represented in the surveys considered in this article is given by the following table:

Year	Number of families represented (millions)
2001	106.5
2004	112.1
2007	116.1
2010	117.6
2013	122.5

Overall population growth between 2010 and 2013 was 2.4 percent, according to figures from the Census Bureau, down slightly from the 2.5 percent growth rate between 2007 and 2010. Also according to Census Bureau estimates, the number of households increased 4.2 percent between 2010 and 2013—well above the greatly diminished rate of household formation between 2007 and 2010, which was 1.3 percent. With the population growing more slowly than household formation, the average number of persons per household fell slightly, from 2.63 people in 2010 to 2.58 in 2013.

The Interviews

Aside from the addition of new questions in the 2010 survey to address the financial relationships of businesses that are not publicly traded, the survey questionnaire has changed in only minor ways since 1989, except in a small number of instances in which the structure was altered to accommodate changes in financial behaviors, in types of financial arrangements available to families, and in regulations covering data collection. In these cases and in all earlier ones, every effort has been made to ensure the maximum degree of com-

[48] For a comprehensive discussion of standards for defining race and ethnicity, see Executive Office of the President, Office of Management and Budget (2002), "Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race And Ethnicity," guidance document (Washington: Executive Office of the President, December 15), www.whitehouse.gov/sites/default/files/omb/assets/information_and_regulatory_affairs/re_guidance2000update.pdf.

parability of the data over time. Except where noted in the article, the data are highly comparable over time.

The generosity of families in giving their time for interviews has been crucial to the ongoing success of the SCF. In the 2010 SCF, the median interview length was about 85 minutes. However, in some particularly complicated cases, the amount of time needed was substantially more than three hours. The role of the interviewers in this effort is also critical. Without their dedication and perseverance, the survey would not be possible.

The SCF interviews were conducted largely between the months of May and December in each survey year by NORC, a social science and survey research organization at the University of Chicago. The majority of interviews were obtained in person, although interviewers were allowed to conduct telephone interviews if that was more convenient for the respondent. Each interviewer used a program running on a laptop computer to administer the survey and collect the data.

The use of computer-assisted personal interviewing has the great advantage of enforcing systematic collection of data across all cases. The computer program developed to collect the data for the SCF was tailored to allow the collection of partial information in the form of ranges whenever a respondent either did not know or did not want to reveal an exact dollar figure.

The response rate in the area-probability sample is more than double that in the list sample. In both 2010 and 2013, about 70 percent of households selected for the area-probability sample actually completed interviews. The overall response rate in the list sample was about one-third; in the part of the list sample likely containing the wealthiest families, the response rate was only about one-half that level.

Weighting

To provide a measure of the frequency with which families similar to the sample families could be expected to be found in the population of all families, an analysis weight is computed for each case, accounting both for the systematic properties of the sample design and for differential patterns of nonresponse. The SCF response rates are low by the standards of some other major government surveys, and analysis of the data confirms that the tendency to refuse participation is highly correlated with net worth. However, unlike other surveys, which almost certainly also have differential nonresponse by wealthy households, the SCF has the means to adjust for such nonresponse. A major part of SCF research is devoted to the evaluation of nonresponse and adjustments for nonresponse in the analysis weights of the survey.[49]

Sources of Error

Errors may be introduced into survey results at many stages. Sampling error—the variability expected in estimates based on a sample instead of a census—is a particularly important source of error. Such error can be reduced either by increasing the size of a sample or, as is done in the SCF, by designing the sample to reduce important sources of variability. Sampling error can be estimated, and for this article we use replication methods to do so.

[49] The weights used in this article are adjusted for differential rates of nonresponse across groups. See Arthur B. Kennickell (1999), "Revisions to the SCF Weighting Methodology: Accounting for Race/Ethnicity and Homeownership," working paper (Washington: Board of Governors of the Federal Reserve System, January), www.federalreserve.gov/econresdata/scf/scf_workingpapers.htm.

Replication methods draw samples, called replicates, from the set of actual respondents in a way that incorporates the important dimensions of the original sample design. In the SCF, weights were computed for all of the cases in each of the replicates.[50] Every value for which standard errors are reported in this article is a weighted statistic estimated using the replicate samples. To estimate the overall standard error, a measure of the variability of these estimates is combined with a measure of the variability because of imputation for missing data.

Other errors include those that interviewers may introduce by failing to follow the survey protocol or misunderstanding a respondent's answers. SCF interviewers are given lengthy, project-specific training and ongoing coaching to minimize such problems. Respondents may introduce error by interpreting a question in a sense different from that intended by the survey. For the SCF, extensive pretesting of questions and thorough review of the data tend to reduce this source of error.

Nonresponse—either complete nonresponse to the survey or nonresponse to selected items within the survey—may be another important source of error. As noted in more detail previously, the SCF uses weighting to adjust for differential nonresponse to the survey. To address missing information on individual questions within the interview, the SCF uses statistical methods to impute missing data; the technique makes multiple estimates of missing data to allow for an estimate of the uncertainty attributable to this type of nonresponse.

Errata

The authors revised this article on September 5, 2014, to correct the following:

- On p. 3, in figure 2, the mean value for the 2010–13 range was corrected to zero.
- On p. 15, in box 5, table B, the date range in the table title was corrected to 2007–13.

The authors revised this article on October 24, 2014, to correct the following:

- On p. 10, in figure A, the x-axis was relabeled to correctly mark the third interval as 1995.
- On p. 11, in figure B, the x-axis was relabeled to correctly mark the third interval as 1995.
- On p. 23, in the last paragraph, the last full sentence was corrected to "In 2010, 39.4 percent of families held credit card debt, while in 2013, 38.1 percent of families held credit card debt."

[50] See Arthur B. Kennickell (2000), "Revisions to the Variance Estimation Procedure for the SCF," working paper (Washington: Board of Governors of the Federal Reserve System, October), www.federalreserve.gov/econresdata/scf/scf_workingpapers.htm.

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The 2013 Home Mortgage Disclosure Act Data

Neil Bhutta and Daniel R. Ringo, of the Division of Research and Statistics, prepared this article. Madura Watanagase provided research assistance.

The Home Mortgage Disclosure Act of 1975 (HMDA) requires most mortgage lending institutions with offices in metropolitan areas to disclose to the public detailed information about their home-lending activity each year. The HMDA data include the disposition of each application for mortgage credit; the type, purpose, and characteristics of each home mortgage that lenders originate or purchase during the calendar year; the census-tract designations of the properties related to those loans; loan pricing information; personal demographic and other information about loan applicants, including their race or ethnicity and income; and information about loan sales (see appendix A for a full list of items reported under HMDA).[1]

HMDA was enacted to help members of the public determine whether financial institutions are serving the housing needs of their local communities and treating borrowers and loan applicants fairly, provide information that could facilitate the efforts of public entities to distribute funds to local communities for the purpose of attracting private investment, and help households decide where they may want to deposit their savings.[2] The data have proven to be valuable for research and are often used in public policy deliberations related to the mortgage market.[3]

The main objective of this article is to provide an overview of the 2013 HMDA data and to help document mortgage market activity over time as captured in the HMDA data. Mortgage debt is by far the largest component of household debt in the United States, and mortgage transactions can have important implications for households' financial well-being. The HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market, providing unique details on how much mortgage credit gets extended each year, who obtains such credit, and which institutions provide such credit.

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[1] In the 2013 HMDA data, property locations incorporate the census-tract geographic boundaries created for the 2010 decennial census. The 2013 HMDA data do not reflect recent updates to the list of metropolitan statistical areas (MSAs) published by the Office of Management and Budget. HMDA reporters will use the updated list of MSAs in preparing their 2014 HMDA data. For further information, see Federal Financial Institutions Examination Council (2013), "OMB Announcement—Revised Delineations of MSAs," press release, February 28, www.ffiec.gov/hmda/OMB_MSA.htm.

[2] A brief history of HMDA is available at Federal Financial Institutions Examination Council, "History of HMDA," webpage, www.ffiec.gov/hmda/history2.htm.

[3] On July 21, 2011, rulemaking responsibility for HMDA was transferred from the Federal Reserve Board to the newly established Consumer Financial Protection Bureau. The Federal Financial Institutions Examination Council (FFIEC; www.ffiec.gov) continues to be responsible for collecting the HMDA data from reporting institutions and facilitating public access to the information. In September of each year, the FFIEC releases to the public summary disclosure tables pertaining to lending activity from the previous calendar year for each reporting lender as well as aggregations of home-lending activity for each metropolitan statistical area and for the nation as a whole. The FFIEC also makes available to the public a data file containing virtually all of the reported information for each lending institution as well as a file that includes key demographic and housing-related data for each census tract drawn from census sources.

In 2013, economic and housing conditions continued to improve, with house prices rising significantly during the course of the year, particularly in areas where they had declined sharply during the recession. Mortgage interest rates, though still low by historical standards, increased about 1 percentage point during the year. While credit conditions still were tight going into 2014, some data, such as the Federal Reserve Board's Senior Loan Officer Opinion Survey on Bank Lending Practices, suggest that credit standards for prime mortgages may have eased somewhat in 2013.[4] Finally, the new ability-to-repay and qualified mortgage standards, which generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling and establish certain protections from liability under this requirement for "qualified mortgages," may have influenced lending patterns to some extent in 2013, even though they did not take effect until January 2014.[5]

This article presents data since 2004 describing mortgage market activity and lending patterns, including the incidence of higher-priced or nonprime lending and rates of denial on mortgage applications, across different demographic groups and lender types.[6] In addition, we use a unique data set composed of HMDA records matched to borrowers' credit records, introduced in last year's *Federal Reserve Bulletin* article on the topic, to reexamine the factors that might help explain the large differences in the incidence of higher-priced lending across borrowers of different races and ethnicities during the housing boom.[7]

Here are some of the key findings:

1. The number of mortgage originations in 2013 declined 11 percent, to 8.7 million from 9.8 million in 2012. This decrease was led by a drop in refinance mortgages for one- to four-family properties, which fell by over 1.5 million, or 23 percent, likely because mortgage interest rates increased significantly during 2013. Partially offsetting the decrease in refinancing, one- to four-family home-purchase originations grew by almost 370,000, or 13 percent, from 2012. This increase came on the heels of a rise of similar magnitude in the previous year. Still, purchase originations in 2013 were low by historical standards, standing below levels as far back as 1993.

2. The government-backed share of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties (that is, the share of loans backed by insurance from the Federal Housing Administration (FHA) or by guarantees from the Department of Veterans Affairs (VA), the Farm Service Agency (FSA), or the Rural Housing Service (RHS)) stood at about 38 percent in 2013, down from 45 percent in 2012 and from a peak of 54 percent in 2009. This decline reflected a decrease in the FHA share of loans, while the VA and FSA/RHS shares have held steady since 2009. A series of increases, starting in 2010, in the mortgage insurance premiums (MIPs) that

[4] For more information on economic conditions during 2013, see Board of Governors of the Federal Reserve System (2014), *Monetary Policy Report* (Washington: Board of Governors, February 11), www.federalreserve.gov/monetarypolicy/mpr_default.htm.

[5] For additional details on the ability-to-repay and qualified mortgage rules, see Consumer Financial Protection Bureau, "Ability to Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)," webpage, www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z.

[6] Some lenders file amended HMDA reports, which are not reflected in the initial public data release. A final HMDA data set containing these changes is created two years following the initial data release. The data used to prepare this article are drawn from the initial public release for 2013 and from the final HMDA data set for years prior to that. Consequently, numbers in this article for the years 2012 and earlier may differ somewhat from numbers calculated from the initial public release files.

[7] For more information on the data set, see Neil Bhutta and Glenn B. Canner (2013), "Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA–Credit Record Data," *Federal Reserve Bulletin,* vol. 99 (November), pp. 1–58, www.federalreserve.gov/pubs/bulletin/2013/default.htm.

the FHA charges borrowers may have been one important reason for the falling share of FHA loans. The share of government-backed home-purchase loans declined across all population groups from 2012 to 2013. In 2013, at the high end, almost 71 percent of black home-purchase borrowers and 63 percent of Hispanic white home-purchase borrowers took out a nonconventional loan; at the low end, 16 percent of Asian home-purchase borrowers used nonconventional loans.

3. After declines each year from 2005 through 2011, home-purchase originations for one- to four-family, owner-occupied, site-built properties grew significantly in 2012 and 2013. However, the degree of growth over these two years varied substantially across demographic groups. Loans to Asian and high-income borrowers have grown most quickly at 42 percent and 50 percent, respectively, while loans to black or African American and s low- or moderate-income (LMI) borrowers have grown most slowly at just 12 percent and 7 percent, respectively.

4. The higher-priced fraction of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties (the fraction of loans with annual percentage rates (APRs) of at least 1.5 percentage points above the prime offer rate) more than doubled in 2013 from 2012, to about 7 percent. However, this increase was driven by a sharp jump in higher-priced FHA loans, as changes to the FHA's MIPs in 2013 (including lengthening the period over which the annual insurance premium is required to be paid) on top of the changes in previous years appear to have pushed the APRs on many FHA home-purchase loans just over the threshold of 150 basis points.

5. We use a special data set composed of HMDA loan records matched to borrowers' credit records to help better understand why substantial differences exist in the incidence of higher-priced lending to different racial and ethnic groups. The HMDA data alone—with information on borrower income and loan amount—explain very little of these differences. The matched data provide information on borrowers' credit scores, and differences in scores across groups help explain a large portion of the differences in higher-priced lending. Some differences still remain after controlling for credit scores. The matched data do not contain some important risk characteristics (such as down-payment size or income documentation level), so we are unable to determine the extent to which the remaining discrepancies are attributable to these unobserved factors or discrimination.

Mortgage Applications and Originations

In 2013, 7,190 institutions reported data on nearly 14 million home mortgage applications (including about 1.9 million applications that were closed by the lender for incompleteness or were withdrawn by the applicant before a decision was made) that resulted in about 8.7 million originations. The number of originations in 2013 was down from 9.8 million originations in 2012 (table 1). (Data on the number of reporting institutions will be discussed in more detail in the section "Lending Institutions.")

Refinance mortgages for one- to four-family properties dropped by over 1.5 million, or 23 percent, from 2012 to 2013, as mortgage interest rates increased from historic lows during the year. According to Freddie Mac's Primary Mortgage Market Survey, the offer rate for prime conventional conforming mortgages increased from an average of 3.35 percent in December 2012 to 4.46 percent in December 2013.

In contrast to the decline in refinance activity, one- to four-family home-purchase originations grew by almost 370,000, or 13 percent, from 2012. Most one- to four-family home-purchase loans are first liens for owner-occupied properties. In the past two years, such

Table 1. Applications and originations, 2004–13

Numbers of loans, in thousands, except as noted

Characteristic of loan and of property	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1–4 Family										
Home purchase										
Applications	9,804	11,685	10,929	7,609	5,060	4,217	3,848	3,650	4,025	4,554
Originations	6,437	7,391	6,740	4,663	3,139	2,793	2,547	2,430	2,743	3,112
First lien, owner occupied	4,789	4,964	4,429	3,454	2,628	2,455	2,218	2,073	2,344	2,680
Site-built, conventional	4,107	4,425	3,912	2,937	1,581	1,089	1,005	999	1,251	1,622
Site-built, nonconventional	553	411	386	394	951	1,302	1,151	1,019	1,034	993
FHA share (percent)	74.6	68.6	66.0	65.8	78.9	77.0	77.4	70.9	68.0	62.7
VA share (percent)	21.6	26.7	29.0	27.1	15.2	13.9	15.2	18.2	19.9	24.3
FSA/RHS share (percent)	3.9	4.7	5.0	7.1	5.9	9.0	7.4	10.9	12.1	13.0
Manufactured, conventional	106	100	101	95	68	43	44	40	44	51
Manufactured, nonconventional	24	27	30	29	28	21	17	15	14	14
First lien, non-owner occupied	857	1,053	880	607	412	292	285	314	355	385
Junior lien, owner occupied	738	1,224	1,269	552	93	44	42	41	43	45
Junior lien, non-owner occupied	53	150	162	50	6	2	2	1	1	1
Refinance										
Applications	16,085	15,907	14,046	11,566	7,805	9,983	8,433	7,422	10,528	8,549
Originations	7,591	7,107	6,091	4,818	3,491	5,772	4,969	4,330	6,670	5,131
First lien, owner occupied	6,497	5,770	4,469	3,659	2,934	5,301	4,516	3,856	5,932	4,385
Site-built, conventional	6,115	5,541	4,287	3,407	2,363	4,264	3,835	3,315	4,972	3,628
Site-built, nonconventional	297	151	110	180	506	979	646	508	918	713
FHA share (percent)	68.3	77.3	87.5	91.5	92.2	83.7	79.3	63.2	61.2	61.1
VA share (percent)	31.4	22.4	12.3	8.3	7.6	15.9	20.3	35.9	37.8	37.7
FSA/RHS share (percent)	.2	.3	.2	.1	.2	.4	.4	.9	.9	1.2
Manufactured, conventional	77	70	60	56	42	36	25	25	31	32
Manufactured, nonconventional	7	8	12	16	22	22	10	9	11	12
First lien, non-owner occupied	618	582	547	474	330	350	359	394	660	671
Junior lien, owner occupied	464	729	1,036	661	219	115	88	74	74	70
Junior lien, non-owner occupied	13	25	39	23	9	7	6	5	5	5
Home improvement										
Applications	2,200	2,544	2,481	2,218	1,413	832	670	675	779	833
Originations	964	1,096	1,140	958	573	390	341	335	381	425
Multifamily[1]										
Applications	61	58	52	54	43	26	26	35	47	51
Originations	48	45	40	41	31	19	19	27	37	40
Total applications	**28,151**	**30,193**	**27,508**	**21,448**	**14,320**	**15,057**	**12,977**	**11,782**	**15,379**	**13,987**
Total originations	**15,040**	**15,638**	**14,011**	**10,480**	**7,234**	**8,974**	**7,876**	**7,122**	**9,831**	**8,707**
Memo										
Purchased loans	5,142	5,868	6,236	4,821	2,935	4,301	3,229	2,939	3,164	2,794
Requests for preapproval[2]	1,068	1,260	1,175	1,065	735	559	445	429	474	516
Requests for preapproval that were approved but not acted on	167	166	189	197	99	61	53	55	64	72
Requests for preapproval that were denied	171	231	222	235	177	155	117	130	149	163

Note: Components may not sum to totals because of rounding. Applications include those withdrawn and those closed for incompleteness. FHA is Federal Housing Administration; VA is U.S. Department of Veterans Affairs; FSA is Farm Service Agency; RHS is Rural Housing Service.

[1] A multifamily property consists of five or more units.

[2] Consists of all requests for preapproval. Preapprovals are not related to a specific property and thus are distinct from applications.

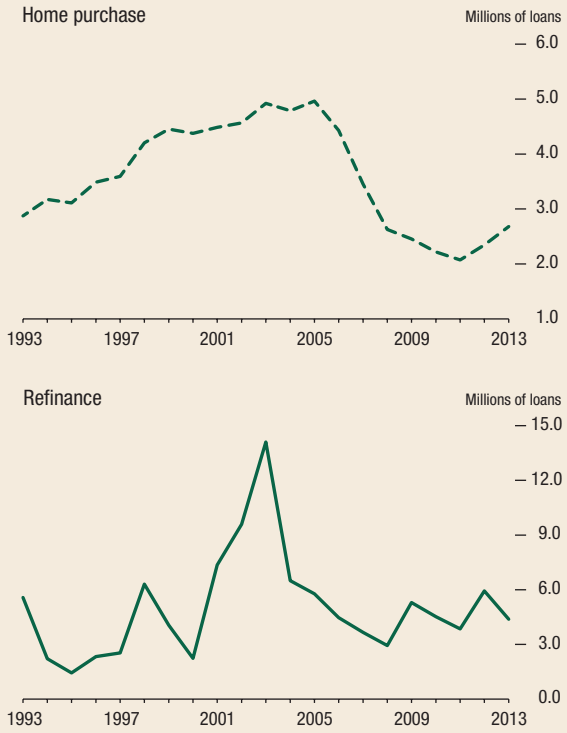
Source: Here and in subsequent tables and figures, except as noted, Federal Financial Institutions Examination Council, data reported under the Home Mortgage Disclosure Act (www.ffiec.gov/hmda).

loans have grown almost 30 percent, from nearly 2.1 million in 2011 to almost 2.7 million in 2013. Still, the volume of such purchase originations has not yet climbed back to the level observed as far back as 1993 (figure 1).[8]

The number of first-lien home-purchase loans for non-owner-occupied properties—that is, purchases of rental properties or vacation and second homes—also increased in 2013, to 385,000 from 355,000 in 2012. But relative to its peak in 2005, the number of originations for non-owner-occupied properties is still about 63 percent lower.

The growth in first-lien home-purchase lending (including for both owner-occupied and non-owner-occupied properties) from 2012 to 2013 varied across the United States (figure 2). In several states, home-purchase lending increased over 20 percent. At the other end of the spectrum, in several states—including some states closely associated with the housing boom and bust, such as Nevada, California, and Arizona—home-purchase loan growth was less than 10 percent.

Figure 1. Number of home-purchase and refinance mortgage originations reported under the Home Mortgage Disclosure Act, 1993–2013

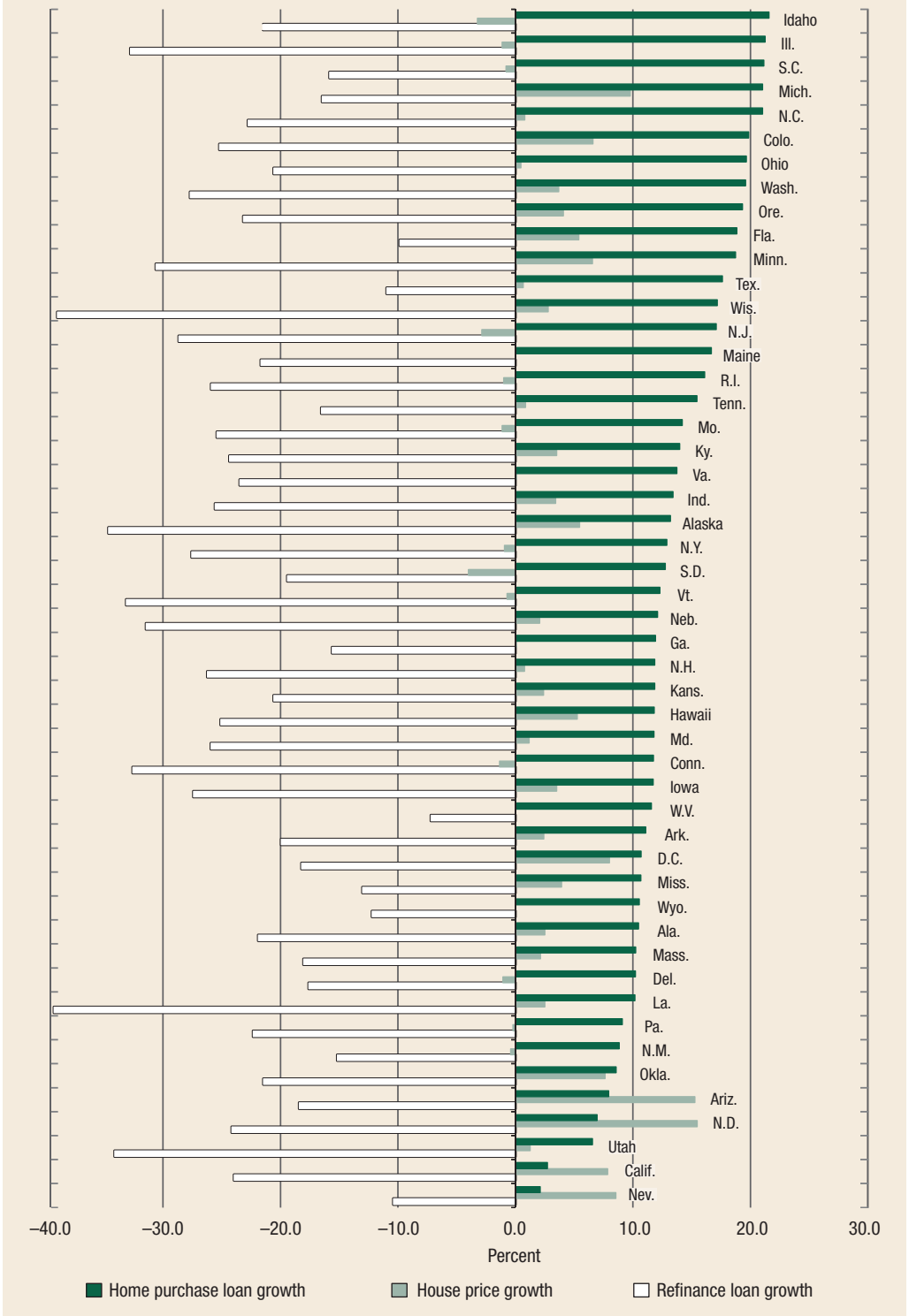


Note: Mortgage originations for one- to four-family owner-occupied properties, with junior-lien loans excluded in 2004 and later.

The decline in refinance lending also varied across the United States, but the magnitudes of these declines were not closely correlated with the strength of home-purchase loan growth, as suggested by figure 2. Finally, figure 2 also displays state-level home price growth from December 2011 to December 2012. Although positive trends in home prices could potentially spur both home-purchase and refinance loan growth, there does not appear to be a strong connection at the state level. For instance, home prices grew most strongly in Arizona and North Dakota, but these increases were not associated with relatively high rates of subsequent growth in home-purchase lending.

[8] The HMDA data prior to 2004 did not provide lien status for loans, and thus the number of loans prior to 2004 includes both first- and junior-lien loans. That said, including junior-lien home-purchase loans in 2013 does not change the conclusion that home-purchase lending in 2013 was below that in 1993. It should also be noted that, because HMDA coverage has expanded over time, in part because of significantly more counties being included in metropolitan statistical areas now than in the early 1990s, the lower loan volume in 2013 relative to 1993 is understated.

Figure 2. Growth in home-purchase and refinance lending, by state, 2012–13

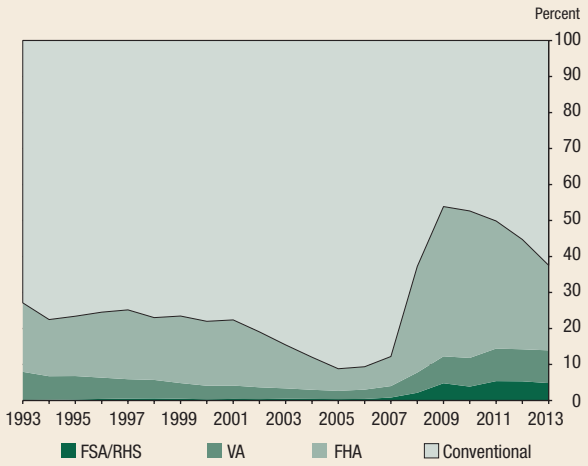


Note: First-lien mortgage originations for one- to four-family properties. House price growth is measured as the rate of change in the Zillow Home Value Index for single-family residences from December 2011 to December 2012; house price growth data not available for Maine and Wyoming.

Source: FFIEC HMDA data; Zillow.

In addition to lien and occupancy status, the HMDA data provide details on the type of loan (conventional or not) and the type of property securing the loan (site-built or manufactured home).[9] In table 1, the volume of first-lien lending for owner-occupied properties is further disaggregated by loan and property type. As shown, nonconventional, or government-backed, home-purchase loans for site-built properties declined slightly in 2013, while conventional loans increased about 30 percent. The nonconventional share of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties stood at about 38 percent in 2013, down from 45 percent in 2012 and from its peak of 54 percent in 2009. That said, the nonconventional share remains above historically normal levels going back to 1993 (figure 3).

Figure 3. Nonconventional share of home-purchase mortgage originations, 1993–2013



Note: Home-purchase mortgage originations for one- to four-family owner-occupied properties, with junior-lien loans excluded in 2004 and later. Nonconventional loans are those insured by the Federal Housing Administration (FHA) or backed by guarantees from the U.S. Department of Veterans Affairs (VA), the Farm Service Agency (FSA), or the Rural Housing Service (RHS).

Nonconventional lending is more common among home-purchase loans and usually involves loans with high loan-to-value (LTV) ratios, offering investors mortgage insurance protection against losses due to borrower default. The analogue in the conventional market is insurance offered by private mortgage insurance (PMI) companies. In fact, PMI or some other credit enhancement is required by statute for loans with LTVs above 80 percent that are sold to the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. Another high-LTV alternative, frequently used during the housing boom, is for borrowers to obtain a junior-lien loan (a "piggyback" loan) alongside an 80 percent first lien to collectively finance more than 80 percent of the purchase price.[10]

The sharp rise in nonconventional lending after the financial crisis likely reflects reduced availability and relatively high prices for conventional high-LTV financing options, particularly for borrowers with less-than-excellent credit scores.[11] Junior-lien home-purchase loans have been limited in recent years, with just 45,000 such loans in 2013, compared with over

[9] Manufactured-home lending differs from lending on site-built homes, in part because most of the homes are sold without land and are treated as chattel-secured lending, which typically carries higher interest rates and shorter terms to maturity than those on loans to purchase site-built homes (for pricing information on manufactured-home loans, see table 7). This article focuses almost entirely on site-built mortgage originations, which constitute the vast majority of originations (as shown in table 1). That said, it is important to keep in mind that, because manufactured homes typically are less expensive than site-built homes, they provide a low-cost housing option for households with more moderate incomes.

[10] Junior liens could also be used to keep the first lien within the GSEs' conforming loan-size limit while the combined LTV ratio is at or below 80 percent.

[11] For a more detailed discussion of the post-crisis rise in government-backed lending, see Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort, and Glenn B. Canner (2010), "The 2009 HMDA Data: The Mortgage Market in a Time of Low Interest Rates and Economic Distress," *Federal Reserve Bulletin,* vol. 96 (December), pp. A39–A77, www.federalreserve.gov/pubs/bulletin/2010/default.htm.

550,000 in 2007 and nearly 1.3 million in 2006 (as shown in table 1).[12] In addition, PMI issuance declined to historic lows by 2010 as PMI companies tightened standards and raised prices and the GSEs imposed additional fees for high-LTV loans (PMI data not shown in tables).[13]

As noted earlier and as shown in figure 3, the nonconventional share of home-purchase loans has been declining since 2009. Figure 3 also shows that the decline in the nonconventional share reflects a decrease in the FHA share of loans, while the VA and FSA/RHS shares have held steady since 2009. One factor that may help explain the reduction in the FHA share is a series of increases in the annual MIP that the FHA charges borrowers, which were implemented to help improve the financial health of the FHA. Between October 2010 and April 2013, the annual MIP for a typical home-purchase loan more than doubled from 0.55 percent of the loan amount to 1.35 percent.[14] Also, in 2013, the FHA extended the period over which the annual MIP is required to be paid. For a typical home-purchase loan, the annual premium must now be paid over the life of the loan instead of until the LTV ratio falls below 78 percent. Although this change has no effect on the initial cost of the mortgage, it would change the potential longer-term cost if borrowers held the mortgage after the LTV ratio fell below 78 percent.

The remainder of table 1 provides additional details on the breakdown of one- to four-family home-purchase and refinance loans by lien and occupancy status and by property and loan type. Table 1 also provides the number of applications for and originations of home-improvement loans for one- to four-family properties, many of which are junior liens or unsecured, and total multifamily property (consisting of five or more units) applications and originations across all three loan purposes (home purchase, refinance, and home improvement). Finally, the HMDA data include details about preapproval requests for home-purchase loans and loans purchased by reporting institutions during the reporting year, although the purchased loans may have been originated at any point in time. Table 1 shows that, for 2013, lenders reported information on about 2.8 million loans that they had purchased from other institutions. Lenders also reported roughly 516,000 preapproval requests, including approved requests that turned into actual loan applications for specific properties.[15]

Mortgage Outcomes by Income and by Race and Ethnicity

A key attribute of the HMDA data is that they help policymakers and the broader public better understand the distribution of mortgage credit to different demographic groups. The next set of tables provides information on loan shares, product usage, denial rates, reasons

[12] Under the regulations that govern HMDA reporting, many standalone junior-lien loans are not reported because either the lender does not know the purpose of the loan or the reasons cited for the loan are not ones that trigger a reporting requirement. Unless a junior lien is used for home purchase or explicitly for home improvements, or to refinance an existing lien, it is not reported under HMDA. Further, home equity lines of credit, many of which are junior liens and could also be used to help purchase a home, do not have to be reported in the HMDA data regardless of the purpose of the loan.

[13] For time-series data on PMI issuance through 2012, see Bhutta and Canner (2013), "Mortgage Market Conditions and Borrower Outcomes," in note 7.

[14] Changes to the FHA's upfront and annual MIPs over time have been documented in Urban Institute, Housing Finance Policy Center (2014), *Housing Finance at a Glance: A Monthly Chartbook* (Washington: Urban Institute, March), www.urban.org/publications/413061.html. A typical FHA home-purchase loan has an LTV of over 95 percent and a loan term in excess of 15 years. The upfront premium, on net, was unchanged between 2010 and 2013; it was briefly increased from 1.75 percent to 2.25 percent and lowered back to 1.00 percent in 2010, and then it was raised back to 1.75 percent in 2012.

[15] Reporters can, but are not required to, report preapproval requests that they approve but are not acted on by the potential borrower.

for denial, and mortgage pricing for population groups defined by applicant income, neighborhood income, and applicant race and ethnicity (tables 2–6). These tables focus on first-lien home-purchase and refinance loans for one- to four-family, owner-occupied, site-built properties. As can be seen from table 1, such loans accounted for about 81 percent of all HMDA originations in 2013.

The Distribution of Home Loans across Demographic Groups

Table 2 shows different groups' shares of home-purchase and refinance loans and how these shares have changed over time. For example, black borrowers' share of home-purchase loans (conventional and nonconventional loans combined) was 4.8 percent in 2013, down from 5.1 percent in 2012 and from 8.7 percent in 2006. In contrast, the non-Hispanic white share of home-purchase loans was 70.2 percent in 2013, up slightly over 2012 and well above the 61.2 percent mark in 2006.

The bottom of the table provides the total loan counts for each year, and thus the number of loans to a given group in a given year can be easily derived.[16] From 2011 to 2013, the total number of home-purchase loans increased about 30 percent, from about 2 million to about 2.6 million, but the rate of growth varied significantly for different groups. Home-purchase loans to Asian borrowers grew most quickly at about 42 percent, while those to black borrowers grew least quickly at just under 12 percent.

In terms of borrower income, the share of home-purchase loans to LMI borrowers declined significantly in 2013 from 2012, from 33.4 percent to 28.4 percent.[17] In fact, the *number* of loans to LMI borrowers declined slightly from 2012 despite growth in the overall number of home-purchase loans.

From 2012 to 2013, home-purchase loan shares by neighborhood or census-tract income group held steady.[18] It is important to note that shares by neighborhood in 2012 and 2013 are not perfectly comparable to those in 2011 and earlier because census-tract definitions and census-tract median family income estimates were revised in 2012 based on 2010 census data and 2006–10 American Community Survey data, whereas the 2004–11 data relied on 2000 census income and population data.[19]

In contrast to home-purchase lending, shares of refinance loans to black and Hispanic-white borrowers and to LMI borrowers have risen in the past two years. While overall refinance lending declined between 2012 and 2013 from 5.9 million loans to 4.3 million loans, the number of refinance loans to black and Hispanic-white borrowers nearly held steady.

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[16] For example, the number of home-purchase loans to Asians in 2013 was about 149,000, derived by multiplying 2.615 million loans by 5.7 and dividing by 100.

[17] LMI borrowers have incomes of less than 80 percent of estimated contemporaneous area median family income (AMFI), middle-income borrowers have incomes of at least 80 percent and less than 120 percent of AMFI, and high-income borrowers have incomes of at least 120 percent of AMFI. These definitions are identical to those adopted in the rules implementing the Community Reinvestment Act.

[18] Definitions for LMI, middle-income, and high-income neighborhoods are identical to those for LMI, middle-income, and high-income borrowers but are based on the ratio of census-tract median family income to area median family income measured from the 2006–10 American Community Survey data for 2012 and 2013 and from the 2000 census for 2004–11.

[19] For more information on the transition to the new census-tract data, see Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort, and Glenn B. Canner (2012), "The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act," *Federal Reserve Bulletin,* vol. 98 (December), pp. 1–46, www.federalreserve.gov/pubs/bulletin/2012/default.htm.

Table 2. Distribution of home loans, by purpose of loan, 2004–13
Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
A. Home purchase										
Borrower race and ethnicity[1]										
Asian	4.8	5.0	4.5	4.5	4.9	5.3	5.5	5.2	5.3	5.7
Black or African American	7.1	7.7	8.7	7.6	6.3	5.7	6.0	5.5	5.1	4.8
Other minority[2]	1.4	1.3	1.1	1.0	.9	.9	.9	.8	.8	.7
Hispanic white	7.6	10.5	11.7	9.0	7.9	8.0	8.1	8.3	7.7	7.3
Non-Hispanic white	57.1	61.7	61.2	65.4	67.5	67.9	67.6	68.7	69.9	70.2
Joint	2.3	2.3	2.3	2.5	2.8	2.8	2.7	2.8	2.9	3.1
Missing	19.8	11.5	10.5	10.1	9.6	9.3	9.1	8.6	8.3	8.2
All	100	100	100	100	100	100	100	100	100	100
Borrower income[3]										
Low or moderate	27.7	24.6	23.6	24.7	28.1	36.7	35.5	34.4	33.4	28.4
Middle	26.9	25.7	24.7	25.2	27.1	26.7	25.6	25.2	25.2	25.2
High	41.4	45.5	46.7	47.0	43.1	34.7	37.4	38.8	40.0	44.8
Income not used or not applicable	4.0	4.2	5.0	3.1	1.8	1.8	1.4	1.5	1.5	1.5
All	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]										
Low or moderate	14.5	15.1	15.7	14.4	13.1	12.6	12.1	10.8	12.8	12.7
Middle	48.7	49.2	49.5	49.6	49.8	50.2	49.4	48.6	43.6	43.7
High	35.8	34.7	33.7	35.1	35.9	35.8	37.7	38.6	43.2	43.2
All	100	100	100	100	100	100	100	100	100	100
B. Refinance										
Borrower race and ethnicity[1]										
Asian	3.5	2.9	3.0	3.1	3.1	4.1	5.2	5.4	5.5	4.7
Black or African American	7.4	8.3	9.6	8.4	6.0	3.5	2.9	3.1	3.3	4.4
Other minority[2]	1.4	1.4	1.3	1.1	.8	.6	.5	.6	.6	.7
Hispanic white	6.2	8.6	10.1	8.7	5.3	3.2	3.0	3.3	3.9	5.0
Non-Hispanic white	57.2	60.9	59.6	62.7	70.7	74.6	74.3	73.5	72.5	70.5
Joint	2.1	2.1	1.9	2.0	2.2	2.6	2.7	2.8	3.1	3.1
Missing	22.1	15.7	14.6	14.1	11.9	11.4	11.4	11.3	11.1	11.6
All	100	100	100	100	100	100	100	100	100	100
Borrower income[3]										
Low or moderate	26.2	25.5	24.7	23.3	23.5	19.6	19.0	19.2	19.6	21.1
Middle	26.3	26.8	26.1	25.6	25.5	22.5	22.5	21.3	21.8	21.7
High	38.8	40.8	43.7	46.1	44.8	45.8	49.6	48.1	47.7	46.3
Income not used or not applicable	8.6	6.9	5.4	4.9	6.2	12.1	8.9	11.4	10.9	10.8
All	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]										
Low or moderate	15.3	16.5	17.9	16.1	11.9	7.7	7.2	7.3	10.1	12.1
Middle	50.0	51.3	52.0	52.2	51.9	47.5	46.1	45.5	41.9	43.8
High	33.9	31.6	29.4	31.0	35.2	43.5	46.0	45.6	47.6	43.9
All	100	100	100	100	100	100	100	100	100	100
Memo										
Number of home-purchase loans (thousands)	4,660	4,836	4,298	3,331	2,533	2,391	2,157	2,018	2,286	2,615
Number of refinance loans (thousands)	6,412	5,692	4,397	3,588	2,869	5,243	4,481	3,823	5,890	4,341

Note: First-lien mortgages for one- to four-family family, owner-occupied, site-built homes. Rows may not sum to 100 because of rounding or, for the distribution by neighborhood income, because property location is missing.

[1] Applications are placed in one category for race and ethnicity. The application is designated as *joint* if one applicant was reported as white and the other was reported as one or more minority races or if the application is designated as white with one Hispanic applicant and one non-Hispanic applicant. If there are two applicants and each reports a different minority race, the application is designated as *two or more minority races*. If an applicant reports two races and one is white, that applicant is categorized under the minority race. Otherwise, the applicant is categorized under the first race reported. "Missing" refers to applications in which the race of the applicant(s) has not been reported or is not applicable or the application is categorized as white but ethnicity has not been reported.

[2] Consists of applications by American Indians or Alaska Natives, Native Hawaiians or other Pacific Islanders, and borrowers reporting two or more minority races.

[3] The categories for the borrower-income group are as follows: Low- or moderate-income (or LMI) borrowers have income that is less than 80 percent of estimated contemporaneous area median family income (AMFI), middle-income borrowers have income that is at least 80 percent and less than 120 percent of AMFI, and high-income borrowers have income that is at least 120 percent of AMFI.

[4] The categories for the neighborhood-income group are based on the ratio of census-tract median family income to area median family income from the 2006–10 American Community Survey data for 2012 and 2013 and from the 2000 census for 2004–11, and the three categories have the same cutoffs as the borrower-income groups (see note 3).

Table 3. Nonconventional share of home loans, by purpose of loan, 2004–13
Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
A. Home purchase										
Borrower race and ethnicity[1]										
Asian	2.9	1.8	2.1	2.6	13.4	26.1	26.6	25.8	21.9	16.0
Black or African American	21.7	14.3	13.6	21.7	64.1	82.0	82.9	80.3	77.3	70.6
Other minority[2]	14.0	9.3	9.4	14.8	48.4	67.6	68.8	65.9	62.3	55.3
Hispanic white	13.7	7.5	7.0	12.4	51.4	75.4	77.0	74.1	70.6	62.8
Non-Hispanic white	11.1	8.9	9.5	11.5	35.4	52.0	50.3	47.4	42.2	35.3
Joint	16.9	12.8	14.4	17.2	46.4	59.4	56.3	53.6	48.9	41.8
Missing	11.3	5.1	5.7	8.8	32.7	50.6	49.4	45.9	39.5	31.9
Borrower income[3]										
Low or moderate	20.3	15.2	14.9	16.0	46.1	65.3	66.6	64.5	59.8	52.3
Middle	14.3	11.0	12.6	16.8	46.1	60.4	59.3	57.0	51.5	45.5
High	5.3	3.9	4.9	7.5	26.7	38.5	37.2	34.3	29.6	25.0
Neighborhood income[4]										
Low or moderate	15.8	9.7	9.6	13.8	45.5	64.4	65.1	61.1	57.9	49.6
Middle	14.1	10.2	10.8	14.2	42.7	59.8	59.4	56.9	52.1	44.5
High	7.1	5.4	6.1	7.6	27.4	43.4	42.0	39.4	34.7	28.0
Memo: All borrowers	11.9	8.5	9.0	11.8	37.6	54.4	53.4	50.5	45.2	38.0
B. Refinance										
Borrower race and ethnicity[1]										
Asian	1.2	.7	.6	1.0	4.6	5.7	4.7	4.3	6.0	6.7
Black or African American	11.1	5.8	4.4	10.2	39.2	53.8	42.0	37.8	38.7	37.0
Other minority[2]	5.5	3.4	2.4	4.9	20.0	28.3	23.3	21.9	25.5	24.9
Hispanic white	5.6	2.6	1.9	3.9	20.5	36.2	28.1	22.9	26.9	25.7
Non-Hispanic white	4.0	2.4	2.6	4.9	15.9	16.8	13.6	12.2	14.2	14.8
Joint	7.5	3.7	3.4	6.2	19.5	21.1	16.6	16.3	20.1	20.4
Missing	4.2	1.9	1.7	4.1	18.7	19.0	12.5	13.6	16.5	16.8
Borrower income[3]										
Low or moderate	2.3	1.6	2.9	5.7	18.3	16.6	14.0	11.5	9.3	9.4
Middle	1.7	1.3	2.7	6.2	19.6	13.2	12.2	10.9	9.0	9.6
High	.8	.6	1.1	2.7	10.5	7.2	6.7	6.3	5.5	6.2
Neighborhood income[4]										
Low or moderate	5.9	3.2	2.9	6.3	24.6	31.3	23.1	19.6	22.2	22.1
Middle	5.2	3.0	2.9	5.8	20.2	22.3	17.5	16.0	18.4	18.9
High	2.9	1.7	1.6	3.0	11.3	12.1	10.0	9.3	11.7	12.4
Memo: All borrowers	4.6	2.6	2.5	5.0	17.6	18.7	14.4	13.3	15.6	16.4

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. Nonconventional loans are those insured by the Federal Housing Administration or backed by guarantees from the U.S. Department of Veterans Affairs, the Farm Service Agency, or the Rural Housing Service.

[1] See table 2, note 1.

[2] See table 2, note 2.

[3] See table 2, note 3.

[4] See table 2, note 4.

Variation across Demographic Groups in Nonconventional Loan Use

Table 3 shows that black and Hispanic-white borrowers are much more likely to use nonconventional loans than conventional loans compared with other racial and ethnic groups. In 2013, almost 71 percent of black home-purchase borrowers and 63 percent of Hispanic white home-purchase borrowers took out a nonconventional loan, compared with about 35 percent of non-Hispanic white home-purchase borrowers and just 16 percent of Asian home-purchase borrowers. These numbers have declined from their peaks in 2009 and 2010,

when over three-fourths of black and Hispanic-white home-purchase borrowers and over one-half of non-Hispanic white home-purchase borrowers took out nonconventional loans.

Nonconventional usage also rises as borrower and neighborhood income falls. In 2013, the majority of home-purchase borrowers and about 50 percent of those borrowing to purchase homes in LMI neighborhoods used nonconventional loans, compared with about one-fourth of high-income borrowers and 28 percent of borrowers in high-income neighborhoods.

Greater reliance on nonconventional loans may reflect the relatively low down-payment requirements of the FHA and VA lending programs, which serve the needs of borrowers who have few assets to meet down-payment and closing-cost requirements.[20] The patterns of product incidence could also reflect the behavior of lenders to some extent; for example, concerns have been raised about the possibility that lenders steer borrowers in certain neighborhoods toward government-backed loans.[21]

With respect to refinance loans, minority and lower-income borrowers are again more likely to use nonconventional than conventional loans. But, in general, nonconventional loans are less prevalent in refinance lending.[22]

Denial Rates and Denial Reasons

In 2013, the overall denial rate on applications for home-purchase loans of 14.5 percent was about the same as in 2012, while the denial rate for refinance loan applications of 22.7 percent was somewhat higher than in 2012 (as shown in table 4).[23] Over longer horizons, denial rates have exhibited significant variation. For example, the denial rate for conventional home-purchase loan applications of about 13 percent in 2013 was almost 6 percentage points lower than in 2006, while the denial rate for nonconventional home-purchase loan applications of 17 percent in 2013 was about 5 percentage points higher than in 2006. Changes in raw denial rates over time reflect not only changes in credit standards, but also changes in the demand for credit and in the composition of borrowers applying for mortgages. For example, the significant decline in the denial rate on applications for conventional home-purchase loans since the housing boom years despite tightened credit standards could stem from a relatively large drop in applications from riskier applicants.

As in past years, black, Hispanic white, and "other minority" borrowers had notably higher denial rates in 2013 than non-Hispanic whites, while denial rates for Asian borrowers were more similar to those for non-Hispanic white borrowers. For example, the denial rates for conventional home-purchase loans were about 29 percent for blacks, 22 percent for Hispanic whites, 23 percent for other minorities, 14 percent for Asians, and 11 percent for non-Hispanic whites.

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[20] Findings of the Federal Reserve Board's Survey of Consumer Finances for 2010 indicate that liquid asset levels and financial wealth holdings for minorities and lower-income groups are substantially smaller than they are for non-Hispanic whites or higher-income populations. See Board of Governors of the Federal Reserve System, "2010 Survey of Consumer Finances," webpage, www.federalreserve.gov/econresdata/scf/scf_2010.htm.

[21] See, for example, Glenn B. Canner, Stuart A. Gabriel, and J. Michael Woolley (1991), "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets," *Southern Economic Journal*, vol. 58 (July), pp. 249–62.

[22] The nonconventional share of refinance loans is lower than expected for the groups categorized by borrower income because, in most nonconventional refinance loans, income is not reported. Thus, when income is reported on a refinance loan, the loan is likely to be conventional.

[23] Denial rates are calculated as the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Table 4. Denial rates, by purpose of loan, 2004–13
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	14.4	16.0	18.0	18.7	18.0	15.5	15.6	15.8	14.8	14.5
Asian	13.7	15.9	16.9	17.5	19.2	16.3	15.8	16.5	15.7	15.1
Black or African American	23.6	26.5	30.3	33.5	30.6	25.5	24.8	26.0	25.9	25.5
Other minority[2]	19.4	20.8	24.0	26.7	25.5	21.2	21.9	20.9	20.7	21.5
Hispanic white	18.3	21.1	25.1	29.5	28.3	22.2	21.8	21.1	20.2	20.5
Non-Hispanic white	11.1	12.2	12.9	13.3	14.0	12.8	12.9	13.1	12.4	12.2
Conventional only										
All applicants	14.6	16.3	18.5	19.0	18.3	15.8	15.2	15.1	13.6	12.9
Asian	13.7	16.0	17.1	17.5	19.1	15.8	14.8	15.5	14.4	13.9
Black or African American	25.0	27.8	31.9	35.7	37.6	35.8	33.6	33.2	32.1	28.5
Other minority[2]	19.7	21.2	24.8	27.8	29.0	25.9	28.0	24.6	23.7	22.6
Hispanic white	18.6	21.4	25.7	30.5	32.5	26.9	24.9	24.2	22.4	21.5
Non-Hispanic white	11.2	12.3	13.2	13.3	14.1	13.3	12.9	12.7	11.6	10.9
Nonconventional only[1]										
All applicants	13.3	12.5	12.1	16.2	17.4	15.3	16.0	16.5	16.3	17.0
Asian	12.6	11.6	10.6	15.5	20.2	17.7	18.6	19.3	20.2	20.7
Black or African American	17.7	16.8	16.2	22.8	25.3	22.6	22.7	23.9	23.9	24.2
Other minority[2]	16.8	16.3	15.2	18.6	20.9	18.7	18.7	18.8	18.8	20.5
Hispanic white	16.3	17.2	15.7	20.5	23.1	20.4	20.7	19.9	19.2	20.0
Non-Hispanic white	10.7	10.2	10.0	13.1	13.9	12.5	13.0	13.6	13.6	14.4
B. Refinance										
Conventional and nonconventional[1]										
All applicants	29.5	32.6	35.4	39.6	37.7	24.0	23.3	23.8	19.8	22.7
Asian	18.8	23.5	27.5	32.6	32.5	21.4	19.5	20.1	17.4	20.5
Black or African American	39.9	42.2	44.1	52.0	56.0	42.2	41.7	40.0	32.8	33.9
Other minority[2]	33.7	35.5	40.6	52.0	57.4	37.3	35.3	34.4	30.0	30.5
Hispanic white	28.7	30.1	33.2	43.0	49.1	36.4	33.4	33.2	27.4	28.7
Non-Hispanic white	24.1	26.9	30.1	33.7	32.2	20.7	20.6	21.3	17.7	20.0
Conventional only										
All applicants	30.1	32.9	35.6	39.9	37.0	22.1	21.3	22.3	19.3	22.0
Asian	18.8	23.5	27.5	32.5	31.5	20.2	18.5	19.4	17.0	20.0
Black or African American	41.7	43.0	44.7	53.3	60.9	48.6	41.4	40.6	34.7	35.1
Other minority[2]	34.5	35.7	40.9	52.6	59.4	38.4	34.8	34.4	31.1	31.0
Hispanic white	29.3	30.2	33.3	43.2	50.2	38.9	33.6	33.5	28.9	29.8
Non-Hispanic white	24.6	27.1	30.4	33.9	31.5	19.1	18.9	20.1	17.4	19.4
Nonconventional only[1]										
All applicants	15.0	20.1	21.9	31.6	40.9	31.1	33.3	32.2	22.1	25.9
Asian	15.0	20.0	22.0	38.5	48.9	37.2	34.2	32.7	22.1	26.1
Black or African American	17.5	23.6	24.6	33.7	43.5	35.1	42.2	39.1	29.4	31.6
Other minority[2]	15.2	25.8	22.2	34.8	45.4	34.1	37.0	34.4	26.6	28.9
Hispanic white	15.7	23.6	26.3	34.6	43.4	31.4	33.0	32.3	23.2	25.4
Non-Hispanic white	12.0	17.6	19.7	28.3	36.1	27.4	29.3	29.0	19.6	23.0

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] Nonconventional loans are those insured by the Federal Housing Administration or backed by guarantees from the U.S. Department of Veterans Affairs, the Farm Service Agency, or the Rural Housing Service.

[2] See table 2, note 2.

Previous research and experience gained in the fair lending enforcement process show that differences in denial rates and in the incidence of higher-priced lending (the topic of the next subsection) among racial or ethnic groups stem, at least in part, from credit-risk-related factors not available in the HMDA data, such as credit history (including credit scores) and LTV ratios. Differential costs of loan origination and the competitive environ-

ment also may bear on the differences in pricing, as may differences across populations in credit-shopping activities.

Despite these limitations, the HMDA data play an important role in fair lending enforcement. The data are regularly used by bank examiners to facilitate the fair lending examination and enforcement processes. When examiners for the federal banking agencies evaluate an institution's fair lending risk, they analyze HMDA price data and loan application outcomes in conjunction with other information and risk factors that can be drawn directly from loan files or electronic records maintained by lenders, as directed by the Interagency Fair Lending Examination Procedures.[24] The availability of broader information allows the examiners to draw stronger conclusions about institution compliance with the fair lending laws.

Lenders can, but are not required to, report up to three reasons for denying a mortgage application, selecting from nine potential denial reasons (as shown in table 5). Among denied first-lien applications for one- to four-family, owner-occupied, site-built properties in 2013, 79 percent of home-purchase applications and about 77 percent of refinance applications had at least one reported denial reason. The most frequently cited denial reason for both home-purchase and refinance loans was the applicant's credit history (note that the columns in table 5 can add up to more than 100 percent because lenders can cite more than one denial reason). For home-purchase applications, the second-most-cited denial reason was the debt-to-income ratio, while, for refinance applications, the second-most-cited denial reason was collateral. For both home-purchase and refinance applications, collateral is more likely to be cited as a denial reason on conventional than nonconventional applications.

Denial reasons vary across racial and ethnic groups to some degree. For example, among denied home-purchase loan applications in 2013, credit history was cited as a denial reason for 30 percent of black applicants, 21 percent of Hispanic white applicants, 23 percent of non-Hispanic white applicants, and just 13 percent of Asian applicants. The debt-to-income ratio was cited most often as a denial reason for Asian home-purchase applicants at 27 percent, compared with 21 percent for non-Hispanic white applicants at the lower end. Finally, collateral was cited most often as a denial reason on home-purchase applications for non-Hispanic whites at 15 percent, compared with 10 percent for black applicants.

The Incidence of Higher-Priced Lending

Current price-reporting rules under HMDA, in effect since October 2009, define higher-priced first-lien loans as those with an APR of at least 1.5 percentage points above the average prime offer rate (APOR) for loans of a similar type (for example, a 30-year fixed-rate mortgage).[25] The spread for junior-lien loans must be at least 3.5 percentage points for such loans to be considered higher priced. The APOR, which is published weekly by the Federal Financial Institutions Examination Council, is an estimate of the APR on loans being offered to high-quality prime borrowers based on the contract interest rates and discount points reported by Freddie Mac in its Primary Mortgage Market Survey.[26]

[24] The Interagency Fair Lending Examination Procedures are available at www.ffiec.gov/PDF/fairlend.pdf.

[25] For more information about the rule changes related to higher-priced lending and the ways in which they affect the incidence of reported higher-priced lending over time, see Avery and others, "The 2009 HMDA Data," in note 11.

[26] See Freddie Mac, "Mortgage Rates Survey," webpage, www.freddiemac.com/pmms; and Federal Financial Institutions Examination Council, "FFIEC Rate Spread Calculator," webpage, www.ffiec.gov/ratespread/newcalc.aspx.

Table 5. Reasons for denial, by purpose of loan, 2013
Percent

Type of loan and race and ethnicity of borrower	Debt-to-income ratio	Employment history	Credit history	Collateral	Insufficient cash	Unverifiable information	Credit application incomplete	Mortgage insurance denied	Other	No reason given
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	22.1	3.7	22.9	14.1	6.3	5.9	11.2	.8	10.3	21.0
Asian	27.2	4.8	13.4	14.3	6.9	9.1	15.1	.6	12.3	15.9
Black or African American	23.9	2.7	30.0	10.3	6.8	4.8	8.1	.6	9.9	23.1
Other minority[2]	23.1	3.4	27.7	11.5	6.7	5.9	9.4	.8	9.4	22.2
Hispanic white	24.7	3.8	20.5	12.6	6.6	6.3	8.5	.6	11.0	24.5
Non-Hispanic white	21.0	3.9	22.5	15.4	6.1	5.6	11.6	.9	10.1	20.8
Conventional only										
All applicants	22.1	3.2	21.7	16.4	6.8	6.2	12.2	1.3	10.1	19.1
Asian	26.3	4.4	11.9	15.4	7.1	9.4	16.5	.8	12.6	14.9
Black or African American	22.6	2.1	36.3	12.3	7.4	4.1	7.0	1.6	9.3	20.4
Other minority[2]	22.8	2.7	30.5	12.2	7.2	5.9	8.6	1.4	8.9	21.8
Hispanic white	24.2	3.3	22.5	15.6	7.6	7.0	8.8	1.3	10.9	20.6
Non-Hispanic white	21.5	3.3	20.8	17.6	6.7	6.0	12.4	1.4	9.5	19.3
Nonconventional only[1]										
All applicants	22.1	4.4	24.3	11.4	5.6	5.4	10.0	.2	10.6	23.3
Asian	30.3	5.9	18.5	10.7	6.3	8.0	10.4	.05	11.3	19.3
Black or African American	24.6	2.9	26.6	9.2	6.4	5.1	8.7	.1	10.2	24.5
Other minority[2]	23.4	4.0	25.1	10.8	6.2	6.0	10.2	.2	9.9	22.6
Hispanic white	25.1	4.2	19.1	10.5	6.0	5.9	8.3	.1	11.0	27.1
Non-Hispanic white	20.4	4.7	24.8	12.3	5.2	5.2	10.5	.2	10.8	22.8
B. Refinance										
Conventional and nonconventional[1]										
All applicants	16.6	1.1	20.3	18.6	3.4	4.8	12.4	.2	11.5	23.1
Asian	26.0	1.8	14.5	16.3	3.5	8.2	14.2	.3	13.0	16.6
Black or African American	13.2	.6	25.8	15.6	4.4	3.7	10.7	.2	12.5	25.6
Other minority[2]	18.2	1.0	23.2	15.3	3.6	5.5	12.0	.2	13.2	21.2
Hispanic white	19.7	1.2	21.8	13.6	4.2	6.0	11.2	.2	14.0	21.6
Non-Hispanic white	16.9	1.2	18.8	20.4	3.4	4.8	12.7	.3	11.2	22.7
Conventional only										
All applicants	18.9	1.2	21.1	19.6	3.0	5.1	13.1	.3	11.3	19.7
Asian	27.4	1.9	14.5	16.8	3.3	8.4	14.5	.3	12.7	15.1
Black or African American	16.4	.6	28.5	16.4	3.5	3.7	11.6	.3	11.1	21.6
Other minority[2]	21.3	1.1	24.5	15.8	3.0	6.0	12.6	.3	12.4	17.8
Hispanic white	22.4	1.2	22.8	14.6	3.2	6.1	11.6	.3	12.8	19.6
Non-Hispanic white	18.9	1.3	19.3	21.3	3.1	5.0	13.4	.3	10.9	19.6
Nonconventional only[1]										
All applicants	7.5	.8	17.2	14.7	5.0	3.7	9.8	.04	12.7	36.6
Asian	12.1	1.2	15.4	12.1	5.6	6.3	10.8	.1	16.0	31.4
Black or African American	6.8	.5	20.5	13.8	6.3	3.6	9.1	.03	15.3	33.6
Other minority[2]	7.9	.6	18.7	13.7	5.6	3.8	10.1	.1	16.0	32.6
Hispanic white	10.3	1.0	18.2	10.4	7.7	5.5	9.7	.02	18.2	28.7
Non-Hispanic white	7.7	.9	16.1	16.1	4.7	3.7	9.9	.04	12.6	36.4

Note: Denials on first-lien mortgage applications for one- to four-family, owner-occupied, site-built homes. Columns sum to more than 100 because lenders may report up to three denial reasons. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] See table 4, note 1.

[2] See table 2, note 2.

In 2013, the fraction of home-purchase loans (again, first liens for one- to four-family, owner-occupied, site-built properties) above the higher-priced threshold increased to 7.1 percent from 3.1 percent in 2012 (as shown in table 6.A). This increase stemmed from a rise in the higher-priced share of nonconventional loans from 3 percent to nearly 14 percent

Table 6.A. Incidence of higher-priced lending, by purpose of loan, 2004–13
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	9.8	22.5	23.2	12.7	8.1	4.6	2.2	3.3	3.1	7.1
Asian	5.5	16.3	16.4	7.6	4.0	2.4	1.0	1.5	1.4	3.0
Black or African American	24.3	46.7	46.4	27.6	14.5	7.1	3.0	5.0	5.3	14.2
Other minority[2]	14.4	30.3	30.7	16.1	9.1	5.3	2.3	3.5	3.4	8.7
Hispanic white	17.5	42.0	43.3	25.9	15.8	8.1	3.9	6.1	5.9	16.8
Non-Hispanic white	7.8	15.5	16.0	9.6	7.2	4.3	2.2	3.1	2.9	6.1
Conventional only										
All applicants	11.0	24.5	25.3	14.0	7.3	4.6	3.3	3.8	3.2	2.9
Asian	5.6	16.6	16.7	7.7	3.3	1.9	1.0	1.3	1.2	1.1
Black or African American	30.6	54.1	53.4	34.0	17.4	8.7	6.1	8.0	6.7	6.1
Other minority[2]	16.1	33.3	33.6	18.5	9.5	6.7	4.6	5.5	5.1	4.9
Hispanic white	20.0	45.3	46.3	28.9	17.7	11.0	9.6	10.7	8.7	7.3
Non-Hispanic white	8.6	16.9	17.5	10.5	6.5	4.8	3.4	3.9	3.2	2.9
Nonconventional only[1]										
All applicants	1.2	.9	1.8	3.0	9.5	4.6	1.3	2.7	3.0	13.8
Asian	2.4	.6	.8	1.3	8.2	3.9	.8	2.0	1.9	13.1
Black or African American	1.4	1.6	2.5	4.5	12.8	6.8	2.4	4.3	4.9	17.6
Other minority[2]	4.4	.7	2.1	2.4	8.8	4.7	1.2	2.5	2.4	11.7
Hispanic white	2.0	1.4	3.5	4.5	14.0	7.1	2.2	4.5	4.7	22.4
Non-Hispanic white	1.0	.7	1.5	2.5	8.4	3.9	1.0	2.3	2.5	12.0
B. Refinance										
Conventional and nonconventional[1]										
All applicants	14.5	25.0	30.3	21.0	10.9	3.8	1.8	2.1	1.5	1.9
Asian	5.8	15.1	19.5	12.5	3.1	.9	.4	.5	.4	.5
Black or African American	30.0	46.2	50.7	38.1	22.8	9.0	6.5	6.8	4.1	3.8
Other minority[2]	17.6	26.9	32.3	23.8	13.9	4.7	2.6	2.6	2.0	2.2
Hispanic white	18.2	32.6	36.9	26.5	15.1	7.0	4.4	4.4	2.6	3.1
Non-Hispanic white	12.3	20.4	25.0	17.6	10.2	3.7	1.8	2.2	1.5	2.0
Conventional only										
All applicants	15.2	25.7	31.0	21.8	10.4	3.1	1.3	1.5	1.2	1.5
Asian	5.8	15.2	19.6	12.5	2.9	.7	.2	.3	.3	.3
Black or African American	33.7	49.0	52.8	41.5	27.6	9.9	4.0	4.2	2.9	3.3
Other minority[2]	18.2	27.7	32.9	24.5	14.7	4.8	1.9	2.2	1.7	2.0
Hispanic white	19.2	33.4	37.5	27.3	16.0	7.2	3.3	3.3	2.3	2.4
Non-Hispanic white	12.8	20.9	25.6	18.2	9.8	3.1	1.3	1.6	1.2	1.6
Nonconventional only[1]										
All applicants	1.5	.9	3.1	6.6	13.2	6.7	4.9	5.9	3.2	3.9
Asian	3.6	2.1	2.5	4.9	8.9	4.8	3.1	4.0	1.8	2.6
Black or African American	1.0	1.2	4.1	7.8	15.2	8.2	9.8	10.9	6.0	4.6
Other minority[2]	8.1	3.9	9.6	9.9	10.5	4.5	4.6	4.3	2.9	2.9
Hispanic white	2.0	.9	2.6	6.2	11.6	6.6	7.3	7.9	3.6	5.1
Non-Hispanic white	1.3	.7	2.8	6.0	12.1	6.5	4.6	5.9	3.3	4.2

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] See table 4, note 1.

[2] See table 2, note 2.

(the higher-priced share of conventional loans declined slightly). More specifically, the higher-priced fraction of FHA home-purchase loans spiked from about 5 percent in early 2013 to about 40 percent after May 2013, with an overall average incidence for the year

Table 6.B. Adjusted incidence of higher-priced lending, by purpose of loan, 2004–13
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	7.4	18.3	17.1	6.3	1.3	2.4	.6	.8	.8	.7
Asian	3.8	13.0	11.4	3.1	.5	1.2	.3	.3	.3	.3
Black or African American	19.3	40.3	38.5	16.7	1.9	3.5	.6	.7	.9	1.1
Other minority[2]	10.5	24.7	22.7	8.0	1.5	3.0	.8	.9	1.1	.9
Hispanic white	12.3	34.5	32.8	13.0	2.1	4.0	1.0	1.3	1.6	1.6
Non-Hispanic white	5.8	12.1	10.9	4.3	1.3	2.3	.7	.8	.8	.7
Conventional only										
All applicants	8.2	20.0	18.7	7.1	1.9	3.1	1.3	1.4	1.2	.9
Asian	3.8	13.3	11.6	3.2	.5	1.0	.3	.4	.4	.3
Black or African American	24.4	46.9	44.5	21.2	4.7	5.8	2.6	2.6	2.7	1.8
Other minority[2]	11.6	27.2	25.0	9.3	2.7	4.9	2.3	2.5	2.6	1.7
Hispanic white	14.0	37.2	35.2	14.8	3.9	6.9	3.9	4.1	4.5	2.8
Non-Hispanic white	6.5	13.2	12.0	4.9	1.9	3.2	1.3	1.5	1.2	.8
Nonconventional only[1]										
All applicants	.9	.3	.2	.3	.4	1.8	.1	.2	.3	.5
Asian	2.2	.3	.1	.2	.2	1.6	.1	.2	.2	.3
Black or African American	1.0	.5	.3	.6	.4	3.0	.2	.3	.3	.8
Other minority[2]	3.9	.3	.2	.2	.3	2.1	.1	.1	.2	.3
Hispanic white	1.6	.3	.3	.2	.5	3.1	.1	.3	.3	.8
Non-Hispanic white	.8	.2	.2	.2	.3	1.5	.1	.2	.3	.5
B. Refinance										
Conventional and nonconventional[1]										
All applicants	11.3	20.1	21.3	12.7	4.3	2.0	.6	.8	.7	.7
Asian	4.1	12.2	12.1	5.4	.8	.4	.1	.2	.1	.1
Black or African American	24.3	38.5	39.0	26.4	10.6	5.3	2.6	3.3	2.5	1.6
Other minority[2]	13.2	22.0	22.3	14.5	7.1	3.0	.9	1.1	1.1	.8
Hispanic white	13.4	27.0	25.8	14.8	5.6	3.8	1.8	1.8	1.1	.9
Non-Hispanic white	9.5	15.9	16.9	10.3	4.1	2.0	.6	.8	.7	.7
Conventional only										
All applicants	11.8	20.7	21.9	13.3	5.1	1.9	.5	.6	.4	.4
Asian	4.1	12.3	12.1	5.4	.9	.3	.1	.1	.0	.0
Black or African American	27.3	40.8	40.7	29.4	17.1	7.5	2.0	1.8	1.0	1.0
Other minority[2]	13.6	22.6	22.7	14.9	8.3	3.4	.9	.9	.7	.7
Hispanic white	14.1	27.7	26.2	15.4	6.9	4.5	1.4	1.3	.8	.7
Non-Hispanic white	9.9	16.3	17.3	10.9	4.8	1.9	.5	.6	.4	.5
Nonconventional only[1]										
All applicants	1.0	.6	.7	.5	.4	2.6	1.2	2.5	2.3	1.8
Asian	2.9	1.8	1.3	1.4	.5	1.6	.5	1.5	1.4	1.1
Black or African American	.6	.8	1.2	.6	.5	3.5	3.5	5.9	4.9	2.6
Other minority[2]	6.3	3.4	7.8	6.3	1.9	1.9	1.1	2.0	2.2	1.3
Hispanic white	1.4	.4	.3	.6	.7	2.7	2.8	3.5	1.9	1.3
Non-Hispanic white	.8	.4	.4	.3	.4	2.4	1.0	2.4	2.5	2.1

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1. See text for details on how adjusted incidences are calculated.

[1] See table 4, note 1.

[2] See table 2, note 2.

of about 22 percent (table 7).[27] In contrast, less than 1 percent of VA and FSA/RHS loans were higher priced in 2013. The rise in higher-priced FHA lending reflects, at least in part,

[27] Lenders report the date on which they took action on an application, although this information is not released in the public HMDA data files. For originations, the "action date" is the closing date or date of origination for the loan. This date is used to compile data at the monthly level.

Table 7. Distribution of price spread, 2013
Percent except as noted

Purpose and type of loan	Total number	Number	Loans with APOR spread above the threshold[1]						
			Percent	Distribution, by percentage points of APOR spread					
				1.5–1.99	2–2.49	2.5–2.99	3–3.99	4–4.99	5 or more
Site-built homes									
Home purchase									
Conventional	1,622,487	47,481	2.9	49.8	20.8	11.6	10.6	3.8	3.3
FHA[2]	622,826	135,429	21.7	75.6	20.6	2.9	.8	.05	.02
VA/RHS/FSA[3]	370,117	1,741	.5	76.6	19.0	1.7	1.3	1.0	.4
Refinance									
Conventional	3,627,767	55,700	1.5	53.0	19.4	9.9	10.8	4.2	2.7
FHA[2]	435,666	27,064	6.2	41.6	10.6	10.7	33.2	3.7	.3
VA/RHS/FSA[3]	277,397	1,101	.4	94.1	3.6	.5	1.0	.4	.4
Manufactured homes									
Home purchase									
Conventional	50,855	34,934	68.7	5.1	5.6	5.5	14.0	14.0	55.8
FHA[2]	11,003	4,308	39.2	52.8	24.6	6.9	6.1	9.3	.3
VA/RHS/FSA[3]	3,052	30	1.0	76.7	13.3	6.7	0	3.3	0
Refinance									
Conventional	32,322	8,309	25.7	22.2	14.0	12.0	20.8	12.8	18.2
FHA[2]	9,117	832	9.1	54.0	10.3	4.9	25.0	5.5	.2
VA/RHS/FSA[3]	2,567	17	.7	94.1	0	5.9	0	0	0

Note: First-lien mortgages for one- to four-family owner-occupied homes.

[1] Average prime offer rate (APOR) spread is the difference between the annual percentage rate on the loan and the APOR for loans of a similar type published weekly by the Federal Financial Institutions Examination Council. The threshold for first-lien loans is a spread of 1.5 percentage points.

[2] Loans insured by the Federal Housing Administration.

[3] Loans backed by guarantees from the U.S. Department of Veterans Affairs, the Rural Housing Service, or the Farm Service Agency.

the slight increase in the FHA annual MIP in April 2013 (on top of increases in 2010, 2011, and 2012), in addition to the FHA's lengthening the period over which the annual MIP is required to be paid beginning in June 2013.[28] For example, on a 30-year loan with an initial LTV over 90 percent (the vast majority of FHA loans), the annual MIP is now required to be paid over the life of the loan (as discussed earlier), whereas the previous policy was to automatically cancel premium payments once the LTV reached 78 percent.[29] These changes appear to have pushed many FHA home-purchase loans just over the reporting threshold; as shown in table 7, over 75 percent of higher-priced FHA home-purchase loans were within 0.5 percentage point of the higher-priced threshold.

There was little increase in the higher-priced fraction of refinance mortgages (as shown in table 6.A). In contrast to nonconventional home-purchase loans, the higher-priced share of nonconventional refinance loans increased only slightly. Perhaps an important factor here is that, in 2012, the FHA reduced the annual MIP on streamline refinances of FHA loans endorsed before June 2009 to 0.55 percent.[30]

[28] As shown in table 7, almost no VA or FSA/RHS loans were higher priced in 2013.

[29] While lengthening the term over which the MIP must be paid does not affect the monthly cost a borrower faces initially, it does change the potential lifetime cost of the loan and thus the APR. The ultimate cost of the loan will depend on how long the borrower holds the loan. If borrowers end up holding these loans even after the LTV drops below 78 percent, the loans will prove to be more expensive than in the absence of the policy change.

[30] See U.S. Department of Housing and Urban Development (2012), "FHA Announces Price Cuts to Encourage Streamline Refinancing," press release, March 6, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-045.

Table 6.A also shows that, in 2013, black and Hispanic-white borrowers had the highest incidences of higher-priced loans within both the conventional and nonconventional loan types. Table 6.A provides the raw rates of higher-priced lending by group from 2004 to 2013, but, as discussed in detail in previous *Bulletin* articles on the HMDA data, the raw rates reported in the public HMDA data can be difficult to compare over time for two main reasons. First, a different price-reporting rule was in place prior to October 2009. And, second, the previous price-reporting rule created unintended distortions in reporting over time (which is why the reporting rule was changed).

Under the previous rule, lenders were required to compare the APR on a mortgage with the yield on a Treasury security with a comparable term to maturity to determine whether the loan should be considered higher priced. If the difference exceeded 3 percentage points for a first-lien loan or 5 percentage points for a junior-lien loan, the loan was classified as higher priced and the rate spread (the amount of the difference) was reported. Unfortunately, using comparable-term Treasury securities as the benchmark rate generated differences over time in the incidence of reported higher-priced lending that were independent of changes in the supply of and demand for riskier mortgage loans.

One effect of the old pricing rule is that, in periods when the yield curve is steep (that is, when shorter-term Treasury rates are significantly lower than longer-term Treasury rates), a loan would be less likely to be reported as higher priced than in periods when the yield curve is flat, all else being equal. Since most mortgages prepay well before the stated term of the loan, lenders typically use relatively shorter-term interest rates when setting the price of mortgage loans. For example, lenders often price 30-year fixed-rate mortgages based on the yields on securities with maturities of 10 years or less. As such, when shorter-term Treasury rates fall relative to longer-term rates, mortgage rates get pulled down relative to longer-term Treasury rates, essentially raising the bar for a mortgage to be classified as higher priced. While the current reporting rule defines higher-priced loans as those with a spread over the prime mortgage rate, or APOR, of at least 1.5 percentage points, in 2004, when the yield curve was relatively steep, a 30-year fixed-rate mortgage's spread over the APOR would have had to have been about 2.2 percentage points over the APOR to meet the threshold of 300 basis points over the Treasury rate. A similar steepening of the yield curve affected reported higher-priced lending during 2009 prior to the rule change.

A second effect of tying the higher-priced definition to Treasury rates is that, when there is a "flight to quality," such as during the financial crisis, investors flock to the safest securities, such as Treasury securities, increasing the spread between Treasury securities and other instruments, including prime mortgages.[31] In contrast to the first effect, this flight-to-quality effect lowers the bar for a loan to be reported as higher priced. At some points in the latter half of 2008, 30-year fixed-rate mortgages with spreads over the APOR of just 1 percentage point would have been reported as higher priced.

Table 6.B provides adjusted rates of higher-priced lending intended to be more comparable over time. Using the dates of application and origination (which are not released in the public HMDA data files), we can estimate the APR of loans that were originated under the old pricing rule. This estimated APR can then be compared with the APOR instead of with Treasury rates, as is done under the new price-reporting rule. Finally, because the implied threshold spread over the APOR during the previous reporting regime got to as high as about 2.5 percentage points, table 6.B reports the fraction of loans with an estimated APR

[31] When the demand for a fixed-income security such as a Treasury bond increases, the price of the bond rises and its yield falls. When investors' demand for Treasury securities rises more than their demand for mortgage securities, the interest rate on Treasury securities falls relative to the interest rate on mortgages, thus increasing the spread between the two.

spread over the APOR (or the actual reported spread for loans made under the new rules) of at least 2.5 percentage points.[32]

Because of the higher adjusted threshold imposed, the frequencies of higher-priced mortgage lending reported in table 6.B are significantly lower than those in table 6.A, but they should be more comparable over time. The rates in table 6.B may also provide a better sense of the extent of subprime lending, rather than a combination of subprime and near-prime lending, since the threshold is 2.5 percentage points over the APOR rather than 1.5 percentage points. Notably, table 6.B suggests that, by 2008, there was very little subprime lending. In addition, whereas table 6.A indicates that the rate of higher-priced lending in 2013 had risen from 2012 and was almost one-third the rate in 2006, table 6.B shows that the adjusted rate in 2013 was slightly lower than in 2012 and was less than one-twentieth what it was in 2006. Finally, in 2013, the differences across racial and ethnic groups are more muted than in table 6.A: Almost no borrowers, regardless of race or ethnicity, got loans with a spread over the APOR in excess of 2.5 percentage points, in stark contrast to the patterns during the height of the housing boom in 2005 and 2006.

One shortcoming of this adjustment technique is that we assume all loans are 30-year fixed-rate mortgages because the HMDA data do not provide information on the term or rate structure. Perhaps the most significant implication of this assumption is that, despite our adjustments, the extent of higher-priced lending in 2004 relative to other years is understated (alternatively, the growth in higher-priced lending between 2004 and 2005 is still overstated despite our adjustments). During the housing boom, adjustable-rate mortgages were quite prevalent, and the APRs on such loans are tied to even shorter-term Treasury rates than fixed-rate mortgages. Thus, when the yield curve is relatively steep, as in 2004, the bar for adjustable-rate mortgages to be reported as higher priced would have been even higher than for fixed-rate mortgages.

Analyzing the Incidence of Higher-Priced Lending Using Credit Bureau Data

Next, we present the results from an analysis using an enhanced HMDA data set in which first-lien home-purchase and refinance mortgages for owner-occupied site-built properties reported in the HMDA data have been matched to borrowers' consumer credit record information.[33] As shown in tables 6.A and 6.B, the HMDA data exhibit persistent differences in the incidence of higher-priced lending across racial and ethnic lines. At the height of the housing boom in 2006, when higher-priced lending was far more prevalent than it is today, over 53 percent of conventional home-purchase loans to black borrowers and over 46 percent of such loans to Hispanic white borrowers were higher priced, compared with less than 18 percent for white borrowers (as shown in table 6.A).

It is unclear whether, or to what extent, these differences are due to discrimination, borrower risk characteristics, or other factors. Because the information on borrower and loan characteristics in the HMDA data is limited, one cannot explain the observed disparities with the HMDA data alone. The matched data allow us to account for borrowers' credit risk scores, which are an important determinant of the interest rate lenders set on a loan. As discussed in more detail in the next subsections, the matched data reveal significant differences in risk scores across racial and ethnic groups. Moreover, these differences help

[32] For a more detailed discussion of this adjustment technique, see Avery and others, "The 2009 HMDA Data," in note 11.

[33] For further information about credit records, see Robert B. Avery, Paul S. Calem, Glenn B. Canner, and Raphael W. Bostic (2003), "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, vol. 89 (February), pp. 47–73, www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf.

explain much (but not all) of the difference in the incidence of higher-priced lending across groups.

Unfortunately, the matched data set does not include all of the characteristics of the borrower and loan that banks consider when pricing a loan, and these unobserved characteristics could be driving the remaining difference in higher-priced lending.[34] Therefore, although differences in higher-priced lending by race and ethnicity remain after controlling for risk scores, one cannot conclude that they are evidence of discrimination.

Description of the Matched HMDA–Credit Record Data

The credit records available for matching come from the Federal Reserve Bank of New York Consumer Credit Panel/Equifax data (CCP).[35] The CCP is a 5 percent, nationally representative sample of all individuals with a credit record and a valid Social Security number. The CCP is a quarterly panel, tracking the same individuals over time and providing detailed information on the evolution of individuals' debt holdings and payment history.[36] The CCP also provides a credit risk score—the Equifax Risk Score—which is updated each quarter.[37] In this analysis, we use risk scores one quarter prior to the quarter of mortgage origination.

Neither the HMDA data nor the credit record data include personal identifying information, but borrowers in the two data sets can be matched based on the mortgage loan information common to both data sets.[38] For this article, we present results from the matched 2006 HMDA loan records, reflecting lending activity at the height of the most recent housing boom and when higher-priced lending was prevalent. Because of tightened credit and the rarity of higher-priced lending in recent years regardless of race or ethnicity (as shown, in particular, in table 6.B), there simply are no sizable pricing differences observed in the HMDA data, as there were during the housing boom, to explain. Moreover, the subsequent housing market crash has drawn increased scrutiny to lender behavior during this period.

Because the credit record data are a 5 percent sample of the full population, only a small fraction of HMDA loan records will be represented in the CCP. That said, because the HMDA data consist of several million loan records, the resulting matched data set is still quite large. For reasons discussed in the 2013 *Bulletin* article on the HMDA data, we

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[34] Other researchers have found a similar black–white difference in the selection into the subprime lending market after controlling for a richer set of borrower characteristics, including the LTV ratio and the full documentation status of the application. See, for example, Marsha J. Courchane (2007), "The Pricing of Home Mortgage Loans to Minority Borrowers: How Much of the APR Differential Can We Explain?" *Journal of Real Estate Research,* vol. 29 (October–December), pp. 399–439; and Marvin M. Smith and Christy Chung Hevener (2014), "Subprime Lending over Time: The Role of Race," *Journal of Economics and Finance*, vol. 38 (April), pp. 321–44.

[35] For further details, see Donghoon Lee and Wilbert van der Klaauw (2010), "An Introduction to the FRBNY Consumer Credit Panel," Federal Reserve Bank of New York Staff Reports 479 (New York: Federal Reserve Bank of New York, November), www.newyorkfed.org/research/staff_reports/sr479.html.

[36] The sampling approach is designed to generate the same entry and exit behavior as is present in the population, with young individuals and immigrants entering the sample and deceased individuals and emigrants leaving the sample each quarter at the same rate as in the U.S. population, such that each quarterly snapshot continues to be nationally representative.

[37] The credit score included in the CCP is generated from the Equifax Risk Score 3.0 model. This credit score is generated from a general-purpose risk model that predicts the likelihood an individual will become 90 days or more delinquent on any account within 24 months after the score is calculated. The Equifax Risk Score 3.0 ranges from 280 to 850, with a higher score corresponding to lower relative risk (for more information, see www.equifax.com). Although a given lender may have used a different score in underwriting a loan, it is likely that the scores used here are highly correlated with the scores used in underwriting.

[38] We direct readers interested in the details of the matching process to Bhutta and Canner, "Mortgage Market Conditions and Borrower Outcomes," in note 7 (see especially appendix B, "Matching HMDA Records with Credit Bureau Records").

Table 8. Credit risk score distribution, by race and ethnicity, 2006
Percent except as noted

Measure of credit risk	Asian	Black or African American	Other minority[1]	White		Memo: Total observations
				Hispanic	Non-Hispanic	
Equifax Risk Score range						
500 or less	.2	2.9	1.0	.9	.5	811
501–550	.7	9.3	1.8	3.6	1.8	2,716
551–600	3.3	22.4	11.1	11.9	6.0	8,225
601–650	9.0	22.2	17.1	21.1	10.8	13,613
651–700	18.8	17.3	20.6	24.6	16.8	19,480
701–750	28.6	14.6	26.2	22.2	24.5	27,122
751 or more	39.3	11.4	22.3	15.7	39.7	43,590
All	100	100	100	100	100	115,557
Memo: Average risk score	718	635	680	668	702	…

Note: Conventional first-lien home-purchase mortgages for owner-occupied, one- to four-family, site-built homes. Distributions may not sum to 100 because of rounding. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.
[1] See table 2, note 2.
... Not applicable.
Source: FFIEC HMDA data matched to FRBNY Consumer Credit Panel/Equifax data.

attempted to match only those mortgages for owner-occupied properties in metropolitan statistical areas.[39] Of such loans, we matched about 300,000 in 2006. A comparison of the characteristics of the matched loans with the characteristics of the full HMDA data set indicates that the matched loans provide a good representation of all HMDA records targeted for matching.

Credit Scores and the Racial and Ethnic Disparity in Higher-Priced Lending

Credit risk scores are a summary metric of the relative credit risk posed by current and prospective borrowers. Generic risk scores (sometimes referred to as bureau or credit history scores) are derived using credit records to predict the likelihood of default based on individuals' past experiences. Lower scores indicate a greater credit risk. Lenders consider such scores when underwriting loans, and borrowers with poor credit, all else being equal, are likely to be charged higher prices. To the extent that credit scores differ significantly across groups, that could help explain differences in mortgage pricing.

Black and Hispanic-white borrowers, the two groups with the highest incidences of loans priced above the reporting threshold in 2006, also had the lowest group-average credit scores of 635 and 668, respectively (table 8). While about two-thirds of non-Hispanic white borrowers had scores over 700, only about 26 percent of black borrowers and 38 percent of Hispanic white borrowers had such scores. At the same time, over one-third of black borrowers and about 16 percent of Hispanic white borrowers had credit scores below 600, compared with less than 9 percent of non-Hispanic white borrowers and less than 5 percent of Asian borrowers.

Next, we show the frequencies of higher-priced lending by race and ethnic group, broken into "bins" by risk score (table 9). The third row from the bottom shows the raw difference in the incidence of higher-priced lending for each group.[40] The second-to-last row presents

[39] The reasons are discussed in Bhutta and Canner, "Mortgage Market Conditions and Borrower Outcomes," in note 7.
[40] These differences are similar, but not identical, to those shown in table 6.A. The differences are attributable to the matched data set not being perfectly representative of the HMDA data.

Table 9. Incidence of higher-priced lending, by race, ethnicity, and credit risk score, 2006
Percent

Measure of credit risk and of difference in higher-priced lending	Asian	Black or African American	Other minority[1]	White		All
				Hispanic	Non-Hispanic	
Equifax Risk Score range						
500 or less	84.6	88.2	73.3	81.0	73.1	79.2
501–550	53.7	83.8	75.9	78.3	75.5	78.6
551–600	53.4	74.9	58.0	74.7	63.2	68.3
601–650	39.0	54.8	39.3	59.9	36.6	44.0
651–700	14.1	29.0	19.1	38.0	14.3	19.4
701–750	5.0	17.0	12.8	20.9	5.6	7.9
751 or more	2.3	12.7	8.8	16.3	2.5	3.4
All	10.8	48.3	25.1	41.8	14.3	20.3
Difference in incidence of higher-priced lending relative to non-Hispanic white						
Raw difference	-3.5	34.1	10.8	27.5	0	…
Adjusted for HMDA controls	-1.7	31.6	12.4	24.3	0	…
Adjusted for HMDA controls and Equifax Risk Score	-1.3	14.1	4.7	15.9	0	…

Note: Conventional first-lien home-purchase mortgages for owner-occupied, one- to four-family, site-built homes. Distributions may not sum to 100 because of rounding. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.
[1] See table 2, note 2.
… Not applicable.
Source: FFIEC HMDA data matched to FRBNY Consumer Credit Panel/Equifax data.

the estimated difference in the incidence after controlling only for the variables available in the HMDA data.[41] As noted earlier, controlling for HMDA variables such as income does little to reduce the disparities.

The final row contains estimates of the differences after controlling for borrowers' risk scores. Accounting for risk scores significantly reduces the discrepancies in higher-priced lending, which can also be seen in the top part of the table. Within any given score category, differences in the incidence of higher-priced lending are smaller than the overall difference. For example, within the highest score group (751 or more), the difference in the incidence of higher-priced lending between black and non-Hispanic-white borrowers is about 10 percentage points rather than 35 percentage points.

Still, the remaining discrepancies are not immaterial. It is important to recognize that the matched data do not contain all of the information lenders might take into account when making the loan pricing decision, such as the LTV ratio, employment history, other assets, and the level of income and asset documentation. Lacking LTV data may be particularly problematic, as such data are a key measure of default risk as well as of the loss the lender would incur in the event of default—a higher LTV ratio means less collateral for a given loan amount.

Risk factors like LTV ratios are likely correlated with both minority status and credit score. Table 9 could be overstating the true effect of race, ethnicity, and credit score on higher-priced lending if these variables are acting as proxies for other risk factors we do not

[41] We run standard multivariate linear regressions in order to control for other factors that might be correlated with race and the likelihood of getting a higher-priced loan. The HMDA controls include indicator variables for various borrower groups defined by income, loan amount, presence of a co-applicant, month of origination, and local metropolitan statistical area. This procedure is similar to that used in Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner (2007), "The 2006 HMDA Data," *Federal Reserve Bulletin*, vol. 93 (December), pp. A73–A109, www.federalreserve.gov/pubs/bulletin/2007/07index.htm.

Table 10. Incidence of loans 60 days delinquent within two years of origination, 2006
Percent

Measure of credit risk and of difference in delinquency	Asian	Black or African American	Other minority[1]	White		All
				Hispanic	Non-Hispanic	
Equifax Risk Score range						
500 or less	53.9	61.0	33.3	44.4	35.7	45.6
501–550	33.3	51.5	58.6	47.9	38.9	44.1
551–600	25.5	39.2	34.7	38.6	29.9	33.7
601–650	17.8	26.5	25.6	32.3	16.1	20.6
651–700	8.8	12.3	16.0	21.6	6.7	9.6
701–750	3.3	5.6	9.7	13.5	2.6	4.0
751 or more	1.3	2.5	3.7	6.0	.6	.9
All	5.9	24.8	16.3	23.0	6.4	9.9
Difference in incidence of 60-day delinquency relative to non-Hispanic white						
Raw difference	-.6	18.3	9.9	16.5	0	…
Adjusted for HMDA controls	-.6	18.0	7.5	14.0	0	…
Adjusted for HMDA controls and Equifax Risk Score	-.4	8.1	4.1	9.2	0	…

Note: Conventional first-lien home-purchase mortgages for owner-occupied, one- to four-family, site-built homes. Distributions may not sum to 100 because of rounding. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] See table 2, note 2.

… Not applicable.

Source: FFIEC HMDA data matched to FRBNY Consumer Credit Panel/Equifax data.

observe. A more technical treatment attempting to further explain the racial and ethnic disparities in higher-priced lending using additional information from the credit record data—including measures of back-end payment-to-income ratios and variables that might be correlated with having a high LTV ratio, such as first-time homebuyer status—is available in appendix B. These additional controls do little to reduce the differences, however.

Differences in Delinquency across Groups

As suggested earlier, lenders use information other than risk scores to assess a borrower's risk of default. To the extent that these other measures of risk differ by race and ethnicity, the residual incidence of higher-priced lending by group could be a function of each group's residual riskiness (that is, risk unexplained by credit risk scores). The credit record data allow us to construct an array of loan performance measures. One widely used metric of performance, which we investigate here, is the share of mortgage borrowers whose payments fell behind 60 days or more at any point within two years of taking out their loans in 2006.

We present the likelihood of 60-day delinquency within two years of origination, by credit score bins and by race and ethnicity (table 10). Black and Hispanic-white borrowers were more likely to become delinquent than non-Hispanic whites, conditional on their risk scores and other variables available from the HMDA data, including metropolitan statistical area. A possible explanation for the remaining differences in higher-priced lending, then, is that risk factors (such as LTV ratio, employment history, other available assets, and so on) differ across groups even after controlling for score. The remaining disparities in loan pricing found in table 9 could be a reflection of the distribution of these other factors.

Other explanations fit the data as well, however. Some lenders could be unfairly charging minorities more than similar non-Hispanic white borrowers, and, faced with the burden of

higher monthly payments, minorities would then be more likely to default. Essentially, the price difference could be contributing to the delinquency difference.

Note that even if the differences in delinquency explain the differences in pricing, such data cannot rule out the possibility of "statistical discrimination." Risk factors that lenders do not observe could be distributed disproportionately across groups or by neighborhood demographics. Some lenders might use race and ethnicity as risk proxies and charge minorities higher prices as a result. This kind of (illegal) discrimination can be difficult to differentiate from (legal) pricing on the observed risk characteristics if the information lenders use in setting rates is not precisely known.

Finally, readers should keep in mind that these realized delinquency rates come from the period from 2006 through 2008, when default rates were much higher than historical averages. Therefore, they are not necessarily an accurate representation of the delinquencies lenders anticipated when the loans were originated.

Lending Institutions

In 2013, there were 7,190 reporting institutions: 4,216 banks and thrifts (hereafter, banks), 127 subsidiaries of banks or bank holding companies, 2,015 credit unions, and 832 independent mortgage companies (table 11). Banks accounted for over one-half of all reported mortgage originations, and independent mortgage companies accounted for about one-third. One of the biggest changes in the institutional landscape since the height of the housing boom in 2006 is the decline in originations by mortgage company subsidiaries of banks. In 2006, subsidiaries accounted for over 21 percent of originations; in 2013, they accounted for less than 6 percent.

Many reporting institutions are small. Over one-third of institutions (2,615 out of 7,190) reported fewer than 100 mortgage originations in 2013, accounting for only about 111,000 originations, or 1.3 percent of all originations. Over 10 percent of institutions originated fewer than 25 loans, accounting for about one-tenth of 1 percent of all originations.

Table 11 also reports various characteristics of first-lien home-purchase and refinance lending for one- to four-family, owner-occupied, site-built properties by each type of lending institution. The table documents some degree of variation in lending patterns in 2013 by lender type. For example, bank originations were significantly more skewed toward refinancings compared with originations by independent mortgage companies. In addition, for both home-purchase and refinance lending, a larger share of bank originations was conventional compared with originations by independent mortgage companies. The vast majority of loans by credit unions were conventional.

There were also significant differences in the propensity to originate and then sell loans.[42] Banks reported selling about three-fourths of their home-purchase originations and 80 percent of their refinance originations, whereas independent mortgage companies sold nearly all of the loans they originated. Credit unions were the least likely to sell the loans they originated.

[42] Under HMDA, lenders report whether a loan they originated was also sold within the calendar year and some information regarding the institution to which it was sold (for example, Fannie Mae, Freddie Mac, Ginnie Mae, a bank, a life insurance company, and so on; see appendix A for a full list). Because lenders report a loan as sold only if the sale occurs within the same year as origination, the incidence of loan sales tends to decline for loans originated toward the end of the year. For that reason, in tables 11 and 12, we report the incidence of loan sales only for loans originated within the first three quarters of the year.

Table 11. Lending activity, by type of institution, 2013
Percent except as noted

Institutions and type of activity	Type of institution				
	Bank	Bank subsidiary	Credit union	Independent mortgage company	All
Number of institutions	4,216	127	2,015	832	7,190
Applications (thousands)	7,354	780	993	4,860	13,987
Originations (thousands)	4,731	490	611	2,876	8,707
Purchases (thousands)	1,967	397	18	413	2,794
Number of institutions with fewer than 100 loans	1,654	26	874	61	2,615
Originations (thousands)	72.0	.9	36.1	2.4	111.4
Number of institutions with fewer than 25 loans	523	10	296	20	849
Originations (thousands)	6.4	.1	3.6	.2	10.3
Home-purchase loans (thousands)[1]	1,152	198	127	1,138	2,615
Conventional	72.0	58.5	91.3	49.3	62.0
Higher-priced share of conventional loans	3.7	1.2	3.9	1.9	2.9
LMI borrower[2]	26.0	30.6	28.8	30.5	28.4
LMI neighborhood[3]	11.6	11.9	12.5	14.0	12.7
Non-Hispanic white[4]	72.5	72.4	74.2	67.0	70.2
Minority borrower[4]	16.3	16.5	11.8	21.7	18.5
Within CRA assessment area[5]	67.0	39.1	…	…	…
Sold[6]	74.1	98.2	55.4	97.6	85.2
Refinance loans (thousands)[1]	2,438	227	311	1,364	4,341
Conventional	87.7	78.7	98.8	73.5	83.6
Higher-priced share of conventional loans	1.6	.6	2.5	1.3	1.5
LMI borrower[2]	22.1	19.1	24.2	19.1	21.1
LMI neighborhood[3]	11.9	10.8	12.4	12.6	12.1
Non-Hispanic white[4]	71.5	71.0	74.6	67.5	70.5
Minority borrower[4]	14.6	13.9	10.9	16.3	14.9
Within CRA assessment area[5]	67.8	45.1	…	…	…
Sold[6]	79.0	98.3	44.1	98.1	83.4

[1] First-lien mortgages for one-to-four family, owner-occupied, site-built homes.
[2] See table 2, note 3.
[3] See table 2, note 4.
[4] See table 2, note 1. "Minority borrower" refers to nonwhite (excluding joint or missing) or Hispanic-white applicants.
[5] Loans originated by banking institutions within their Community Reinvestment Act (CRA) assessment areas, which are defined for this analysis as the counties where the bank has at least one branch office. For subsidiaries, assessment areas are defined as the counties with at least one branch of any bank within the same banking organization.
[6] Excludes originations made in the last quarter of the year because the incidence of loan sales tends to decline for loans originated toward the end of the year, as lenders report a loan as sold only if the sale occurs within the same year as origination.
… Not applicable.

Finally, there are also differences across institution types in the composition of their borrowers. For example, nearly 22 percent of home-purchase borrowers at independent mortgage companies were minorities, compared with just 12 percent of the borrowers at credit unions.

The next table lists the top 25 reporting institutions according to their total number of originations, along with most of the lending characteristics listed in table 11 (table 12). Wells Fargo reported the most originations, with over 800,000. The next-highest total was for JPMorgan Chase, followed by Quicken Loans and Bank of America. Overall, the top 25 lenders accounted for about 41 percent of all loan originations in 2013. They also pur-

Table 12. Top 25 respondents in terms of total originations, 2013
Percent except as noted

Respondent	Total originations (thousands)	Total purchases (thousands)	Home-purchase loans[1]							
			Number (thousands)	Conventional	Higher priced[2]	LMI borrower[3]	LMI neighborhood[4]	Non-Hispanic white[5]	Minority borrower[5]	Sold[6]
Wells Fargo Bank, NA	819	842	188	71.4	.1	21.3	11.1	69.6	20.2	83.2
JPMorgan Chase Bank, NA	426	426	59	72.5	.5	25.4	12.3	63.7	24.8	79.1
Quicken Loans, Inc.	376	0	30	56.0	2.7	25.2	12.2	61.7	12.9	100.0
Bank of America, NA	359	117	40	77.4	.1	21.5	11.8	59.5	25.1	55.0
Citibank, NA	232	104	19	93.7	.0	13.7	12.3	46.8	25.6	63.6
U.S. Bank, NA	178	166	32	75.1	.6	28.4	11.1	75.5	11.1	79.4
PNC Bank, NA	118	1	20	66.0	.0	33.9	13.3	63.8	14.7	90.5
Flagstar Bank, FSB	114	42	38	57.9	1.3	26.1	11.7	66.6	26.0	99.6
Nationstar Mortgage	98	26	9	53.9	.1	25.3	14.4	57.1	33.1	98.5
SunTrust Mortgage, Inc.	85	42	18	84.2	.0	19.4	8.8	66.1	16.8	98.7
Branch Banking and Trust Co.	84	95	25	68.5	2.8	30.0	13.1	71.0	11.0	68.8
Fifth Third Mortgage Co.	82	25	21	65.1	1.2	32.1	12.1	71.5	13.5	93.1
USAA Federal Savings Bank	77	0	37	36.5	.0	13.1	8.7	64.7	12.7	99.3
Freedom Mortgage Group	63	14	8	46.2	.1	28.8	12.6	69.8	20.2	100.0
Navy Federal Credit Union	57	0	19	45.2	11.5	20.9	11.7	58.4	17.8	55.9
PrimeLending	56	0	36	52.6	2.1	30.8	12.5	68.7	16.9	99.9
Regions Bank	55	0	17	56.7	4.7	33.5	12.8	74.1	21.3	74.1
Guaranteed Rate, Inc.	50	0	23	74.2	.9	23.1	12.5	71.6	13.9	100.0
Stearns Lending, Inc.	46	6	18	58.0	.7	35.2	16.3	63.5	24.6	100.0
Shore Mortgage	46	0	18	65.5	2.4	32.5	14.2	64.5	29.2	100.0
EverBank	41	5	8	77.4	.6	21.8	12.6	64.4	20.4	90.4
loanDepot.com	36	2	3	50.6	1.0	18.3	14.0	55.0	32.4	100.0
PHH Mortgage Co.	35	49	6	52.9	.8	26.6	10.1	61.3	11.3	99.9
The Huntington National Bank	34	1	9	74.7	1.3	29.6	10.0	88.5	7.0	75.4
Guild Mortgage Co.	32	4	20	37.8	3.8	38.3	19.4	62.0	23.8	99.9
Top 25 institutions	3,602	1,967	723	65.4	1.0	24.8	12.0	66.6	19.5	85.6
All institutions	**8,707**	**2,794**	**2,615**	**62.0**	**2.9**	**28.4**	**12.7**	**70.2**	**18.5**	**85.2**

[1] See table 11, note 1.
[2] Share of conventional loans that are higher priced.
[3] See table 2, note 3.
[4] See table 2, note 4.
[5] See table 2, note 1. "Minority borrower" refers to nonwhite (excluding joint or missing) or Hispanic-white applicants.
[6] See table 11, note 6.

(continued on next page)

chased nearly 2 million loans during 2013 (these loans could have been originated in 2013 or in earlier years).

Note that the institutions listed in table 12 may be part of a larger organization with multiple HMDA reporting entities or have subsidiary institutions that originate or purchase mortgages and file separate HMDA reports. Using information about parent institutions available in the HMDA Reporter Panel and HMDA Transmittal Sheets, some organizations have more originations or purchases than the "lead" institution listed in table 12.[43] Most notably, Wells Fargo & Company, collectively, had about 841,000 originations, including the 819,000 by Wells Fargo Bank; Citigroup purchased 419,000 loans, including the 104,000 purchased by Citibank; Fifth Third Bancorp originated 114,000 loans, includ-

[43] The Reporter Panel and Transmittal Sheets provide information for each HMDA reporting institution and are available on the Federal Financial Institutions Examination Council's website at www.ffiec.gov/hmda/hmdaflat.htm.

Table 12. Top 25 respondents in terms of total originations, 2013–*continued*
Percent except as noted

Respondent	Refinance loans[1]							
	Number (thousands)	Conventional	Higher priced[2]	LMI borrower[3]	LMI neighborhood[4]	Non-Hispanic white[5]	Minority borrower[5]	Sold[6]
Wells Fargo Bank, NA	467	78.1	.5	16.6	12.6	70.3	18.1	91.6
JPMorgan Chase Bank, NA	287	85.9	.7	27.1	13.5	68.8	18.1	94.2
Quicken Loans, Inc.	300	76.7	1.9	21.8	13.1	65.5	12.9	99.9
Bank of America, NA	249	88.5	.2	27.8	14.5	62.7	21.5	80.1
Citibank, NA	175	97.5	.1	28.1	13.6	64.3	14.2	96.0
U.S. Bank, NA	111	92.7	3.0	25.7	12.3	65.1	9.4	57.5
PNC Bank, NA	71	86.5	.0	27.5	13.1	69.3	11.4	61.4
Flagstar Bank, FSB	61	79.4	.5	15.6	10.7	66.1	24.0	99.9
Nationstar Mortgage	67	93.1	3.3	34.5	18.6	66.2	23.6	99.5
SunTrust Mortgage, Inc.	52	91.7	.0	22.6	11.3	69.6	14.2	99.6
Branch Banking and Trust Co.	37	90.5	.3	22.7	12.8	75.9	9.5	55.3
Fifth Third Mortgage Co.	51	60.5	.9	17.6	12.7	66.9	11.3	98.3
USAA Federal Savings Bank	31	59.5	.1	8.5	8.2	59.7	11.2	98.2
Freedom Mortgage Group	49	18.8	.1	4.7	14.9	59.4	16.9	100.0
Navy Federal Credit Union	24	44.6	.4	12.6	10.2	58.3	20.3	61.6
PrimeLending	13	85.0	.8	19.8	10.1	75.1	12.1	99.9
Regions Bank	26	91.8	1.2	24.7	12.6	83.5	12.7	45.1
Guaranteed Rate, Inc.	20	91.7	.2	13.0	8.8	76.1	10.0	100.0
Stearns Lending, Inc.	22	86.0	.1	21.9	12.8	64.8	20.2	100.0
Shore Mortgage	22	89.2	1.1	20.2	10.3	73.2	19.1	100.0
EverBank	24	92.0	.9	28.3	14.5	67.5	18.9	96.1
loanDepot.com	29	74.8	.9	19.1	13.2	72.7	15.2	100.0
PHH Mortgage Co.	21	94.0	3.0	33.4	13.9	71.7	11.7	99.9
The Huntington National Bank	20	88.0	6.6	24.8	9.7	89.0	5.9	52.8
Guild Mortgage Co.	6	70.7	1.0	19.7	15.0	65.4	16.9	99.9
Top 25 institutions	2,237	82.1	.9	22.5	13.1	67.5	16.3	89.2
All institutions	**4,341**	**83.6**	**1.5**	**21.1**	**12.1**	**70.5**	**14.9**	**83.4**

ing the nearly 82,000 originated by Fifth Third Mortgage Company; and SunTrust Banks originated almost 99,000 loans, including the 85,000 by SunTrust Mortgage.

The top institutions differ significantly in their lending patterns. For example, nearly 94 percent of Citibank's home-purchase loans were conventional, compared with much lower percentages for many other large lenders. Regarding loan sales, Bank of America sold only 55 percent of its home-purchase originations, whereas the average across the top 25 institutions was over 85 percent. Finally, the composition of borrowers varies across the top 25 institutions. For some institutions, one-third or more of home-purchase borrowers were LMI, while at other institutions 20 percent or less of borrowers were in that category.[44] It is difficult to know precisely why such variation exists. These differences could reflect different business strategies, different customer demands in the markets and geographic regions being served, or some combination of these two broad factors.

[44] Note that for lenders with a significant nonconventional share of refinance loans (for example, Freedom Mortgage Group), borrower income may not be reported for most loans, thus pushing down the LMI share of borrowers.

Appendix A: Requirements of Regulation C

The Federal Reserve Board's Regulation C requires lenders to report the following information on home-purchase and home-improvement loans and on refinancings:

For each application or loan

- application date and the date an action was taken on the application
- action taken on the application
  - approved and originated
  - approved but not accepted by the applicant
  - denied (with the reasons for denial—voluntary for some lenders)
  - withdrawn by the applicant
  - file closed for incompleteness
- preapproval program status (for home-purchase loans only)
  - preapproval request denied by financial institution
  - preapproval request approved but not accepted by individual
- loan amount
- loan type
  - conventional
  - insured by the Federal Housing Administration
  - guaranteed by the Department of Veterans Affairs
  - backed by the Farm Service Agency or Rural Housing Service
- lien status
  - first lien
  - junior lien
  - unsecured
- loan purpose
  - home purchase
  - refinance
  - home improvement
- type of purchaser (if the lender subsequently sold the loan during the year)
  - Fannie Mae
  - Ginnie Mae
  - Freddie Mac
  - Farmer Mac
  - private securitization
  - commercial bank, savings bank, or savings association
  - life insurance company, credit union, mortgage bank, or finance company
  - affiliate institution
  - other type of purchaser

For each applicant or co-applicant

- race
- ethnicity
- sex
- income relied on in credit decision

For each property

- location, by state, county, metropolitan statistical area, and census tract
- type of structure
  - one- to four-family dwelling
  - manufactured home
  - multifamily property (dwelling with five or more units)
- occupancy status (owner occupied, non-owner occupied, or not applicable)

For loans subject to price reporting

- spread above comparable Treasury security for applications taken prior to October 1, 2010
- spread above average prime offer rate for applications taken on or after October 1, 2010

For loans subject to the Home Ownership and Equity Protection Act

- indicator of whether loan is subject to the Home Ownership and Equity Protection Act

Appendix B: Explaining Differences in Higher-Priced Lending with Additional Data

Lenders have much more information on the borrower and property to be purchased than is represented by the borrower's credit risk score. Using the Federal Reserve Bank of New York Consumer Credit Panel/Equifax data (CCP), we can construct variables that might help capture some of the types of information that lenders are likely to weigh in assessing risk and setting interest rates. At the borrower level, these variables include the following:

- Payment-to-income (PTI) ratio: The merged data set allowed us to observe other debts owed in addition to the mortgage matched in the enhanced database. PTI measures the yearly debt service payments on other loans the borrower has outstanding, as a fraction of the borrower's reported annual income (the income reported under the Home Mortgage Disclosure Act of 1975 (HMDA)). High ratios increase the likelihood the borrower will have difficulty affording all of the payments and thus default. The payments data are based on what lenders and servicers report to Equifax, which typically reflects the payment-due amount on monthly account statements. For mortgages, this amount may include payments for property taxes and insurance, if collected by the servicer (for nonmortgage debt, we use the scheduled payment amounts in the quarter prior to mortgage origination).[45]
- First-time borrower: This variable is an indicator for the mortgage being the first recorded mortgage in the borrower's credit history, suggesting the borrower is a first-time homebuyer. First-time homebuyers, because they tend to be younger and have had less time to build savings, are more likely to have a higher loan-to-value (LTV) ratio. However, first-time borrowers may also be less experienced financially and perhaps less likely to shop for a mortgage. In this case, first-time borrowers could pay more, independent of their LTV.
- "Piggyback" loan: The matched data allow us to observe all other mortgages the borrower has in addition to the matched mortgage. We identify piggyback loans as mortgages that were opened in the same month as the first-lien mortgage and were smaller in size. As noted in the main text, many borrowers during the housing boom used junior-lien loans to help finance more than 80 percent of the purchase price of the house. This variable may therefore also help indicate a high LTV ratio.

Note that the PTI ratios we calculated are likely to understate the PTI ratios used in underwriting for two main reasons. First, for joint mortgages, because we matched the credit record information of only one (randomly selected) borrower, the consumer debts and payments we calculated exclude individually held debts of other, unmatched co-borrowers. Second, nondebt obligations, such as child-support or alimony payments, may be included by underwriters in PTI calculations, but such obligations are not available in credit record data and thus could not be included in our calculations.

We regressed a binary indicator for a higher-priced loan against indicators for the race and ethnicity of the borrower, credit score "bins," the HMDA controls, and the additional variables just discussed. The estimates are very similar to the final row in table 9, with black and Hispanic-white borrowers about 13 percent and 16 percent more likely, respectively, to

[45] Note that the PTI ratios we calculated are likely to understate the PTI ratios used in underwriting for two main reasons. First, for joint mortgages, because we matched the credit record information of only one (randomly selected) borrower, the consumer debts and payments we calculated exclude individually held debts of other, unmatched co-borrowers. Second, nondebt obligations, such as child-support or alimony payments, may be included by underwriters in PTI calculations, but such obligations are not available in credit record data and thus could not be included in our calculations.

Table B.1. Regression of higher-priced loan on borrower race and ethnicity, 2006

Independent variable	Outcome: indicator of higher-priced loan		
Minority status[1]			
Asian	-0.003	0.005	-0.003
	(0.006)	(0.007)	(0.005)
Black or African American	0.129 **	0.120 **	0.060 **
	(0.005)	(0.007)	(0.004)
Other minority[2]	0.043 **	0.039 *	0.024 *
	(0.012)	(0.016)	(0.010)
Hispanic white	0.164 **	0.106 **	0.069 **
	(0.004)	(0.007)	(0.004)
Additional controls			
Borrower characteristics	Yes	Yes	Yes
Tract fixed effects	No	Yes	No
Lender fixed effects	No	No	Yes

Note: Table shows ordinary least squares regression results using conventional first-lien home-purchase mortgages for owner-occupied, one- to four-family, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1. Standard errors in parentheses.

[1] See table 2, note 1.

[2] See table 2, note 2.

* Significant at the 5 percent level.

** Significant at the 1 percent level.

Source: FFIEC HMDA data matched to FRBNY Consumer Credit Panel/Equifax data.

have a higher-priced loan (table B.1, first column of estimates). The additional CCP variables did little to explain the racial and ethnic disparities.

The second column includes the additional control variables as well as census-tract fixed effects. A comparison of borrowers within the same census tract indicates that black and Hispanic-white borrowers are over 12 percent and over 10 percent, respectively, more likely than non-Hispanic white borrowers to get a higher-priced loan. The differences between the first and second columns stemming from the inclusion of census-tract fixed effects could reflect the geographic distribution of borrower risk factors or differences in the local supply of credit (due either to market forces or to a "redlining" type of discrimination). Regardless, a significant portion of the between-group differences in higher-priced lending remains to be explained.

The third column includes the borrower-level controls and a lender-level fixed effect. The coefficients on race and ethnicity now indicate the average difference in pricing between groups borrowing from the same lender. Controlling for lender identity reduces the black and Hispanic-white coefficients, now estimated at 6.0 percent and 6.9 percent, respectively. The reduction in the coefficients indicates that minority borrowers tend to get loans from institutions that often make higher-priced loans (regardless of the race or ethnicity of the given customer).

There could be multiple reasons that minorities tend to obtain loans from a particular set of lenders. One might be that, because of differing financial circumstances, minority borrowers are more likely to prefer certain types of loans offered by higher-priced lenders. Less sanguine explanations are also possible. For example, if there is discrimination in the acceptance decision by lower-cost lenders, minorities might then be more likely to turn to higher-priced lenders. Why different groups tend to use different types of lenders is an important question for further research.

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Legal Developments: Fourth Quarter, 2013

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2013–12 (December 6, 2013)

Ameris Bancorp ("Ameris"), Moultrie, Georgia, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire The Prosperity Banking Company ("Prosperity") and thereby indirectly acquire its subsidiary bank, Prosperity Bank ("Prosperity Bank"), both of St. Augustine, Florida. Immediately following the proposed acquisition, Prosperity Bank would be merged into Ameris's subsidiary bank, Ameris Bank, Moultrie, a state nonmember bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 35033 (2013)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Ameris, with consolidated assets of approximately $2.8 billion, is the 261st largest insured depository organization in the United States, controlling approximately $2.4 billion in consolidated deposits.[4] Ameris Bank operates in Alabama, Florida, Georgia, and South Carolina. Ameris Bank is the 14th largest depository institution in Georgia, controlling deposits of approximately $1.6 billion, and is the 88th largest depository institution in Florida with approximately $373.3 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of these states.[5] In addition, Ameris Bank is the 36th largest depository institution in South Carolina with approximately $304.8 million in deposits, and the 60th largest in Alabama with approximately $186.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

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1 12 U.S.C. § 1842.

2 The merger of Prosperity Bank into Ameris Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on November 6, 2013 (Letter from Jeffrey L. Povlak, Assistant Regional Director of FDIC Atlanta Regional Office, to Jody L. Spencer, Rogers & Hardin LLP (Nov. 6, 2013)).

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of June 30, 2013, unless otherwise noted.

5 State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Prosperity, with total consolidated assets of $753 million, controls Prosperity Bank, which operates in Florida. Prosperity Bank is the 72nd largest insured depository institution in Florida, controlling deposits of approximately $490 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Ameris would become the 215th largest depository organization in the United States, with total consolidated assets of approximately $3.6 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Ameris would have total consolidated deposits of approximately $2.9 billion. In Florida, Ameris would become the 51st largest depository organization, controlling deposits of approximately $868.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[6] However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.[7] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[8]

For purposes of the BHC Act, the home state of Ameris is Georgia,[9] and Prosperity is located in Florida.[10] Ameris is well capitalized and well managed under applicable law. Georgia law has no minimum requirements for period of operation,[11] and Prosperity Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $10.4 trillion. On consummation of the proposed transaction, Ameris would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

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[6] The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C.§ 1842(d)(1)(A).

[7] 12 U.S.C. § 1842(d)(1)(B).

[8] 12 U.S.C. § 1842(d)(2)(A).

[9] *See* 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[10] For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)-(7); 1842(d)(1)(A); and 1842(d)(2)(B).

[11] *See* GA. CODE § 7-1-530 (2013) (permits interstate acquisitions but does not impose a requirement for period of operation).

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[12]

Ameris and Prosperity compete directly in the Jacksonville Area, Florida banking market.[13] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Ameris and Prosperity;[14] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[15] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain highly concentrated, as measured by the HHI, and numerous competitors would remain.[16]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration

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[12] 12 U.S.C. § 1842(c)(1).

[13] The Jacksonville Area, Florida banking market is defined as Baker, Clay, Duval, and Nassau counties in Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia.

[14] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[15] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[16] Ameris operates the 12th largest depository institution in the Jacksonville Area, Florida banking market with approximately $238 million in deposits, which represent less than 1 percent of market deposits. Prosperity operates the 25th largest depository institution in the same market, controlling deposits of approximately $42.5 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Ameris would operate the 12th largest depository institution in the market, controlling weighted deposits of approximately $280.5 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2937, and 39 competitors would remain in the market.

of resources in the banking market in which Ameris and Prosperity compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that they are all consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Ameris, and public comments received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Ameris and Ameris Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured to give Prosperity shareholders the option of exchanging their shares for shares in Ameris or receiving cash consideration.[17] Ameris is in satisfactory financial condition, and the asset quality, earnings, and liquidity of Ameris Bank are consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Ameris, Prosperity, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has

[17] If a holder of Prosperity common stock elects to exchange shares, the Prosperity shares would be cancelled and converted into the right to receive Ameris's common stock based on a fixed exchange ratio. If a holder of Prosperity common stock elects to receive cash consideration for shares, the holder would receive a fixed cash amount in exchange for each share. The number of shares of Prosperity common stock for which cash consideration would be paid is limited to 50 percent of the total number of Prosperity shares converted in the transaction. Ameris has the resources to fund the cash consideration portion of the transaction.

considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money laundering laws.

Ameris and its subsidiary depository institution are each considered to be managed well. Ameris's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Ameris have substantial knowledge and experience in the banking and financial services sectors.

The Board also has considered Ameris's plans for implementing the proposal. Ameris is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[18] Ameris would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Ameris plans to integrate Prosperity's existing management and personnel in a manner that augments Ameris's management.[19]

Ameris's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and Ameris's money-laundering policies are consistent with approval.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[20] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[21] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[22]

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[18] Ameris Bank has support divisions with experienced senior management with specific areas of expertise and responsibilities to ensure a smooth integration, including a dedicated systems conversion project team and a special assets team. In addition, Ameris Bank has reassigned its most experienced senior credit officer to manage the region that will include the legacy Prosperity Bank locations, and has hired compliance and audit staff experienced in bank integration.

[19] Certain senior executive officers of Prosperity Bank are expected to retain management positions within the merged bank. Following the merger, the current President and Chief Executive Officer of Prosperity Bank will serve as Regional President of Ameris Bank, the current Executive Vice President and Chief Lending Officer of Prosperity Bank will serve as Senior Vice President/Commercial Banking of Ameris Bank, the current Executive Vice President and Chief Banking Officer of Prosperity Bank will serve as Senior Vice President/Retail Banking of Ameris Bank, and the Executive Vice President and Chief Credit Officer of Prosperity Bank will serve as Senior Vice President/Credit Administration of Ameris Bank. The executive officers and directors of Ameris and Ameris Bank will continue to serve in their capacities following the merger.

[20] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Ameris Bank and Prosperity Bank, data reported by Ameris Bank and Prosperity Bank under the Home Mortgage Disclosure Act ("HMDA"),[23] other information provided by Ameris, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of Ameris Bank's fair lending record as reflected in 2011 HMDA data and the bank's CRA performance record.

1. Records of Performance under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[24] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Ameris Bank. Ameris Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 7, 2009 ("Ameris Bank Evaluation").[26] Examiners considered Ameris Bank to have an adequate record of lending inside of its assessment areas and an adequate record in community development lending.[27] Ameris Bank received a "low satisfactory" rating for the Lending, Service, and Investment Tests.[28]

As described in the Ameris Bank Evaluation, FDIC examiners found that the bank's overall volume of lending was good and that it had a good record of serving its assessment areas' credit needs.[29] The bank had a good record of lending to businesses of different sizes, especially smaller-sized businesses, and an adequate record of residential lending to borrowers of different incomes. FDIC examiners noted, however, that isolated instances of unfair lending had been identified in the bank's Dothan, Alabama, assessment area.[30] Examiners noted that, considering the differences among the bank's markets and their

[23] 12 U.S.C. § 2801 *et seq*.

[24] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Federal Register* 11642 at 11665 (2010).

[25] 12 U.S.C. § 2906.

[26] The 2009 examination was conducted using the Large Bank CRA Examination Procedures. Examiners focused on the bank's small business and residential lending record for 2008.

[27] The Ameris Bank Evaluation reviewed data available to the FDIC as of the date of the evaluation concerning all 2008 and 2009 loans originated or purchased within the relevant assessment areas. In addition, examiners reviewed all of the community development activities and the flexible and innovative lending practices and products from June 30, 2003, through September 30, 2009.

[28] The Ameris Bank Evaluation included a full-scope review of four assessment areas: Albany, Georgia MSA; Dothan, Alabama MSA; Jacksonville, Florida MSA; and Columbia, South Carolina MSA. A limited scope review was performed in the Tifton, Georgia Non-MSA. Examiners placed greater weight on the bank's performance in Georgia than in the other three states due to the bank's longevity in the state as well as the number of its offices and the volume of its lending operations in the state; 77 percent of the bank's loans were made in the Georgia market.

[29] Small business and residential mortgage lending are the bank's primary lending focus.

[30] Specifically, FDIC examiners identified three instances of unfair pricing for African American borrowers compared to similarly-situated white borrowers in the Dothan, Alabama market. The FDIC determined that these were isolated instances, required the bank to take corrective actions to address deficiencies in its compliance management system highlighted by these instances, and concluded that the bank's overall compliance management system was adequate.

respective demographics, Ameris Bank had adequately penetrated LMI geographies throughout its assessment areas. Examiners also noted that the bank had made good use of its flexible lending programs and had originated over $9.2 million in community development loans in its combined assessment areas during the evaluation period.

With respect to the Investment Test, FDIC examiners found that although Ameris Bank was passive to the investment needs of its communities, it did participate in various CRA-qualified investment vehicles. In particular, FDIC examiners noted that Ameris Bank's total outstanding qualified community development investments of $6.9 million represented 0.31 percent of average total assets since the previous examination and 2.75 percent of total equity capital for the same period. The dollar volume of investments, viewed in light of Ameris Bank's capacity and the opportunity for making qualified investments in its assessment areas, was a key driver in the rating assigned to Ameris Bank on the Investment Test.

With respect to the Service Test, FDIC examiners focused on the retail banking and community development services provided by Ameris Bank throughout its assessment areas and concluded that the bank provided a reasonable level of both services. Specifically, FDIC examiners concluded that the bank's delivery systems were reasonably accessible overall[31] and that the bank provided a fairly reasonable number of community development services in its areas of operations.[32] However, examiners found that during the evaluation period Ameris Bank had only an adequate level of participation in community development activities and retail banking services dedicated to LMI areas or individuals in its assessment areas.

CRA Performance of Prosperity Bank. Prosperity Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 18, 2011 ("Prosperity Bank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.[33] Examiners concluded that Prosperity Bank's lending levels demonstrated excellent responsiveness to the credit needs, and a satisfactory responsiveness to the community development needs, of its assessment areas, and that the bank maintained a significant level of qualified community development investments. Examiners noted, however, that Prosperity Bank showed an inadequate responsiveness to the credit needs of small- and start-up businesses in several assessment areas.

Ameris Bank's Efforts Since the 2009 CRA Evaluation. Ameris represents that since the Ameris Bank Evaluation, Ameris Bank has extended 43 community development loans totaling $52.2 million, which primarily funded affordable housing initiatives and the provision of community services in various locations, including distressed communities, throughout its assessment areas. In addition, Ameris stated that, from 2010 to 2013, Ameris Bank has made $33.8 million in qualified investments, including investments in Ginnie Mae Mortgage Backed Securities and the CRA Qualified Investment Fund, both of which benefitted all four states in the bank's assessment areas. The bank also invested in

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[31] At the time of the Ameris Bank Evaluation, the bank operated 48 full-service offices, eight branches in moderate-income geographies, 25 in middle-income tracts, and 14 in upper-income tracts. Of the 25 branches located in middle-income tracts, 11 were located in close proximity to moderate-income tracts. Ameris Bank also had 47 ATM locations and provided customers with free internet and telephone access to their accounts.

[32] The Ameris Bank Evaluation found that the bank participated in a total of 252 service projects in 2008 and 2009, of which 113 counted as CRA community development services (e.g., providing a first-time homebuyer workshop).

[33] The Prosperity Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, and examiners reviewed the bank's small business lending activity for the 2010 calendar year and loans reported on the bank's 2008 HMDA Loan Application Register. These products were selected for analysis because they represented 86.8 percent of the bank's loan portfolio.

school district bonds in Georgia and South Carolina and bonds from the Atlanta Georgia Urban Residential Finance Authority. Ameris also noted that since the Ameris Bank Evaluation, the bank has made approximately $186,000 in donations, including matching dollars donated to the bank's "Fight Hunger Campaign" and other donations to organizations providing community services to LMI individuals, as well as economic development and affordable housing.[34]

2. Fair Lending Record and Public Comments on the Application

The Board has considered the records of Ameris Bank and Prosperity Bank in complying with fair lending and other consumer protection laws. In addition to reviewing the Ameris Bank and Prosperity Bank Evaluations and Ameris Bank's record of performance in providing community development lending and services since its evaluation, as discussed above, the Board's consideration includes an evaluation of Ameris Bank's fair lending policies and procedures. This also includes consideration of other agencies' views on Ameris Bank's record of performance under fair lending laws. The Board also has taken into account the comments on the application.

Ameris's Fair Lending Program. Ameris has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk management program includes a centralized marketing plan to ensure consistency of marketing and advertising both at the corporate and the local/regional levels, secondary review of proposed loan pricing to reduce pricing exceptions, compliance training for applicable employees on a quarterly basis, and collection and tracking of customer complaints to ensure appropriate responses and reports to management or the board of directors concerning indications of possible fair lending implications. Ameris is developing a customer-based pricing model that would allow more consistent pricing at the customer level across the entirety of Ameris Bank. In addition, Ameris has begun to develop a centralized approval and review process to enable bank-wide secondary reviews, including denied, withdrawn, approved, or not-accepted loans, and has also created a "Chief Risk Officer" position to provide direct oversight and management of the company's compliance program. Ameris's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

Public Comments on the Application. Commenters raised concerns about the greater incidence of higher-cost mortgage loans to minority and LMI borrowers than to nonminority borrowers compared to the aggregate of all lenders in the bank's rural Georgia markets, as reflected by data reported under HMDA in 2011. Specifically, commenters alleged that 42.1 percent of the bank's higher-cost loans were issued to LMI borrowers compared to 33.8 percent for the aggregate. Similarly, commenters alleged that 21.4 percent of the bank's higher-cost loans were issued to African American borrowers compared to 15.7 percent for the aggregate. Commenters also noted pricing disparities between African American and white borrowers and between LMI and middle- and upper-income borrowers with respect to the bank's home-improvement and refinance loans. It was also alleged that Ameris Bank issued fewer prime loans to LMI and African American borrowers compared to the aggregate. The commenters contended that these disparities suggest that Ameris Bank may be steering LMI and African American borrowers into higher-cost loans and that the bank needed to improve its marketing, underwriting, and product development activities. In addition, the commenters questioned the public benefits of the proposal.

[34] These loans, investments, and donations have not yet been evaluated by the FDIC.

Analysis of HMDA Data and Pricing Disparities. Although the commenters did not allege specific denial disparities, they generally contended that Ameris Bank had a poor record of meeting the credit needs of LMI and African American borrowers in the communities the bank served. In response to the comments, the Board analyzed Ameris Bank's HMDA data to develop a view of the bank's overall lending patterns. The Board's analysis included a review of the bank's 2010, 2011, and 2012 HMDA and small business lending data in its combined Statewide CRA assessment areas, for each statewide assessment area, including the rural Georgia Statewide areas, and in several individual markets where the bank received a significant volume of applications.

The Board's analysis revealed that generally Ameris Bank's volume of mortgage applications from and loans to African American and Hispanic individuals, as a percent of total applications and loans, exceeded those of the aggregate for all three years. Similarly, the bank's record of receiving applications from and making loans to majority-minority tracts, to LMI tracts, and to LMI individuals also consistently exceeded those of the aggregate. Within the combined Georgia market, where the bank derived 67 percent of its total loans for 2012, the bank's percentage of mortgage applications from and loans to Hispanic individuals exceeded that of the aggregate, although its percentages for African American individuals generally lagged the aggregate for the three years. However, the bank's percentages of applications from and loans to majority-minority tracts, LMI tracts, and LMI individuals in the combined Georgia market generally approximated or exceeded those of the aggregate. Moreover, in its rural Georgia markets, which were of particular interest to the commenters, Ameris Bank's percentage of applications from and loans to African Americans and Hispanic individuals exceeded those of the aggregate. The bank's percentage of applications from and loans to majority-minority tracts, LMI tracts and LMI individuals also consistently exceeded those of the aggregate in this market.

In addition, to address the pricing disparities noted by commenters, the Board reviewed Ameris Bank's 2011 mortgage pricing data for its rural Georgia markets as well as the bank's 2011 and 2012 HMDA data for relevant assessment areas. Although the Board was not able to duplicate the specific data disparities presented by the commenters, the Board's analysis more generally confirmed the commenters' allegations that the bank's volume of high-cost loans, as a percentage of total loans, exceeded those of the aggregate and that the bank made fewer prime loans to LMI and African American borrowers than the aggregate in the markets of concern to the commenters. The Board's analysis showed that Ameris had a higher percentage of higher-cost loans than the aggregate in 2011 and 2012. Moreover, the bank's percentages of higher-cost loans to African American and Hispanic borrowers were significantly higher than those of the aggregate. Similarly, the bank's percentages of higher-cost loans for minority and LMI individuals and for minority and LMI census tracts exceeded those of the aggregate.

The Board is concerned by data indicating pricing disparities between minority and white borrowers and between LMI and middle- and upper-income borrowers. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. However, many elements factor into a lender's pricing decision, and HMDA data are not sufficient to evaluate a bank's compliance with fair lending laws and regulations because the data do not include the key lending factors which may explain the observed disparities.[35] Fully evaluating Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its

[35] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis

loan pricing practices would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed pricing disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with the bank's primary federal regulator, the FDIC, regarding its evaluation of Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its loan pricing practices in particular. The FDIC reported that, based on a recent review, it did not find evidence that Ameris Bank engaged in discriminatory conduct in making its credit decisions.

In response to the commenters' concerns about racial and income disparities in the bank's loan pricing practices, the FDIC conducted an onsite review of Ameris Bank to determine whether the bank has been pricing mortgage loans fairly, based on the creditworthiness of the borrower.[36] Although the review confirmed the disparities noted by commenters, FDIC examiners did not find that the bank deviated from its established pricing matrix in the reviewed cases or that loan prices were based on discriminatory reasons.[37] FDIC examiners concluded that race was not a factor in the bank's pricing of loans. In addition, FDIC examiners conducted an underwriting analysis comparing minority and nonminority denied and approved applicants and did not find evidence that applicants were denied based on prohibited factors. Examiners also reviewed the bank's mortgage marketing practices and did not find evidence that the bank was steering or targeting minority individuals into higher-priced loans. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of Prosperity Bank into Ameris Bank and has approved the merger under the Bank Merger Act.

3. Convenience and Needs of Communities to Be Served by the Combined Organization

The Board has considered the extent to which the proposal would benefit the customers of Ameris Bank, Prosperity Bank, or both.[38] Such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of either bank.

Ameris represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including back-office operations. Ameris notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meet the banking needs of their customers. In addition, Ameris notes that Prosperity Bank's current operations would be evaluated under the more strenuous requirements of the large bank examination procedures, which may further improve lending performance among local constituents.

for an independent assessment of an applicant's credit worthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

[36] The review began on September 16, 2013, and examiners reviewed the bank's loan data for 2011, 2012, and year-to-date 2013.

[37] The review also showed that pricing for the bank's secondary market loans is standardized through an automated underwriting system and that the bank uses a manual underwriting system and its pricing matrix to price its nonconforming portfolio loans.

[38] Commenters alleged that the proposal would not provide a clear or significant public benefit. The commenters specifically asserted that to satisfactorily demonstrate the public benefits of the proposal, Ameris should, among other things, partner with local community organizations, including the commenters' partners, to offer housing counseling and financial education classes to help underserved borrowers qualify for affordable mortgages. In evaluating the public benefits of a proposal, the Board considers all benefits of the proposed transaction, not just those that benefit specific disadvantaged communities. *See*, *e.g.*, *First Merit Corporation*, FRB Order No. 2013-3 (March 22, 2013).

Ameris also states that it would provide substantially similar retail and commercial banking products and services as are currently provided by Prosperity Bank. Prosperity Bank's customers would benefit from Ameris Bank's stronger financial position as well as its banking expertise and resources, including marketing, advertising, product development, commercial and consumer credit, employee training and personnel, and automated banking.

The merger also would benefit current customers of Prosperity Bank through access to significantly larger branch and ATM networks. The branch network available to current Prosperity Bank customers would increase from 12 to 69 branch locations throughout Georgia, Florida, South Carolina and Alabama.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Ameris, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Ameris Bank and Prosperity Bank, and review of examination reports, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages Ameris to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[39]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[40] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[41]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Ameris would have approximately $3.6 billion in consolidated assets, and by any of a number of alternative

[39] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[40] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[41] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

measures of firm size, Ameris would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Ameris's intrafinancial assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[42] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Ameris with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 6, 2013.

[42] The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches
FRB Order No. 2013–13 (December 12, 2013)

United Bankshares, Inc. ("United"), Charleston, West Virginia, and its subsidiary, George Mason Bankshares, Inc. ("GMB"), Fairfax, Virginia (together with United, the "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Virginia Commerce Bancorp, Inc. ("VCB") and thereby indirectly acquire its subsidiary bank, Virginia Commerce Bank ("VC Bank"), both of Arlington, Virginia. In addition, Applicants' subsidiary state member bank, United Bank, Fairfax, Virginia ("Fairfax Bank"), has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with VC Bank, with Fairfax Bank as the surviving entity.[2] Fairfax Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of VC Bank.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 40739 (2013)) and locally in accordance with the relevant statutes and the Board's Rules of Procedures.[4] As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

United, with consolidated assets of approximately $8.5 billion, is the 108th largest insured depository organization in the United States, controlling approximately $6.6 billion in consolidated deposits.[5] United controls two subsidiary banks, Fairfax Bank and United Bank, Inc., Parkersburg, West Virginia ("Parkersburg Bank"), which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.[6] United is the second largest depository organization in West Virginia, controlling deposits of approximately $3.6 billion, and is the 13th largest depository organization in the District of Columbia with approximately $418.7 million in deposits, which represent 11.7 percent and 1.2 percent of the total deposits of insured depository institutions in these jurisdictions, respectively.[7] In addition, United is the 16th largest depository organization in Virginia with approxi-

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1 12 U.S.C.§ 1842.

2 12 U.S.C. § 1828(c). VCB would be merged into GMB.

3 12 U.S.C. § 321.

4 12 CFR 262.3(b).

5 Asset data are as of June 30, 2013, unless otherwise noted, and nationwide deposit-ranking data are as of June 30, 2013.

6 Fairfax Bank operates in the District of Columbia, Maryland, and Virginia. Parkersburg Bank operates in Maryland, Ohio, Pennsylvania, and West Virginia.

7 State deposit and asset data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

mately $1.8 billion in deposits, the 22nd largest in Maryland with approximately $492.3 million in deposits, the 101st largest in Pennsylvania with approximately $320.2 million in deposits, and the 216th largest in Ohio with approximately $42.6 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in those states, respectively.

VCB, with total consolidated assets of $2.8 billion, controls VC Bank, which operates in Virginia. VC Bank is the 13th largest insured depository institution in Virginia, controlling deposits of approximately $2.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, United would become the 91st largest depository organization in the United States, with total consolidated assets of approximately $11.6 billion.[8] United would control deposits of approximately $8.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Virginia, United would be the seventh largest depository organization, controlling deposits of approximately $4.0 billion, which represent 1.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.[10] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the applicant controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[11]

For purposes of the BHC Act, the home state of United is West Virginia,[12] and VCB is located in Virginia.[13] United is well capitalized and well managed under applicable law. Virginia law has no minimum requirements for period of operation,[14] and VC Bank has been in existence for more than five years.

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[8] Pro forma total consolidated assets reflect adjustments associated with fair market value accounting and goodwill.

[9] The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 12 U.S.C. § 1842(d)(2)(A).

[12] *See* 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[13] For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)-(7); 1842(d)(1)(A); and 1842(d)(2)(B).

[14] *See* VA. CODE § 6.2-704(C) (2013) (permits interstate acquisitions but does not impose a requirement for period of operation).

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $10.4 trillion. On consummation of the proposed transaction, United would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[15]

United and VCB compete directly in the Washington, DC-MD-WV-VA banking market.[16] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by United and VCB,[17] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[18] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in this market. On consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[19]

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[15] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[16] The Washington, DC-MD-WV-VA banking market includes the Washington, DC-MD-WV-VA Ranally Metro Area ("RMA"); the non-RMA portions of the counties of Calvert, Charles, Frederick, Prince George's and St. Mary's, Maryland; Fauquier and Loudoun counties, Virginia; Jefferson County, West Virginia; and the Virginia independent cities of Alexandria, Fairfax, Falls Church, and Manassas.

[17] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin*386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[18] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[19] United is the 16th largest depository institution in the Washington, DC-MD-WV-VA banking market with approximately $2.1 billion in deposits, which represent approximately 1.4 percent of market deposits. VCB is the14th largest depository institution in the same market, controlling deposits of approximately $2.1 billion, which represent approximately 1.4 percent of market deposits. On consummation of the proposed transaction, United would become the ninth largest depository institution in the market, controlling weighted deposits of approximately $4.2 billion, which represent approximately 2.8 percent of market deposits. The HHI would increase by four points to 931, and 82 competitors would remain in the market.

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which United and VCB compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act and the Bank Merger Act require the Board to take into consideration a number of other factors in acting on bank acquisition applications.[20] These factors include the financial and managerial resources (including the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by United, and public comments received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. United, Fairfax Bank, and Parkersburg Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as an exchange of shares.[21] United is in satisfactory financial condition, and the asset quality, earnings, and liquidity of both Fairfax Bank and VC Bank are consistent with approval. Based on its

[20] 12 U.S.C. §§ 1842(c)(2)-(3) and 1828(c)(5).

[21] As part of the proposed transaction, each share of VCB common stock would be cancelled and converted into the right to receive United common stock based on an exchange ratio. Additionally, United would assume existing VCB stock options and would pay the United States Department of the Treasury in full for all of VCB's Troubled Asset Relief Program preferred stock warrants.

review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of United, VCB, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money laundering laws.

United, VCB, and their subsidiary depository institutions are each considered to be managed well. United's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of United have substantial knowledge and experience in the banking and financial services sectors.[22] Both the chairman and chief executive officer of United would continue in their roles following consummation of the proposed transaction.

The Board also has considered United's plans for implementing the proposal. United is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[23] United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.[24] United's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. United plans to integrate VC Bank's existing management and personnel in a manner that augments United's management.[25]

United's bank integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and United's money laundering policies, are consistent with approval.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository insti-

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[22] On consummation, two current VCB directors would be appointed to United's board, and four current VC Bank directors would be appointed to Fairfax Bank's board.

[23] The company plans to establish various committees comprised of key United and VCB executives with specific areas of expertise and responsibilities to ensure a smooth integration. In addition, United has made significant management and process changes to address the operations of the combined organization, including, for example, increasing the size of its risk-management and audit staff, reorganizing and expanding the Information Technology department, and engaging consultants to review and enhance the company's information security and loan operation functions.

[24] United has consolidated its bank-specific risk-management functions into an enterprise-wide system and has increased the size of its risk-management staff to a level commensurate with the operations of the combined organization.

[25] The officers of VC Bank are expected to retain similar positions within the merged bank. The current president and chief executive officer of Fairfax Bank would continue to serve in these positions, while the current president and chief executive officer of VCB and VC Bank would be appointed to serve as "President Emeritus" of Fairfax Bank following the merger.

tutions under the Community Reinvestment Act ("CRA").[26] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[27] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Fairfax Bank, Parkersburg Bank, and VC Bank, data reported by Fairfax Bank and VC Bank under the Home Mortgage Disclosure Act ("HMDA"),[29] other information provided by United, confidential supervisory information, and the public comments received on the proposal. Commenters objected to the proposal on the basis of the small business lending record of Fairfax Bank and VC Bank, as well as the mortgage lending records of VC Bank as reflected in 2011 HMDA data.

1. Records of Performance under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[30] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[31] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Fairfax Bank. Fairfax Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond ("Reserve Bank"), as of June 3, 2013 ("Fairfax Bank Evaluation"). Examiners considered Fairfax Bank to have an excellent record of lending inside its assessment areas and noted that the bank's community development lending performance demonstrated responsiveness to community credit needs.[32] Fairfax Bank received an "outstanding" rating on the Lending Test, "high satisfactory" on the Service Test, and "low satisfactory" on the Investment Test.[33]

As described in the Fairfax Bank Evaluation, Reserve Bank examiners found that Fairfax Bank provided a significant level of community development loans and an overall level of qualified community development investments that were responsive to community credit

[26] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] 12 U.S.C. § 2801 *et seq*.

[30] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[31] 12 U.S.C. § 2906.

[32] The Fairfax Bank Evaluation reviewed (i) loan data and community development lending activities reported by Fairfax Bank from January 1, 2011, through December 31, 2012; (ii) qualified community development loans and services consummated or provided from March 28, 2011, through June 3, 2013; and (iii) all qualified investments made from March 28, 2011, through June 3, 2013, or outstanding as of June 3, 2013.

[33] The Fairfax Bank Evaluation included a full-scope review of three assessment areas: Washington-Baltimore-Northern Virginia, DC-MD-VA Combined Statistical Area ("Multistate CSA"); Harrisonburg, Virginia Metropolitan Statistical Area; and Augusta County, Virginia Assessment Area. A limited scope review was performed in the Charlottesville, Virginia MSA and the Shenandoah County, Virginia Non-MSA.

needs. Examiners noted that the bank's delivery systems were accessible and convenient to geographies and individuals of different income levels within the bank's assessment areas. In addition, examiners found that Fairfax Bank had a good record of participating in community development initiatives.

With respect to the Lending Test, examiners noted that the bank is a leader in making community development loans. In particular, examiners noted that the bank had an excellent record of lending within its assessment areas, with good distributions of loans across geographies and among borrowers of different income levels. The amount and responsiveness of community development lending in the bank's assessment areas were also key factors in the "outstanding" rating.[34] During the evaluation period, Fairfax Bank extended approximately $39.3 million in community development loans. These loans reflected a variety of community development purposes, such as supporting affordable housing and funding organizations that provided community services or promoted economic development benefiting predominately LMI communities and individuals within the bank's assessment areas.

In the Fairfax Bank Evaluation, while the bank's qualified community investment activities were rated "low satisfactory," examiners found that the bank's overall community development investments were responsive to community credit needs.[35] Fairfax Bank's investments included an equity investment of $2 million in the CRA Fund, which invests in community development projects that provide for the development of LMI areas and the improvement of the quality of life for LMI residents; a $1.5 million commitment in the Franklin Capital Low-Income Housing Tax Credit Fund, which provides rehabilitation financing for several multifamily housing developments in Virginia; and equity investments totaling $3.1 million in the Virginia Community Development Corporation's Housing Equity Fund, which facilitates the development and financing of affordable housing throughout Virginia and utilizes the federal low-income housing tax credit program. In addition, between March 2011 and December 2012, Fairfax Bank donated approximately $124,820 to support numerous community development organizations whose operations assist LMI individuals and areas.

With respect to the Service Test, examiners stated that the bank had a high level of community development services within its primary market areas. It was noted that Fairfax Bank and its employees actively sought out, and participated in, opportunities that were generally targeted to LMI individuals and areas within the communities the bank served. In addition, Fairfax Bank employees have been involved with organizations that assist small businesses with funding, provide financial literacy training, promote affordable housing opportunities, or support education.

CRA Performance of Parkersburg Bank. United's lead bank subsidiary, Parkersburg Bank, received an overall "satisfactory" rating at its most recent CRA evaluation by the Reserve Bank on June 3, 2013 ("Parkersburg Evaluation"), with ratings of "high satisfactory" for the Lending Test, "low satisfactory" for the Investment Test, and "outstanding" for the

[34] Fairfax Bank's lending is considered highly responsive to community credit needs, with an overwhelming majority of the bank's HMDA loans (approximately 88 percent) and small business loans (approximately 85 percent) originated within its assessment area.

[35] The "low satisfactory" rating on the Investment Test was driven by the bank's performance in its largest assessment area, the Multistate CSA, where the bank held only three investments totaling $595,000 (or 11 percent of its total qualified investments).

Service Test.[36] Examiners noted that a high percentage of the bank's HMDA, small business, and consumer loans were originated within the bank's assessment areas.

In assigning Parkersburg Bank a "high satisfactory" rating for the Lending Test, Reserve Bank examiners noted that the bank participated in a variety of special lending programs that benefit LMI borrowers and communities. For example, the bank originated 21 loans totaling about $1.4 million during the evaluation period under the Affordable Housing Option loan program, which offers home purchase, refinance, and rehabilitation loans with up to 97 percent financing, and is limited to families whose incomes do not exceed 80 percent of the Department of Housing and Urban Development's median family income for their county of residence.[37] Examiners also noted that Parkersburg Bank made a high level of community development loans (originating or renewing 61 such loans totaling about $18.6 million during the review period), which ultimately benefitted LMI borrowers and communities.

As noted, Parkersburg Bank was assigned a "low satisfactory" on the Investment Test. This rating was driven by the fact that during the review period, the bank had only six qualifying investments totaling $6.8 million, which represented less than 1 percent of the bank's total assets.

On the Service Test, examiners rated the bank's overall performance "Outstanding." The bank's delivery systems, branch locations, and hours of operation were considered accessible and convenient to all portions of the assessment areas. Of the bank's 63 branch offices, 16, or 31.7 percent, were located in LMI areas.

CRA Performance of VC Bank. VC Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of October 31, 2011 ("VC Bank Evaluation"),[38] with ratings of "low satisfactory" for the Lending Test and "high satisfactory" for the Investment and Service Tests.[39] Examiners also concluded that, while VC Bank maintained a significant level of qualified community development investments, the bank's distribution by borrower income or revenue was only marginally adequate.

With respect to the Lending Test, examiners determined that the bank's loan distribution by borrower income or revenue was marginally adequate and that geographic distribution was poor. However, examiners noted that a substantial majority of the bank's HMDA and small business loans, both by number and volume, were extended within the bank's assessment area. In addition, the bank provided a relatively high level of community develop-

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[36] The Parkersburg Evaluation reviewed HMDA, small business, and consumer lending activity reported by the bank from January 1, 2011, through December 31, 2012. Examiners also considered qualified community development loans originated from March 14, 2011, through June 3, 2013.

[37] Additionally, as noted in the Parkersburg Evaluation, Parkersburg Bank (1) has extended 166 loans totaling $1.8 million as part of the FHA Title 1 Home Improvement loan program, which offers flexible nontraditional underwriting criteria for home improvement loans; (2) has been involved in eight projects under the Federal Home Loan Bank ("FHLB") Affordable Housing program, which provides grants and loans for new and rehabilitated single- and multifamily housing projects; (3) has provided three eligible small businesses with start-up and expansion funding totaling $320,000 under the FHLB Banking on Business program; and (4) has provided 36 veterans with more than $305,000 in home improvement assistance as part of a partnership with the Atlanta FHLB to provide grants to LMI veterans for eligible home improvement loans.

[38] The VC Bank Evaluation reviewed loan data and small business lending activity reported by Fairfax Bank from January 1, 2009, through December 31, 2010. The evaluation also considered any qualified community development loans, investments, or service activities since the previous evaluation, and all qualified investments outstanding as of October 31, 2011, regardless of when such investments were made.

[39] Ratings for the Lending, Investment, and Service Tests are assigned to an institution based on its performance within an assessment area. For both Fairfax Bank and VC Bank, the Lending Test performance accounts for half of the banks' overall rating, while the Investment and Service Tests each accounted for one quarter of the banks' overall rating.

ment loans (16 loans totaling $36.7 million) within its assessment areas during the review period. These loans contributed significantly to the revitalization of LMI areas, development of affordable housing, provision of community development services, and promotion of small businesses within the assessment areas.

With respect to the Investment Test, examiners noted that VC Bank held 10 qualified community development investments totaling $29.1 million, the majority of which were directed at initiatives to help LMI borrowers in Virginia attain quality, affordable housing. Examiners also determined that the bank's retail banking delivery systems were effective and accessible to all portions of the assessment area, including LMI areas and, consequently, assigned the bank a "high satisfactory" rating under the Service Test.

2. Fair Lending Record

The Board has considered the records of Fairfax Bank, Parkersburg Bank, and VC Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Fairfax Bank and VC Bank Evaluations, discussed above. This also includes an evaluation of Fairfax Bank's fair lending policies and procedures. The Board also has taken into account the comments on the application.

United's Fair Lending Program. United has instituted policies and procedures at Fairfax Bank and Parkersburg Bank to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes (1) procedures to evaluate new laws and regulations to determine applicability to United's mortgage operations, (2) annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls, (3) fair lending training for all lending-related employees, (4) comparative loan file reviews, (5) legal and compliance reviews for potential fair lending complaints, and (6) polices requiring a second review of all home mortgage loan applications initially recommended for denial or for approval based on policy exceptions. United also engages in ongoing monitoring and testing, on a regular basis, to ensure compliance with federal and state laws and regulations and internal policies and procedures. Findings from these ongoing efforts are reported to United's board and management and serve as a catalyst for additional training, updating of policies and procedures, and implementing additional controls. United's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

3. HMDA and Small Business Lending Analysis, and Public Comment on the Application

Based on HMDA data from 2011, the commenters alleged that both Fairfax Bank and VC Bank had a poor record of meeting the needs of small businesses in LMI communities compared to the aggregate of lenders in certain assessment areas. The commenters further alleged that in 2011 VC Bank made a lower percentage of mortgage loans to LMI and African American borrowers and in LMI census tracts compared to the aggregate of lenders in certain assessment areas. In addition, commenters questioned the public benefits of the proposal.

The Board has reviewed HMDA and CRA small business lending data from 2011 and 2012 reported by Fairfax Bank, Parkersburg Bank, and VC Bank, the most recent publicly available data. In response to the comments, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns by Fairfax Bank, Parkersburg Bank, and VC Bank, even though the commenters did not criticize Fairfax Bank's or Parkersburg Bank's HMDA lending records. The Board focused its analysis on the market areas

addressed in the public comments (Northern Virginia; Harrisonburg, Winchester, Augusta County, Staunton, and Waynesboro City, Virginia; and Washington, D.C. MSA).

The commenters asserted that in 2011 Fairfax Bank made 4.9 percent of its small business loans in LMI census tracts in Winchester, Virginia (compared to 10.6 percent for the aggregate) and extended 36.6 percent of such loans to companies with Gross Annual Revenues ("GARs") of $1 million or less in the Washington, D.C. MSA (compared to 45.3 percent for the aggregate). The Board's review confirmed the disparity noted by the commenters.[40] However, the Board's analysis also revealed that Fairfax Bank's small business lending in LMI census tracts improved significantly from 2011 to 2012 in Winchester and other markets of concern to the commenters and was consistent with or exceeded the aggregate's in 2012 in all but the Augusta-Staunton-Waynesboro, Virginia market.

In addition, the percentage of loans to businesses with GARs of $1 million or less was consistent with or exceeded the aggregate for both 2011 and 2012 in the Winchester, Harrisonburg, and Augusta-Staunton-Waynesboro, Virginia MSAs. Such small business lending also increased slightly in the Washington, D.C. market in 2012, although it still lagged the aggregate. Importantly, when small business lending in the Washington, D.C. MSA was considered without regard to the size of business revenue, Fairfax Bank compared favorably to the aggregate, with 29.2 percent of the bank's loans made to small businesses (regardless of revenue amount) compared to just 12.6 percent for the aggregate.

The Board's review of Fairfax Bank's 2011 and 2012 HMDA data showed that, in both years, the bank exceeded the aggregate in the percentage of HMDA loans made in LMI tracts in its combined assessment area, as well as in the Winchester and Harrisonburg, Virginia and the Washington, D.C. MSAs. The data also showed Fairfax Bank's HMDA lending to LMI borrowers was consistent with or exceeded the aggregate in all the MSA's except Harrisonburg, Virginia in 2012, where lending to LMI borrowers nevertheless showed significant improvement from 2011 to 2012.

With respect to VC Bank, the commenters asserted that in 2011, compared to the aggregate of lenders in Northern Virginia, the bank made fewer home mortgage loans to LMI borrowers (23.5 percent for the aggregate compared to the bank's 12.7 percent) and to LMI neighborhoods (7.4 percent for the aggregate compared to the bank's 4.4 percent). The commenters also asserted that VC Bank made 1.7 percent of its home mortgage loans to African Americans borrowers in Northern Virginia during 2011, compared to 5.2 percent for the aggregate. Furthermore, commenters stated that only 4.6 percent of VC Bank's small business loans were extended in LMI census tracts in 2011 in Northern Virginia compared to 8.69 percent for the aggregate. The Board's analysis confirmed that VC Bank lagged the aggregate in mortgage lending to LMI and African American borrowers and LMI communities in Northern Virginia in 2011. The analysis also showed that the bank's mortgage lending continued to lag the aggregate in 2012.

The data shows, however, that there was significant improvement from 2011 to 2012 in the number of mortgage loan applications from, and originations to, LMI and African American borrowers, residents in minority census tracts, and in LMI census tracts. For example, in 2011, VC Bank received a total of six mortgage applications (or 1.4 percent of applications) from African Americans and originated all six (or 1.5 percent of loans). In 2012, the bank received 15 mortgage loan applications from African Americans (or 2.2 percent of applications) and originated 14 (or 2.2 percent of loans). Similarly, in 2012, VC Bank

[40] Fairfax Bank conducted a CRA Self Evaluation in June 2012, which noted the same deficiencies indicated by the commenters. In response to this internal evaluation, Fairfax Bank increased its percentage of small business loans to LMI census tracts in Winchester, Virginia from 4.9 percent in 2011 to 30.4 percent in 2012.

improved its small business lending in minority census tracts and closely approximated the aggregate in LMI census tracts and to businesses with GARs of $1 million or less.[41]

Since 2011, VC Bank has made an effort to increase lending to LMI neighborhoods and small business in LMI communities and to increase home mortgage lending to LMI and African American borrowers. In particular, the bank adopted the "In Reach" program, which provides portfolio mortgage loans at below market 30-year fixed rates for owner-occupied Northern Virginia residences at a 97 percent loan-to-value ratio for loans up to $417,000, and at a 95 percent loan-to-value ratio for loans up to $500,000, with no income limits for homes within LMI areas. The program has more than doubled the number and dollar amount of VC Bank's home loans to LMI borrowers in Northern Virginia between 2011 (40 loans totaling $8.8 million) and 2012 (93 loans totaling $20.1 million). Similarly, VC Bank more than doubled the number and dollar amount of its home loans in LMI communities between 2011 (15 loans totaling $5.8 million) and 2012 (48 loans totaling $11.8 million).[42]

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Fairfax Bank and VC Bank have excluded or denied credit to any group on a prohibited basis.[43]

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations by the Reserve Bank of compliance by Fairfax Bank, Parkersburg Bank, and VC Bank with fair lending laws and regulations. Fairfax Bank, Parkersburg Bank, and VC Bank also have provided the Board with detailed information on their training, marketing, advertising, and centralized underwriting programs, which reflect the companies' commitment to the prevention of prescreening, discouragement, or exclusion of credit applications on a prohibited basis. The Board also considered information showing the actual reasons for credit decisions.

The Reserve Bank's analysis showed that the marketing programs of Fairfax Bank, Parkersburg Bank, and VC Bank were inclusive and unbiased and did not discourage minority applicants. Moreover, the analysis by the Reserve Bank showed that the banks involved consistently adhered to their underwriting guidelines and procedures, which are designed to ensure individual credit decisions are made on a non-discriminatory basis (e.g., credit history, inadequate collateral, and debt-to-income ratio).

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[41] One commenter expressed continuing concerns about VC Bank's lending to LMI and African American borrowers and asserted that both banks have work to do to serve all communities in their service areas. This same commenter acknowledged and commended specific progress made by both Fairfax Bank and VC Bank to improve their HMDA and small business lending. In particular, the commenter praised Fairfax Bank for its significant progress in improving small business lending to businesses with GARs of $1 million or less in Washington, D.C. and to LMI communities outside of Washington, D.C.

[42] One commenter has commended VC Bank for the increase in lending to LMI neighborhoods and small business in LMI communities, and the increase in home mortgage lending to LMI and African American borrowers through the adoption of the In Reach program.

[43] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

The Board notes the progress that United made in its lending performance against the aggregate from 2011 to 2012 and encourages United to continue this positive trend. To that end, United has committed that, at the next CRA examination following consummation of the merger with VCB and consistent with the combined organization's capacity and opportunities for making qualified lending and investments, the combined organization will demonstrate that it has engaged in levels of qualified lending and investments, home mortgage lending, small business lending, and community development lending and investments in low- and moderate-income communities in the Northern Virginia portion of United's Multistate CSA assessment area, that exceed United's improved performance in 2012. In addition, within thirty (30) days of consummation, United will develop a program, to apply across all assessment areas of the combined organization, with the objective of producing results exceeding United's improved performance in 2012. United will submit the program to the Reserve Bank for review and implement the program across the combined organization's assessment areas.

4. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

The Board has considered the extent to which the proposal would benefit the customers of Fairfax Bank, VC Bank, or both.[44] Such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of either bank.

United represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including data processing. United notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers.

United also states that the proposal would offer customers convenience through a broader range of financial products. The merger would benefit VC Bank's customers with access to new products and services in the following areas: trust and estate services, retail checking and savings, business checking products services, cash management, credit cards, and consumer and commercial lending. In addition, the merger would enhance the suite of secondary market loan products and portfolio loan offerings to both Fairfax Bank's and VC Bank's noncommercial borrowers. For example, Fairfax Bank would introduce the United States Department of Agricultural Rural Development loan program to VC Bank clients, an option not currently available to these clients. Likewise, VC Bank would bring its CRA loan products to Fairfax Bank, thus expanding the products available to the latter's customers.

The merger also would benefit current customers of VC Bank through access to significantly larger branch and ATM networks. The branch network available to current VC Bank customers would increase from 28 to 136 branch locations throughout Virginia, West Virginia, Ohio, Maryland, Pennsylvania, and Washington, D.C. Similarly, the number of ATMs that VC Bank customers could access would increase from 29 to 197 locations throughout the same jurisdictions. United suggests that the expanded ATM network would offer greater access to current VC Bank customers located in LMI and middle income

[44] The commenters alleged that the proposal would not provide a clear or significant public benefit. One commenter specifically urged that to satisfactorily demonstrate the public benefits of the proposal, United should, among other things, commit to make more community development lending and investments in LMI communities in the combined organization's service areas. However, in evaluating the public benefits of a proposal, the Board considers all benefits of the proposed transaction, not just those that benefit specific disadvantaged communities. *See*, *e.g.*, *FirstMerit Corporation*, FRB Order No. 2013-3 (March 22, 2013).

areas. In this regard, United represents that 28 percent of its ATM transactions are from ATMs in LMI and middle-income distressed census tracts. United further notes that its ATMs offer a Spanish language option.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by United, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage and small business lending operations and compliance programs of Fairfax Bank, Parkersburg Bank, and VC Bank, and its review of examination reports, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages United to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[45]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[46] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[47]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, United would have approximately $11.6 billion in consolidated assets, and, by any of a number of alternative measures of firm size, United would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would

[45] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[46] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[47] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, United's intrafinancial assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Other Considerations

Fairfax Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of VC Bank. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[48] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by United with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application, including the submission and implementation of the program for improved performance. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 12, 2013.

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[48] The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under Section 4 of the Bank Holding Company Act

Investors Bancorp, MHC
Short Hills, New Jersey

Investors Bancorp, Inc.
Short Hills, New Jersey

Order Approving the Acquisition of a Mutual Savings and Loan Holding Company
FRB Order No. 2013–16 (December 23, 2013)

Investors Bancorp, MHC ("Investors MHC"), and Investors Bancorp, Inc. ("Investors Bancorp," and jointly with Investors MHC, "Investors"), both of Short Hills, New Jersey, have requested the Board's approval under section 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended ("BHC Act"), and section 225.4 of the Board's Regulation Y[1] to acquire Gateway Community Financial, MHC ("Gateway MHC") and its wholly-owned subsidiary, Gateway Community Financial Corporation ("GCF," and jointly with Gateway MHC, "Gateway"), and thereby indirectly acquire Gateway's subsidiary savings association, GCF Bank, all of Sewell, New Jersey. Immediately following the proposed acquisition, GCF Bank would be merged into Investors Bancorp's subsidiary bank, Investors Bank, Short Hills, New Jersey.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 35271 (2013)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 4 of the BHC Act.

Investors, with consolidated assets of approximately $15.4 billion, is the 77th largest insured depository organization in the United States, controlling approximately $10 billion in consolidated deposits. Investors Bank operates in New Jersey and New York. Investors Bank is the 10th largest depository institution in New Jersey, controlling deposits of approximately $8.7 billion, which represent 3 percent of the total deposits of insured depository institutions in the state.[3] Investors Bank is the 53rd largest insured depository institution in New York, controlling deposits of approximately $1.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the state.

GCF, with total consolidated assets of $301 million, controls GCF Bank, which operates in New Jersey. GCF Bank is the 77th largest insured depository institution in New Jersey, controlling deposits of approximately $272 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

2 The merger of GCF Bank into Investors Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act. The FDIC approved the merger on December 12, 2013.

3 Deposit data are as of June 30, 2013. Asset data are as of September 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

On consummation of this proposal, Investors would remain the 77th largest depository organization in the United States, controlling consolidated assets of approximately $15.7 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In New Jersey, Investors Bank would remain the seventh largest insured depository institution, controlling deposits of approximately $9 billion, which would represent 3 percent of the total deposits of insured depository institutions in the state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[4] The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.[5] Investors has committed that Gateway and the nonbanking subsidiary that Investors proposes to acquire engage in activities that will conform to those permissible under section 4 of the BHC Act and Regulation Y.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Gateway "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system."[6] As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[7] In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA"). In cases involving the interstate acquisition of an insured depository institution under section 4(c)(8) of the BHC Act, the Board must also consider the concentration of deposits on a nationwide basis.[8]

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4 12 CFR 225.28(b)(4)(ii).

5 A savings association operated by a bank holding company may engage only in activities that are permissible for bank holding companies under section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4). In this instance, Investors will immediately merge GCF Bank into Investors Bank and will not operate the savings association independently.

6 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1601 (2010), ("Dodd-Frank Act") added the "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

7 *See* 12 CFR 225.26; *see*, *e.g.*, *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

8 The Dodd-Frank Act amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the bank holding company and the applicant controls or would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8). For purposes of the BHC Act, the home state of both Investors and Gateway is New Jersey and, therefore, section 4(i)(8) of the BHC Act does not apply to this transaction. Also, as noted, consummation of the proposal would result in Investors controlling less than 1 percent of the total amount of deposits of U.S. insured depository institutions.

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board has reviewed the competitive effects of Investors' acquisition of Gateway, in light of all the facts of record. Investors and Gateway compete directly in the Philadelphia, Pennsylvania banking market.[9] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Investors and Gateway,[10] the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review Guidelines ("DOJ Bank Merger Guidelines"),[11] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds of the DOJ Bank Merger Guidelines in the Philadelphia banking market. On consummation of the proposal, the Philadelphia banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[12] In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Investors and Gateway compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations weigh in favor of approval.

Financial, Managerial, and Other Supervisory Considerations

The Board considered the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset

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[9] The Philadelphia, Pennsylvania banking market is defined as Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania, and Burlington, Camden, Cumberland, Gloucester, and Salem counties, all in New Jersey (the "Philadelphia banking market").

[10] Deposit and market share data are as of June 30, 2012, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[11] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[12] Investors operates the 28th largest depository institution in the Philadelphia banking market, controlling deposits of approximately $462 million, which represent less than 1 percent of market deposits. GCF operates the 62nd largest depository institution in the market, controlling deposits of approximately $272 million, which represent less than 1 percent of market deposits. On consummation, Investors Bank would operate the 19th largest depository institution in the market, controlling weighted deposits of approximately $734 million, which represent less than 1 percent of market deposits. The HHI would decrease by 2 points to 1034.

quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Investors and Investors Bank are well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves two holding company mergers. In the first merger, Gateway MHC would merge with and into Investors MHC. In the second merger, GCF, Gateway MHC's wholly-owned subsidiary, would merge with and into Investors Bancorp. After the merger of GCF into Investors Bancorp, Investors Bancorp will issue a number of shares of common stock to Investors MHC equal in value to the pro forma market value of Gateway MHC and its subsidiaries, as determined by an independent appraiser, for the benefit of Gateway MHC's depositors. Investors is in satisfactory condition, and the asset quality, earnings, and liquidity of Investors Bank and GCF Bank weigh in favor of approval. Based on its review of the record, the Board finds that the organizations have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Investors, Investors Bank, Gateway, and GCF Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Investors' plans for implementing the proposal.

Investors and Investors Bank are considered to be managed well. Investors' existing risk-management program and its directorate and senior management weigh in favor of approval. The directors and senior executive officers of Investors have substantial knowledge and experience in the banking and financial services sectors.[13] There will be no changes in the senior management of Investors following consummation of the proposed transaction.

On December 2, 2013, the Board approved Investors MHC's proposal to acquire two other insured depository institutions in the New Jersey and New York markets. Also, in 2012, Investors successfully integrated the banking operations of two insured depository institutions located in the New York, New York, market into its operations. Investors is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Investors would implement its risk-management policies, procedures, and controls at the combined organization. In addition, Investors' management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Investors is proposing to integrate GCF Bank's existing management and personnel in a manner that augments Investors Bank's management.

[13] On consummation, Investors' board of directors will include three additional directors from GCF's current board of directors. In addition, Investors Bank will form an advisory board consisting of all of the current GCF Bank directors that will advise Investors Bank on the GCF Bank market areas, deposit and lending activities, and customer relationships.

Investors' integration record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors weigh in favor of approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal on balance weigh in favor of approval, as do the other supervisory factors.

Records of Performance under the CRA and Fair Lending Laws

The CRA[14] requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.[15] The CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the convenience and needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[16]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Investors Bank and GCF Bank, data reported by Investors Bank and GCF Bank under the Home Mortgage Disclosure Act ("HMDA"),[17] other information provided by Investors, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of Investors Bank and GCF Bank as reflected in 2011 HMDA data.

A. CRA Performance Evaluations

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Investors Bank. Investors Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in August 2011 ("Investors Evaluation"). Examiners concluded that Investors Bank demonstrated an adequate responsiveness to the credit needs of its assessment areas.[20] Investors Bank received "high satisfac-

[14] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[15] 12 U.S.C. § 2901(b).

[16] 12 U.S.C. § 2903.

[17] 12 U.S.C. § 2801 *et seq*.

[18] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Federal Register* 11642 at 11665 (2010).

[19] 12 U.S.C. § 2906.

[20] Examiners put the most weight on Investors Bank's 1-4 family lending performance in the New York/New Jersey Multistate assessment area because of Investors Bank's significant presence in that area.

tory" ratings on the Lending Test, the Investment Test, and the Service Test.[21] The FDIC assigned Investors Bank a rating of "high satisfactory" for the Lending Test, noting that the bank's lending activity was good. Examiners found that Investors Bank's geographic distribution of loans was adequate, emphasizing the bank's concentration within the New York/New Jersey Multistate area and in residential real estate lending. Examiners also determined that Investors Bank had a good record of lending inside its assessment areas by number and dollar amount of loans. Examiners found that Investors Bank's community development lending performance was excellent. Examiners noted that Investors Bank was a leader in making community development loans, originating 32 development loans totaling $104.5 million for the period from June 2008 through August 2011. Furthermore, examiners highlighted Investors Bank's issuance of community development loans in the New York/New Jersey Multistate Metropolitan assessment area, which had the greatest weight of all areas in the analysis. Examiners also noted that Investors Bank engaged in innovative lending, where the bank offered down-payment assistance forgivable loans and down-payment assistance grants below market interest rate, without closing costs and with extended loan terms.

Concerning the Investment Test, examiners highlighted Investors Bank's significant level of qualified community development investments and grants in its assessment areas. In particular, examiners highlighted Investors Bank's purchase of mortgage-backed securities that consisted of underlying mortgage loans originated to LMI borrowers, as well as an equity investment by Investors Bank to establish the Investors Bank Charitable Foundation, which supports charitable causes and community development activities through grants and donations to cultural, educational, and social service organizations.

For the Service Test, examiners noted retail banking services were accessible to essentially all segments of Investors Bank's assessment areas, including LMI geographies. Examiners further emphasized that Investors Bank provided a relatively high level of community development services that were responsive to a variety of community development needs.

CRA Performance of GCF Bank. The Office of the Comptroller of the Currency ("OCC") assigned GCF Bank an overall CRA rating of "satisfactory" with ratings of "satisfactory" for the Lending Test and "satisfactory" for the Community Development Test at its most recent CRA examination on January 2, 2013.[22] With respect to the Lending Test, examiners noted that the bank's loan-to-deposit ratio was reasonable, and a majority of home mortgage loans, GCF Bank's primary loan product, were made within its assessment area. The examiners concluded that GCF Bank had reasonable penetration among borrowers of different income levels. Because there were no low-income tracts within the assessment area and only six moderate-income tracts, geographical distribution of home mortgage loans was not heavily weighted by the examiners. The examiners did note, however, that they did not detect any conspicuous or unexplained gaps in the bank's lending patterns.

Concerning the Community Development Test, examiners found that GCF Bank's level of community development activities was adequate given its size, capacity, and the community development needs and opportunities of its assessment areas. Examiners noted that, during the evaluation period, GCF Bank provided $630,000 in community development loans, donated $13,651 to community development organizations, and purchased $2.4 million in

[21] The evaluation period for the Lending Test in the Investors Evaluation was January 1, 2009 to June 30, 2011, except for community development loans, for which the evaluation period was from June 23, 2008 through August 9, 2011. The evaluation period for the Investment and Service Tests was from June 23, 2008 through August 9, 2011.

[22] The evaluation periods were from January 1, 2010 through December 31, 2011 for the Lending Test and from November 23, 2009 through January 2, 2013 for the Community Development Test.

CRA-qualified investments to help meet the community development needs of its assessment area. In addition, examiners found that GCF Bank personnel provided leadership and/or financial expertise to five community development organizations serving GCF Bank's assessment areas.

Investors Bank's Efforts Since the 2011 CRA Evaluation. According to Investors, since the Investors Evaluation, Investors Bank has increased its investment in CRA-qualified FNMA Mortgage Backed Securities, serving the credit needs of LMI borrowers within its assessment areas. Investors Bank currently plans to invest 1 percent of its assets in qualified community development investments and grants and has increased its percentage of assets invested from $57 million (0.59 percent of its assets) as of March 31, 2011, to $132 million (1.04 percent of its assets) as of February 28, 2013.[23] In addition, Investors stated that, in 2012, Investors Bank provided 186 small business loans totaling almost $54 million in its assessment areas. Investors also reported that, in 2012, Investors Bank provided 152 community development loans totaling over $435 million in its assessment areas. Moreover, the FDIC reviewed Investors Bank's CRA performance in its review of the related Bank Merger Act application and found no inconsistencies with the purposes of the CRA.

B. Fair Lending Record, HMDA Analysis, and Public Comment on the Application

The Board has also considered the records of Investors Bank and GCF Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Investors, Gateway, and GCF Bank Evaluations. This also includes an evaluation of Investors Bank's fair lending policies and procedures and consideration of other agencies' views on Investors Bank's record of performance under fair lending laws. The Board also has taken into account the comment on the application.

Investors Bank's Fair Lending Program. The Board considered information about Investors Bank's compliance and risk-management systems and the steps it has taken to ensure compliance with fair lending laws. Investors Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Given its recent growth through acquisitions, Investors Bank has recognized the need to ensure that its policies and procedures keep pace to ensure continued effective compliance, and it has increased its compliance staff since January 2013 from two to five people, which include a Director of Compliance, two Compliance Officers, and two Compliance Analysts.

Investors Bank recently underwent a fair lending risk assessment to analyze potential vulnerabilities in loan processes and controls. Investors Bank's legal and compliance risk-management program includes (1) procedures to evaluate new laws and regulations to determine applicability to Investors' mortgage operations, (2) ongoing fair lending training for lending-related personnel, (3) consumer compliance training for the Board of Directors after changes in law or in Investors Bank's product line, (4) compliance reviews for all fair lending complaints, (5) a second review and second signature for all loan applications initially recommended for denial, and (6) a Chief Lending Officer review and Board of Directors ratification of any exceptions to the loan policy guidelines. Investors Bank's risk-management systems and policies and procedures for assuring compliance with fair lending laws will be implemented at the combined organization.

HMDA Analysis and Public Comment on the Application. The commenter cited 2011 HMDA data and alleged that Investors Bank made fewer conventional home purchase

[23] Investors represents that Investors Bank has invested over 1 percent of its assets in CRA-qualified FNMA Mortgage Backed Securities each quarter from June 30, 2012 through February 28, 2013.

loans to African American applicants than to white applicants and fewer refinance loans to African American and Hispanic applicants than to white applicants in the New York and Long Island Metropolitan Statistical Areas ("MSAs"). The commenter also asserted that, in the New York MSA, Investors Bank disproportionately denied applications by Hispanic applicants for conventional home purchase loans and refinance loans. In addition, the commenter alleged that GCF Bank made fewer conventional home purchase, refinance, and home improvement loans to African American and Hispanic applicants than to white applicants in the Camden, New Jersey MSA.s

The Board has reviewed HMDA data from 2011 reported by Investors Bank and GCF Bank, the most recent publicly available data. In response to the comment, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns, as well as the subset of that data related specifically to conventional home purchase and refinance loans, which were the subjects of the public comment received on the proposal. Within those data sets, the Board focused its review on data related to loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

With respect to Investors Bank and GCF Bank, the Board confirmed the levels of conventional home purchase loans and the denial disparity ratios associated with conventional home purchase and refinance loans noted by the commenter.

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Investors Bank or GCF Bank have excluded or denied credit to any group on a prohibited basis.[24]

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by Investors Bank and GCF Bank with fair lending laws and regulations. The Board also has consulted with the OCC, the FDIC, and the Consumer Financial Protection Bureau ("CFPB") about this proposal.

With respect to the specific HMDA data on conventional home purchase and refinance mortgages cited by the commenter, Investors provided information on Investors Bank's nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). Investors also provided the Board with detailed information on Investors Bank's training, marketing, advertising, and underwriting guidelines reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis.

With respect to the specific HMDA data on conventional home purchase or home improvement loans cited by the commenter, Investors provided information on GCF Bank's non-

[24] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

discriminatory reasons for individual lending decisions (i.e., credit history and debt-to-income ratio).

The Board also consulted with the FDIC and the CFPB with respect to Investors Bank's record of fair lending performance since the Investors Evaluation. The FDIC reported, based on its review of supervisory information, that it did not find evidence that Investors Bank engaged in discriminatory conduct during the period before which the CFPB assumed jurisdiction over federal consumer financial laws.[25] The FDIC has indicated that the bank's operations and compliance program were compliant with fair lending and other consumer protection laws for the time period reviewed by the FDIC.

C. Conclusion on CRA, Fair Lending, and HMDA Review

The Board has considered all of the facts of record, information provided by Investors, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of Investors Bank's and GCF Bank's mortgage lending operations and compliance programs, its review of examination reports, the CRA records of the institutions involved, and its consultations with the OCC, the FDIC, and the CFPB, the Board concludes that the CRA and fair lending records of Investors Bank and GCF Bank on balance weigh in favor of approval. The Board encourages Investors Bank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

On December 2, 2013, the Board approved Investors' acquisition of Roma Financial Corporation, MHC, Roma Financial Corporation, Roma Bank, and RomAsia Bank (collectively, "Roma"). In approving the acquisition of Roma by Investors, the Board conditioned its approval by requiring the audit committee of the board of directors of Investors Bancorp to undertake certain review actions. In this case, the Board believes that it is also appropriate, in connection with the acquisition of Gateway, for Investors to enhance its consumer compliance program and policies to account for the size, complexity, and diversification of the business lines that would result from this acquisition and the acquisition of Roma. Accordingly, as a condition of its approval, the Board has determined that the audit committee of the board of directors of Investors Bancorp must issue a written report to the board of directors of Investors Bancorp that shall include: an assessment of Investors Bank's consumer compliance risk systems, processes, and procedures; an assessment of compliance with any reports or recommendations made by any state or federal agency issued in the last five years with respect to consumer compliance; and recommendations for improving the consumer compliance risk program, if necessary. The report shall be issued to the board of directors of Investors Bancorp not later than April 1, 2014, with copies to Investors Bank senior management and the Board of Governors. Compliance with this condition, and with the recommendations made by the audit committee, will be monitored as part of the supervisory process.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act.[26] To

[25] *See* 12 U.S.C. § 5481(14).

[26] Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Investors would have approximately $15.7 billion in consolidated assets, and by any of a number of alternative measures of firm size, Investors Bank would be the 77th largest U.S. insured depository organization. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The Board, therefore, concludes that financial stability considerations relating to this proposal weigh in favor of approval.

Additional Public Benefits of the Proposal

The Board has also considered the extent to which the proposal would benefit the customers of Investors Bank and GCF Bank. Among other things, such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of any of the parties.

The merger would extend the branch and ATM footprints of Investors Bank and GCF Bank within the New Jersey market, allowing customers greater geographic flexibility in accessing banking services. The applicants also have plans to add drive-up ATMs and night depositories at all Gateway branch locations, thereby offering customers "24-7" access to certain banking services. Loan customers will be able to benefit from larger loan-to-one borrower limits with Investors Bank's larger capital base.

Investors expects that the proposal would result in cost savings for the combined organization by eliminating redundant back-office costs, professional expenses, occupancy expenses, data processing charges, marketing costs, and other redundant expenses. Investors has noted that these savings would be reinvested back into the current operations of various projects of the combined organization.

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[27] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Investors also expects that, as a result of the merger, GCF Bank's customers would have access to a variety of consumer and business services, some of which are not currently offered by GCF Bank due to its small scale, such as a Client Care Center and certain mobile and online banking products. Investors is also planning a robust client outreach for the GCF Bank market to support the transition of the client base and identify additional credit and deposit needs that are not currently available in that market from GCF Bank.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order are not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including the commitments made in this case and the conditions noted in this order, and for the reasons discussed above, the Board believes that the factors related to competition, financial and managerial resources, convenience and needs, and financial stability weigh in favor of approval of this case. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.[29] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Investors with all the conditions imposed in this order and the commitments made to the Board in connection with the application, including receipt of all required regulatory approvals. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[30] and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 23, 2013.

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[29] The public commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

[30] 12 CFR 225.7 and 225.25(c).

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Stein, and Powell. Abstaining from this action: Governor Raskin.

Robert deV. Frierson
Secretary of the Board

Orders Issued Under Bank Merger Act

First Farmers Bank & Trust
Converse, Indiana

Order Approving the Acquisition of Assets, Assumption of Liabilities, and Establishment of Branches
FRB Order No. 2013–8 (October 4, 2013)

First Farmers Bank & Trust ("First Farmers"), Converse, Indiana,[1] a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire certain assets and assume certain liabilities of the Bank of Indiana ("Bank of Indiana"), National Association, Dana, Indiana. In addition, First Farmers has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the four acquired branches of Bank of Indiana.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

First Farmers is the 25th largest insured depository institution in Indiana, controlling deposits of approximately $778.5 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Indiana ("state deposits").[6] First Farmers proposes to acquire all of Bank of Indiana's deposits, which represent less than 1 percent of state deposits. On consummation of the proposal, First Farmers would become the 23rd largest insured depository institution in Indiana, controlling deposits of approximately $861.9 million, representing less than 1 percent of state deposits.[7]

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[8] The Bank Merger Act also prohibits the Board from approving a

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1 First Farmers is a subsidiary of First Farmers Financial Corporation ("FFFC"), also of Converse, Indiana, a financial holding company.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321.

4 Bank of Indiana branches to be acquired are located at (1) 129 Maple Street, Dana, (2) 42 South State Road 135, Bargersville, (3) 100 East Short Street, Hamlet, and (4) 302 Keller Avenue, North Judson, all in Indiana.

5 12 CFR 262.3(b).

6 Data are as of June 30, 2012. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

7 At June 30, 2013, Bank of Indiana controlled approximately $83.4 million in deposits.

8 12 U.S.C. § 1828(c)(5)(A).

proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[9]

First Farmers and Bank of Indiana compete directly in the Indiana banking markets of Starke County, Terre Haute, and Indianapolis.[10] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that First Farmers would control,[11] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[12] and other characteristics of the markets.

In the Terre Haute and Indianapolis banking markets, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines. On consummation of the proposal, the Terre Haute and Indianapolis banking markets would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the banking market.[13]

In the Starke County banking market, First Farmers is the third largest insured depository institution, controlling deposits of approximately $54.3 million, which represent approxi-

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[9] 12 U.S.C. § 1828(c)(5)(B).

[10] The Starke County banking market is defined as Starke County, Indiana. The Terre Haute banking market is defined as Clay, Vigo, and Sullivan Counties; Clinton and Helt townships in Vermillion County; and Florida, Racoon, and Jackson townships in Parke County, all in Indiana. The Indianapolis banking market is defined as Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby Counties, and Green Township in Madison County, all in Indiana.

[11] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2012, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 53 (1991). No savings associations operate in the Starke County banking market.

[12] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[13] In the Terre Haute banking market, First Farmers operates the eighth largest insured depository institution, controlling deposits of approximately $31.4 million, which represent 1.4 percent of market deposits. The branch First Farmers proposes to acquire currently controls $39.2 million in deposits. After consummation, First Farmers would become the seventh largest insured depository institution in the market, controlling deposits of approximately $70.6 million, which represent 3.0 percent of market deposits. The HHI would increase by four points, from 3298 to 3302. On consummation of the proposal, nine competitors would remain in the market.

In the Indianapolis banking market, First Farmers operates the 35th largest insured depository institution, controlling deposits of approximately $31.1 million, which represent less than 1 percent of market deposits. The branch First Farmers proposes to acquire currently controls $38.1 million in deposits. After consummation, First Farmers would become the 30th largest insured depository institution in the market, controlling deposits of approximately $69.1 million, which represent less than 1 percent of market deposits. The HHI would not increase in this market. On consummation of the proposal, 43 competitors would remain in the market.

mately 21.9 percent of market deposits. Bank of Indiana is the fifth largest insured depository institution in the market, controlling deposits of approximately $14.8 million, which represent approximately 6 percent of market deposits. On consummation of the proposal, First Farmers would become the second largest depository institution in the Starke County banking market, controlling deposits of approximately $69.1 million, which would represent 27.9 percent of market deposits. The HHI would increase 262 points, from 2170 to 2432.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.[14] In this market, there are several such factors. On consummation, four other insured depository institutions, including three institutions that each control more than 10 percent of the market deposits, would continue to operate in the market, including the market's largest competitor, 1st Source Bank, with 28.4 percent of market deposits.

The Board also has considered the financial condition of Bank of Indiana. Bank of Indiana's financial condition has deteriorated in recent years. Bank of Indiana is party to a formal agreement with its primary federal supervisor, the Office of the Comptroller of the Currency ("OCC").[15] As a result, Bank of Indiana may be exerting less competitive pressure than its market share would indicate, and consummation of this transaction would not substantially lessen competition in the Starke County banking market.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Starke County, Terre Haute, or Indianapolis banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and the organizations' nonbanking operations. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the cost of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

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[14] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

[15] Indiana Bank Corp., the parent bank holding company of Bank of Indiana, has filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Indiana. On May 30, 2013, the court approved the sale of certain assets and liabilities of Bank of Indiana to First Farmers.

First Farmers is well capitalized and would remain so on consummation of the proposal. FFFC will incur a small amount of debt that will be injected into the resulting bank as new capital. The Board has concluded that FFFC has the resources to ensure timely repayment of the debt. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that First Farmers has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of First Farmers and has reviewed the examination records of First Farmers, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and First Farmers' record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered First Farmers' plans for implementing the proposal. First Farmers is considered to be well managed, and its board of directors and senior management have significant banking experience. First Farmers would operate the acquired branches under its existing policies and procedures, which are considered to be adequate. In addition, the Board has considered the integration of First Farmers' 2012 acquisition of a similarly sized organization with the acquisition of problem assets in Illinois. Examiners noted that management was capable of addressing the increased problem assets in a timely and effective manner.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of First Farmers are consistent with approval, as are the other supervisory factors.

Convenience and Needs Considerations

The Bank Merger Act also requires the Board to consider the convenience and needs of the communities to be served and to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[16] The CRA requires the federal financial supervisory agencies to encourage financial institutions to meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals. Accordingly, the Board has considered the convenience and needs factor and the CRA performance records of First Farmers and Bank of Indiana in light of all the facts of record.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[17]

First Farmers received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Chicago, as of February 2012. Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, the geographic distribu-

[16] 12 U.S.C. § 2901 *et seq*.

[17] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Federal Register* 11,642 at 11,665 (2010).

tion of loans reflected reasonable dispersion throughout the assessment area, and the distribution of loans represents reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners further determined that the bank demonstrated adequate responsiveness to the community development needs of its assessment area. Bank of Indiana received an overall rating of "satisfactory" at its most recent CRA performance examination by the OCC, as of November 2011. First Farmers has represented that it would implement its policies at the acquired branches. This proposal would result in customers continuing to have access to banking services in their immediate communities.

Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to convenience and needs, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

Financial Stability

The Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this case. The Board, therefore, concludes that financial stability considerations in this proposal are consistent with approval.

Establishment of Branches

As noted, First Farmers has applied under section 9 of the FRA to establish branches at the current locations of the Bank of Indiana, and the Board has considered the factors it is required to consider when reviewing an application under that section.[18] Specifically, the Board has considered First Farmers' financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by First Farmers with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Acquisition of the branches may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

[18] 12 U.S.C. § 322; 12 CFR 208.6.

By order of the Board of Governors, effective October 4, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Green Dot Bank
Provo, Utah

Order Approving the Acquisition of Assets and Assumption of Liabilities
FRB Order No. 2013–10 (November 22, 2013)

Green Dot Bank DBA Bonneville Bank, Provo, Utah, a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to purchase certain assets and assume certain deposit liabilities of GE Capital Retail Bank ("GECRB"), Draper, Utah, a federal savings bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[2] The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was also requested from the United States Attorney General and the Federal Deposit Insurance Corporation ("FDIC"). The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act.

Green Dot Bank's primary business activity is the issuance of general-purpose reloadable prepaid debit cards ("GPR cards") and provision of settlement services for prepaid debit cards.[3] Green Dot Bank is a subsidiary of Green Dot Corporation ("Green Dot"), Pasadena, California, a financial holding company that provides services related to the provision of GPR cards. Green Dot Bank proposes to acquire assets and assume liabilities related to GPR cards issued by GECRB, sold at U.S.-based Wal-Mart stores and online through a website for the prepaid debit cards, and serviced by Green Dot pursuant to an agreement among the parties initially entered into in 2006 ("Wal-Mart Cards").[4] As a result of the proposed transaction, Green Dot Bank would replace GECRB as the issuer of Wal-Mart Cards. Green Dot would provide the same services to Green Dot Bank that it currently provides to GECRB for the cards.

Green Dot Bank is the 37th largest insured depository institution in Utah, controlling deposits of approximately $183 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Utah ("state deposits").[5]Green Dot Bank proposes to acquire approximately $276 million in total deposits from GECRB, representing less than 1 percent of state deposits. On consummation of the proposal, Green Dot Bank would become the 30th largest insured depository institution in Utah, controlling deposits of approximately $459 million, representing less than 1 percent of state deposits.

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1 12 U.S.C. § 1828(c).

2 12 CFR 262.3(b).

3 GPR cards issued by Green Dot Bank are network branded and linked to FDIC-insured accounts.

4 A large majority of Green Dot's GPR cards are sold through Wal-Mart. Green Dot's percentage of revenue derived from sales through Wal-Mart stores was 64.1 percent for 2012.

5 Deposit data are as of June 30, 2012, and reflect merger activity through August 1, 2013, including Green Dot Bank's acquisition of approximately $150 million of deposit liabilities of Synovus Bank in November 2012.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[6] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[7]

Green Dot Bank and GECRB do not operate branches in any common geographic banking market.[8] This transaction would not raise concerns regarding competition among GPR card issuers, whose market for competition is national in scope.[9] Moreover, Green Dot already services the cards that are the subject of this transaction. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effects on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the cost of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Green Dot Bank is well capitalized and would remain so on consummation of the proposal. As noted, the proposed transaction is structured as an acquisition of assets and assumption of liabilities. Green Dot Bank has represented that the transaction does not require Green Dot or Green Dot Bank to provide funds to GECRB. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Green Dot Bank and reviewed the examination record of Green Dot Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and Green Dot Bank's record of compliance with applicable banking and anti-money-laundering laws. Green Dot Bank is considered to be well managed, and its board of directors and senior management have significant experience in the prepaid card industry and in community banking. The Board also has considered Green Dot

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[6] 12 U.S.C. § 1828(c)(5)(A).

[7] 12 U.S.C. § 1828(c)(5)(B).

[8] Green Dot Bank operates one branch in the Provo-Orem, UT banking market, while GECRB operates one branch in each of the Salt Lake City, UT and Metro New York City, NY-NJ-CT-PA banking markets.

[9] The Board estimates that a national GPR card market would be considered moderately concentrated and that the transaction would cause only a small change in market concentration.

Bank's successful implementation of a similar proposal[10] and its plans for implementing this proposal, including its plans for managing the integration of the acquired assets and assumed liabilities into the bank.

In addition, the Board has considered the future prospects of Green Dot Bank in light of the financial and managerial resources and the bank's business plan. As noted, Green Dot Bank's business activity is focused narrowly on the issuance of GPR cards. A business plan that focuses on a narrow business activity and depends on a limited number of key business partners carries significantly greater risks than a business plan that employs broad diversification of activities and counterparties. As indicated in its order approving Green Dot's acquisition of Green Dot Bank, the Board expects banking organizations with a narrow focus to address these increased risks with financial resources, managerial systems, and expertise commensurate with that additional level of risk.[11] The risk mitigants the Board relied on when it approved Green Dot's acquisition of Green Dot Bank would continue to be in place after the proposed transaction, and the proposal would not appear to adversely affect the future prospects of Green Dot Bank. Green Dot Bank would continue to maintain a tier 1 leverage ratio of at least 15 percent, which is appropriate in light of the narrow focus of Green Dot Bank's activity. Green Dot Bank has committed that deposits associated with general purpose reloadable cards, including deposits associated with Wal-Mart Cards, would continue to be balanced with equal levels of cash or cash equivalents.[12] Green Dot Bank also has committed to refrain from paying dividends for a certain period of time. Moreover, the Board has considered Green Dot's and Green Dot Bank's risk management systems and the Board's supervisory experiences, including examinations conducted at Green Dot and Green Dot Bank and commitments made by Green Dot and Green Dot Bank designed to maintain enhanced audit, governance, and risk management programs regarding its card business.[13]

In considering these factors, the Board has also consulted with the FDIC regarding the proposal. Based on all the facts of record, including supervisory and examination information from various U.S. banking supervisors, publicly reported and other financial information, and information and commitments provided by Green Dot Bank, the Board has concluded that considerations relating to the financial and managerial resources and future prospects involved in the proposal are consistent with approval, as are the other supervisory factors.

Convenience and Needs Considerations

The Bank Merger Act also requires the Board to consider the convenience and needs of the communities to be served and to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage financial institutions to meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, includ-

[10] The Federal Reserve Bank of San Francisco, pursuant to authority delegated by the Board, approved Green Dot Bank's proposal to acquire certain assets and assume certain liabilities of Synovus Bank, Columbus, Georgia, on October 4, 2012. The transaction was completed in November 2012.

[11] Green Dot Corporation, (order dated Nov. 23, 2011), 98 *Federal Reserve Bulletin* 29, 32 (4th Quar. 2011).

[12] The full amount of requisite cash or cash equivalents will be held in the account of Green Dot Bank.

[13] Green Dot Bank also has committed to maintain a strong audit program and strong corporate governance and to obtain the prior regulatory approval of the Federal Reserve for any proposed major deviation or material change from the business plan submitted with this proposal before consummation of the change.

[14] 12 U.S.C. § 2901 *et seq*.

ing low- and moderate-income neighborhoods, in evaluating bank acquisition proposals. Accordingly, the Board has considered the convenience and needs factor and the CRA performance records of Green Dot Bank and GECRB in light of all the facts of record.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[15]

Green Dot Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of San Francisco, as of June 4, 2012, which was conducted using the Interagency Small Institution Examination Procedures. On March 26, 2013, the Board approved the bank's request to operate under a CRA Strategic Plan for the period of 2012 through 2014.[16] GECRB received an overall rating of "Outstanding" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, as of December 31, 2012. After consummation of the proposal, Green Dot Bank would continue to operate under its current CRA policies.

Cardholders whose Wal-Mart Card accounts are acquired from GECRB would have continuous access to their account funds throughout the transition to Green Dot Bank.[17] Green Dot Bank would expand the features available to Wal-Mart Card cardholders not currently supported by GECRB. In particular, Green Dot Bank would provide a traditional bill payment feature, in which the cardholder could pay bills via automated clearinghouse fund transfers, and a check-writing feature, in which the cardholder could electronically complete checks that Green Dot Bank would print and mail to any payee designated by the cardholder.[18] Green Dot Bank is developing additional features for the Wal-Mart Cards, including a budget management feature that would allow cardholders to set aside funds loaded onto the Wal-Mart Card.

Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to convenience and needs, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

Financial Stability

The Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such addi-

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[15] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Federal Register* 11,642 at 11,665 (2010).

[16] Under 12 CFR 228.27, depository institutions may choose to be evaluated under a strategic plan for CRA purposes as an alternative to the traditional and more comprehensive CRA evaluation. The strategic plan sets measurable goals for the depository institution's performance, subject to approval by its primary supervisor prior to the depository institution's CRA evaluation.

[17] Green Dot Bank will provide Wal-Mart Card cardholders with notices and disclosures explaining the changes to their card agreements and issuing bank. Green Dot will provide a full refund to cardholders who elect not to agree to Green Dot Bank as the card issuer.

[18] Green Dot Bank states that the check-writing feature is especially helpful for payments to payees that prefer to receive paper checks, such as payments for rent.

tional risk factors are not present in this case. The Board, therefore, concludes that financial stability considerations in this proposal are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act. Approval of the application is specifically conditioned on compliance by Green Dot Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 22, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under International Banking Act

Banco BPI, S.A.
Porto, Portugal

Order Approving Establishment of Representative Offices
FRB Order No. 2013–9 (November 18, 2013)

Banco BPI, S.A. ("Bank"), Porto, Portugal, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA[1] to establish representative offices in Newark, New Jersey, and New Bedford, Massachusetts. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Newark, New Jersey (*New Jersey Star Ledger*, August 22, 2012), and in New Bedford, Massachusetts (*New Bedford Standard-Times*, August 21, 2012). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately $56.2 billion, is the fourth largest bank in Portugal.[2] Bank engages in a range of commercial and retail banking activities in

[1] 12 U.S.C. § 3107(a).
[2] Data are as of June 30, 2013.

Portugal and internationally. Outside Portugal, Bank operates branches in Spain, France, Macau, and the Cayman Islands, and representative offices in Canada, Venezuela, Germany, France, the United Kingdom, Switzerland, and South Africa. Bank operates banks in the Cayman Islands, Angola, and Mozambique. Bank also operates a subsidiary bank in Portugal that operates branches in Spain and Switzerland. In the United States, Bank operates a money remitter subsidiary.[3]

Bank's largest shareholder, CaixaBank, S.A. ("CaixaBank"), a subsidiary of Caja de Ahorros y Pensiones de Barcelona ("La Caixa"), both of Barcelona, Spain, owns approximately 46 percent of Bank. La Caixa is an integrated financial group with banking, insurance, pension, and investment fund activities, as well as holdings in international banks. Outside Spain, CaixaBank has branches in Morocco, Poland, and Romania. CaixaBank operates five representative offices in Europe, three in Asia, four in the Middle East, and one in South America. CaixaBank has no operations in the United States.[4] Bank's second largest shareholder, Prestação de Serviços, S.A. ("Santoro Finance"), a subsidiary of Santoro Financial Holdings, SGPS, both of Lisbon, Portugal, owns approximately 19.5 percent of Bank. Santoro Finance provides consulting services, including economic consulting, accounting, marketing, advertising, and business management. Allianz Europe, Amsterdam, The Netherlands, and Companhia de Seguros Allianz Portugal, Lisbon, Portugal, subsidiaries of Allianz SE, Munich, Germany, collectively own approximately 8.8 percent of Bank. Allianz SE is an international financial services company that offers a range of insurance and asset management products and services. No other shareholder owns 5 percent or more of Bank's shares.

The proposed representative offices would serve as liaisons between Bank and its customers. The proposed representative offices would also conduct research and assemble credit information, solicit banking business for Bank, perform back-office functions, provide information to customers, and perform loan servicing functions.[5]

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[6] The Board

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[3] The Bank will close the money remitter upon commencement of business at the Bank's representative offices.

[4] CaixaBank owns approximately 16.4 percent of the share capital of the Bank of East Asia Limited ("BEA"), Hong Kong, which is a bank holding company for the purposes of the Bank Holding Company Act of 1956 ("BHC Act"), as amended. CaixaBank executed passivity commitments to demonstrate to the Board that CaixaBank's ownership in BEA coupled with its business relationships would not enable CaixaBank and its affiliates to exercise a controlling influence over BEA for the purposes of the BHC Act. In July 2013, CaixaBank submitted an application to open a representative office in New York.

[5] A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

[6] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial

may also consider additional standards set forth in the IBA and Regulation K.[7] The Board may consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.[8] This application has been considered under the lesser standard.

As noted above, Bank and CaixaBank engage directly in the business of banking outside the United States. Bank has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered that Bank is supervised by the Bank of Portugal. The Board previously has considered the supervisory regime in Portugal for financial institutions in connection with applications involving other Portuguese banks.[9] Bank is supervised by the Bank of Portugal on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative offices, taking into account the nature of such activities. The Bank of Portugal has no objection to the proposed representative offices.

With respect to supervision of La Caixa and CaixaBank, the Board previously has considered the supervisory regime in Spain for financial institutions in connection with applications involving other Spanish banks.[10] La Caixa and CaixaBank are supervised by their home country supervisor, the Bank of Spain, on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that La Caixa and CaixaBank are subject to a supervisory framework consistent with the activities of the proposed representative offices.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent

condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[7] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[8] *See* 12 CFR 211.24(d)(2).

[9] *See*, *e.g.*, *Banco Espírito Santo de Investimento, S.A.*, 95 *Federal Reserve Bulletin* B53 (2009); *Banco Santander Totta, S.A.*, 93 *Federal Reserve Bulletin* C71 (2007); and *Caixa Económica Montepio Geral*, 86 *Federal Reserve Bulletin* 700 (2000).

[10] *See*, *e.g.*, *Bankia, S.A.* (order dated December 16, 2011), 98 *Federal Reserve Bulletin* 42 (4th Quar. 2011); Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja, et al. (order dated December 17, 2010), 97 *Federal Reserve Bulletin* 4 (4th Quar. 2010); and Caja de Ahorros y Monte de Piedad de Madrid, et al., 95 *Federal Reserve Bulletin* B23 (2009).

with approval of the proposed representative offices. Bank appears to have the experience and capacity to support the proposed representative offices and has established controls and procedures for the proposed representative offices to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Portugal is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Portugal has enacted laws and developed regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Portugal, and Portuguese financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank and La Caixa have committed to make available to the Board such information on their operations and on any of their affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and La Caixa have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Bank of Portugal may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Information relevant to the standard regarding risk to the stability of the United States financial system has been reviewed. In particular, consideration has been given to the absolute and relative size of Bank in its home country, the scope of Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and the framework in place for supervising Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to commitments made by Bank and La Caixa, Bank's application to establish the representative offices is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to the authority delegated by the Board.[11] Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[12] For purposes of this action, these commitments and conditions

[11] 12 CFR 265.7(d)(12).

[12] The Board's authority to approve the establishment of the proposed representative offices parallels the continuing authority of the states of Massachusetts and New Jersey to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the states of Massachusetts and New Jersey or

are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective November 18, 2013.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Canara Bank
Bangalore, India

Order Approving Establishment of a Branch
FRB Order No. 2013–14 (December 13, 2013)

Canara Bank ("Canara"), a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA[1] to establish a branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation (*New York Daily News*, March 30, 2012). The time for filing comments has expired, and the Board has considered all comments received.

Canara, with total consolidated assets of approximately $77 billion, is the sixth largest commercial bank in India.[2] The government of India owns approximately 67.7 percent of Canara. No other shareholder owns more than 5 percent of the shares of Canara.

Canara engages in a wide range of activities, including corporate and retail banking, trade finance, venture capital, investment banking, insurance, information system consulting, and asset finance. Outside India, Canara maintains branches or offices in the United Kingdom, the People's Republic of China, United Arab Emirates, and the Kingdom of Bahrain. Canara has a joint venture in Moscow with State Bank of India, Mumbai, India, and also manages two exchange companies in the Middle East, which facilitate remittances of nonresident Indians in the region. The proposed branch would be Canara's initial location in the United States.[3] Canara would be a qualifying foreign banking organization under Regulation K.[4]

The proposed New York branch would offer a range of banking products and services, including permissible deposit accounts, as well as small-business lending, remittance services, advisory services, and trade finance.[5]

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their agents, the Massachusetts Office of Consumer Affairs and Business Regulation and the New Jersey Division of Banking, to license the proposed offices of Bank in accordance with any terms or conditions that those agents may impose.

1 12 U.S.C. § 3105(d).

2 Asset and ranking data are as of March 31, 2013.

3 Upon establishment of the proposed branch, Canara's home state under the IBA and Regulation K would be New York.

4 12 CFR 211.23(a).

5 Deposits of the proposed branch would not be insured.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States, (2) has furnished to the Board the information it needs to assess the application adequately, and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisors.[6] The Board also considers additional standards as set forth in the IBA and Regulation K.[7]

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.[8] This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company, is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application, provided that (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank, and (ii) all other factors are consistent with approval.[9] In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.[10] The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.[11] This is the standard applied in this case.

As noted above, Canara engages directly in the business of banking outside the United States. Canara also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in India, that those banks' home country authorities were working to establish arrangements for the consolidated supervision of the banks.[12] Canara is supervised by the Reserve Bank of India ("RBI") on substantially the same terms and conditions as those banks.

India participates in international forums that address the prevention of money laundering and terrorist financing. India is a member of the Financial Action Task Force ("FATF"). India is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. International Convention for the Suppression of the Financing of Terrorism.[13]

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[6] 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[7] 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

[8] 12 U.S.C. § 3105(d)(6).

[9] 12 U.S.C. § 3105(d)(6)(A).

[10] 12 U.S.C. § 3105(d)(6)(B).

[11] *Id*.

[12] ICICI Bank Limited, 94 *Federal Reserve Bulletin* C26 (2008) (Order dated October 19, 2007); State Bank of India, 94 *Federal Reserve Bulletin* C69 (2008) (Order dated January 25, 2008).

[13] India became a full member of the FATF in June of 2010.

Since becoming a member of FATF, India has submitted five follow-up reports detailing an action plan to further improve its regime for anti-money-laundering activities and to combat the financing of terrorism ("AML/CFT"), with the latest report presented at the June 2013 plenary session of FATF. In early 2013, India enacted legislation to address issues relating to money laundering and the financing of terrorism, and the implementation of effective confiscation and provisional measures. In addition, the RBI has issued "Know Your Customer (KYC) Guidelines – Anti-Money Laundering Standards" ("Guidelines"), which require financial institutions to establish systems for the prevention of money laundering. Indian banks were required to be fully compliant with the Guidelines by December 31, 2005. The RBI issued further guidelines in February 2006 providing clarification on reporting cash and suspicious transactions to India's Financial Intelligence Unit.

Canara has policies and procedures to comply with Indian laws and regulations and the RBI's Guidelines on the prevention of money laundering. Canara has also taken additional steps on its own initiative to combat money laundering and other illegal activities. Canara states that it is committed to implementing the relevant recommendations of the FATF and that it has put in place anti-money-laundering policies and procedures to ensure ongoing compliance with statutory and regulatory requirements, including designating branch-level and regional officers responsible for implementing Canara's anti-money-laundering policies and procedures.[14] Canara's compliance with anti-money-laundering requirements is monitored by the RBI and by Canara's internal and external auditors.

Based on all the facts of record, the Board has determined that Canara's home country authorities are actively working to establish arrangements for the consolidated supervision of Canara and that considerations relating to the steps taken by Canara and its home country to combat money laundering are consistent with approval under this exemption.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K.[15] The RBI has approved the establishment of the proposed branch.

The financial and managerial factors in this case have been considered and are consistent with approval of the proposed branch. India's risk-based capital standards are consistent with those established by the Basel Capital Accord. Canara's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Canara are consistent with approval, and Canara appears to have the experience and capacity to support the proposed branch. In addition, Canara has established controls and procedures for the proposed branch to ensure compliance with U.S. law.

With respect to access to information about Canara's operations, the restrictions on disclosure in relevant jurisdictions in which Canara operates have been reviewed, and relevant government authorities have been contacted regarding access to information. Canara has committed to make available to the Board such information on its operations and those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the

[14] Canara states that the AML/CFT policy documents to be utilized by the proposed branch will be consistent with the FATF financial institution specific recommendations.

[15] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: (i) whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vi) the needs of the community; and (vii) the bank's record of operations.

extent that the provision of such information to the Board may be prohibited by law or otherwise, Canara has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Canara has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.[16] Information relevant to this standard has been reviewed. In particular, consideration has been given to the absolute and relative size of Canara in its home country; the scope of Canara's activities, including the type of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Canara in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Canara as well as the terms and conditions set forth in this order, Canara's application to establish a branch in New York, New York, is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[17] Should any restrictions on access to information on the operations or activities of Canara and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Canara or its affiliates with applicable federal statutes, the Board may require termination of any of Canara's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Canara with the commitments made in connection with this application and with the conditions in this order.[18] The commitments and conditions referred to above are deemed to be conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Canara and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective December 13, 2013.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[16] 12 U.S.C. § 3105(d)(3)(E).

[17] 12 CFR 265.7(d)(12).

[18] The authority to approve the establishment of the proposed branch parallels the continuing authority of the State of New York to license offices of a foreign bank. The approval of this application does not supplant the authority of the New York State Department of Financial Services ("Department") to license the proposed office of Canara in accordance with any terms or conditions that the Department may impose.

RBC Investor Services Bank S.A.
Esch-sur-Alzette, Luxembourg

Order Approving Establishment of a Representative Office
FRB Order No. 2013–15 (December 17, 2013)

RBC Investor Services Bank S.A. ("Investor Bank"), Esch-sur-Alzette, Luxembourg, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Times*, December 4, 2012). The time for filing comments has expired, and all comments received have been considered.

Investor Bank, with total consolidated assets of approximately $18.3 billion, is a global custodian bank organized under the laws of Luxembourg primarily serving funds located outside the United States.[2] Its banking activities are related to its overall custody-related activities. Investor Bank, with approximately $1.0 trillion in assets under management, offers institutional investors worldwide an integrated array of products and services, including global custody, funds administration, securities lending, shareholder services, analytics, and other related investor services. Investor Bank accepts deposits that are incidental to facilitating liquidity for the trading, investing, and settlement activities of its clients. It has subsidiaries and branches in Ireland, France, Spain, Switzerland, Italy, Belgium, Singapore, and Hong Kong.

Investor Bank's parent company, Royal Bank of Canada ("RBC" – consolidated assets of $827 billion), Montreal, Canada, is Canada's largest commercial bank,[3] providing personal and commercial banking, wealth management, insurance, investment banking, and transaction processing services on a global basis.[4] RBC owns 100 percent of Investor Bank through a wholly-owned holding company, Royal Bank Holdings Inc., Toronto, Canada ("RBH"). RBC's custodial and funds management operations are conducted mainly through its Canadian subsidiary RBC Investor Services Trust, Investor Bank, and their affiliates and branches around the world.[5] The Luxembourg Commission de Surveillance du Secteur Financier ("CSSF") is the supervisor of Investor Bank.

The proposed representative office would market Investor Bank's products and services to customers in the United States and engage in certain liaison activities. The office would

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1 12 U.S.C. § 3107(a).

2 Asset data are as of June 30, 2013.

3 Asset and ranking data are as of July 31, 2013.

4 In the United States, RBC operates branches in New York City, Miami, and Portland (Oregon), agencies in Dallas and Houston, and representative offices in San Francisco, Houston, Wilmington (Delaware), and Seattle. In March 2012, RBC sold its retail banking operations in the United States to PNC Financial Services Group, Inc., but retained a bank subsidiary, RBC Bank Georgia, N.A., Atlanta, Georgia, which primarily maintains a securities portfolio comprised of mortgage-backed, asset-backed, and other debt securities. In addition, the bank has several nonbanking subsidiaries in the United States engaged in asset management and capital market activities.

5 RBC Investor Services Trust provides services to clients only in Canada, while services provided to the rest of the world are conducted through Investor Bank. RBC Investor Services Trust is the largest custodian and fund administrator in Canada, and is supervised by Canada's Office of the Superintendent of Financial Institutions ("OSFI").

provide information concerning the bank's products and services, such as custody, fund administration, and transfer agency services, to U.S. fund managers who have or are seeking to establish offshore investment funds, primarily in Ireland and Luxembourg. Specific activities of the representative office would include identifying new business opportunities, responding to requests for proposals, and making presentations regarding available products and services to existing and prospective clients. The proposed representative office would also engage in other activities permissible for a representative office.[6]

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[7] The Board also takes into account additional standards set forth in the IBA and Regulation K.[8] The Board will consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.[9] This application has been considered under the lesser standard.

As noted above, Investor Bank engages directly in the business of banking outside the United States. Investor Bank also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered that Investor Bank is supervised by the CSSF. In connection with an application from another

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[6] A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

[7] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In applying the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[8] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[9] *See* 12 CFR 211.24(d)(2).

Luxembourg banking organization, Cedel Bank, S.A., to establish a representative office in the United States, the Board previously has determined that Cedel Bank was subject to a supervisory framework by the predecessor to the CSSF, the Institut Monetaire Luxembourgeois, consistent with the limited representative office standard.[10] Since that determination, the supervision of banks in Luxembourg by the CSSF has progressed in line with other countries in the European Union. Based on all the facts of record, including the supervisory regime applicable to Investor Bank and the fact that Investor Bank is seeking to establish a representative office, it has been determined that Investor Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

RBC's home country supervisor is the OSFI. With respect to supervision of RBC, the Board previously has determined in connection with applications to establish U.S. operations that several Canadian banking organizations supervised by the OSFI, including RBC, are subject to comprehensive supervision on a consolidated basis.[11] Since the last Board determination, the OSFI has enhanced its supervisory framework by improving requirements in the areas of liquidity, risk management, stress testing, funding diversification, and corporate governance. Based on all the facts of record, the Board has concluded that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.[12] The CSSF and the OSFI have no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Investor Bank, taking into consideration Investor Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Investor Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Luxembourg is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Luxembourg has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Luxembourg, and financial services businesses are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Investor Bank has policies and procedures in place to comply with these laws and regulations, and these policies and procedures are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Investor Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Investor Bank operates have been reviewed, and relevant governmental authorities have been communicated with regarding access to such information. Investor Bank has committed to make available to the Board such infor-

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[10] *See Cedel Bank, S.A.*, 82 *Federal Reserve Bulletin* 591 (1996).

[11] *See Bank of Montreal*, 97 *Federal Reserve Bulletin* 24 (2011); *Royal Bank of Canada*, 94 *Federal Reserve Bulletin* C45 (2008).

[12] *See supra* note 5.

mation on the operations of Investor Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Investor Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the CSSF may share information on Investor Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Investor Bank has provided adequate assurances of access to any necessary information that the Board may request.

Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Investor Bank in its home country, the scope of Investor Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and the framework in place for supervising Investor Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

Based on the foregoing and all the facts of record, Investor Bank's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[13] Should any restrictions on access to information on the operations or activities of Investor Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Investor Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Investor Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Investor Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[14] For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective December 17, 2013.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[13] 12 CFR 265.7(d)(12).

[14] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York Department of Financial Services, to license the proposed office of Investor Bank in accordance with any terms or conditions that it may impose.

Federal Reserve
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Legal Developments: First Quarter, 2014

Order Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

Community & Southern Holdings, Inc.
Atlanta, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2014–5 (March 31, 2014)

Community & Southern Holdings, Inc. ("CSH"), Atlanta, Georgia, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Verity Capital Group, Inc. ("Verity") and thereby indirectly acquire its subsidiary bank, Verity Bank ("Verity Bank"), both of Winder, Georgia. Following the proposed acquisition, Verity Bank would be merged into CSH's subsidiary bank, Community & Southern Bank ("C&S Bank"), Atlanta, a state nonmember bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 61352 (October 3, 2013)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

CSH, with consolidated assets of approximately $2.8 billion, is the 265th largest insured depository organization in the United States, controlling approximately $2.2 billion in consolidated deposits.[4] C&S Bank, which operates only in Georgia, is the 11th largest depository institution in Georgia, controlling deposits of approximately $2.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

Verity, with consolidated assets of approximately $162 million, controls Verity Bank, which operates only in Georgia. Verity Bank is the 119th largest insured depository institution in Georgia, controlling deposits of approximately $145 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, CSH would become the 248th largest depository organization in the United States, with consolidated assets of approximately $3.0 billion, which

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1 12 U.S.C. § 1842.

2 The merger of Verity Bank into C&S Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

5 State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. CSH would control consolidated deposits of approximately $2.4 billion. CSH would remain the 11th largest depository organization in Georgia, controlling deposits of approximately $2.1 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

CSH and Verity compete directly in the Atlanta Area, Georgia banking market.[7] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by CSH and Verity[8]; the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines")[9]; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[10]

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[6] 12 U.S.C. § 1842(c)(1).

[7] The Atlanta Area, Georgia banking market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, and Walton counties; and the towns of Auburn and Winder in Barrow County and Luthersville in Meriwether County, excluding the town of Clermont in Hall County, all in Georgia.

[8] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[9] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[10] CSH operates the 15th largest depository institution in the Atlanta Area, Georgia banking market with approximately $1 billion in deposits, which represent less than 1 percent of market deposits. Verity operates the 53rd largest depository institution in the same market, controlling deposits of approximately $122 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, CSH would operate the 13th largest depository institution in the market, controlling weighted deposits of approximately $1.1 billion, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 1517 and 97 competitors would remain in the market.

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.[11]

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which CSH and Verity compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

Section 3(c) of the BHC Act requires the Board to consider the financial and managerial resources (including the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned, as well as the effectiveness of the company in combatting money laundering.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. CSH and C&S Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as a cash transaction.[12] CSH is in satisfactory financial condition, and the asset quality, earnings, and liquidity of C&S Bank and Verity Bank are consistent with approval. Based on its review of the record, the Board finds that CSH has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of CSH, Verity, and their subsidiary depository institutions, including assessments of their management teams, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and

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[11] A commenter asserted that the proposed transaction should not be permitted under Georgia law because Verity Bank is a de novo bank, established on October 27, 2008. However, under Georgia law, a registered Georgia bank holding company is permitted to directly or indirectly acquire ownership of any bank provided that the bank has been in existence, and continually operating or incorporated as a bank, for a period of three years or more prior to the date of acquisition. *See* GA. CODE § 7-1-608 (2013). Because Verity Bank has been in existence for longer than three years, the proposal would not be in violation of Georgia law. In that regard, the Georgia Department of Banking and Finance approved the proposal on January 8, 2014. Letter from Murali Ramachandran, Corporate Manager, Financial Institutions, Georgia Department of Banking and Finance, to Patrick M. Frawley, Chief Executive Officer, Community & Southern Holdings, Inc. (Jan. 8, 2014).

[12] All Verity common stock will be acquired for cash consideration. The Board has confirmed that CSH has the resources to fund the transaction.

anti-money laundering laws.

CSH, Verity, and their subsidiary depository institutions are each considered to be well managed. CSH's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of CSH have substantial knowledge of, and experience in, the banking and financial services sectors.[13]

The Board also has considered CSH's plans for implementing the proposal. CSH is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CSH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. CSH's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.[14]

CSH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and CSH's money laundering policies are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[16] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[17]

The Board has considered all the facts of record, including reports of examination of the CRA performance of C&S Bank and Verity Bank, data reported by C&S Bank and Verity Bank under the Home Mortgage Disclosure Act ("HMDA"),[18] C&S Bank's small business lending data, other information provided by CSH, confidential supervisory information,

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[13] CSH's board of directors and senior management team would remain the same after consummating the acquisition.

[14] A commenter alleged that C&S Bank has improperly handled foreclosures on assets previously acquired from the FDIC through the failed bank resolution process. These assets are subject to loss sharing agreements with the FDIC. CSH represents that C&S Bank is required to explore loan modification and other loan workout alternatives before initiating the foreclosure process on assets subject to the loss sharing agreements. C&S Bank has established a "Resolution Management Group" in which dedicated workout officers work with borrowers to explore available resolution strategies for troubled assets. C&S Bank is subject to oversight and monitoring by the FDIC in connection with its compliance with the loss sharing agreements. The Board has consulted with the FDIC, the bank's primary federal regulator, which expressed no concerns with C&S Bank's compliance with the loss sharing agreements regarding foreclosures.

[15] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[16] 12 U.S.C. § 2901(b).

[17] 12 U.S.C. § 2903.

[18] 12 U.S.C. § 2801 *et seq*.

and the public comments received on the proposal. The commenter objected to the proposal by generally alleging that C&S Bank has failed to adequately lend within its assessment areas, and generally questioning the public benefits of the proposal.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[19] The CRA requires that the appropriate federal financial supervisory agency for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[20] An institution's most recent CRA performance evaluation is a particularly important consideration in the application process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of C&S Bank. C&S Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of January 28, 2011 ("C&S Bank Evaluation").[21] Examiners considered C&S Bank to have a reasonable record of lending inside of its assessment areas and a reasonable record in small business lending.[22]

As described in the C&S Bank Evaluation, FDIC examiners found that the bank had a good record of serving its assessment areas' credit needs.[23] The bank had a reasonable record of lending to businesses of different sizes, especially smaller-sized businesses, and a reasonable record of residential lending to borrowers of different incomes. Examiners noted that, considering the differences among the bank's markets and their respective demographics, C&S Bank had adequately penetrated LMI geographies throughout its assessment areas. Examiners also noted that the bank's penetration among low-income borrowers was good with regard to both the percentage of originations and the percentage of total dollar volume.

CRA Performance of Verity Bank. Verity Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 26, 2009 ("Verity Bank Evaluation").[24] Examiners concluded that Verity Bank's lending performance repre-

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[19] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

[20] 12 U.S.C. § 2906.

[21] The C&S Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. Examiners focused on the bank's small business and residential lending record from the time C&S Bank began operations on January 29, 2010, through January 28, 2011. CSH provided a copy of the public evaluation portion of the C&S Bank Evaluation to the commenter at the commenter's request. Prior to receiving the public evaluation portion, the commenter erroneously alleged that the FDIC had failed to perform a CRA examination of C&S Bank.

[22] The C&S Bank Evaluation reviewed data available to the FDIC as of the date of the evaluation concerning residential mortgage and small business loans originated or purchased within the relevant assessment areas. The C&S Bank Evaluation included a full-scope review of the Atlanta-Sandy Springs-Marietta, Georgia MSA assessment area (the "Atlanta MSA Assessment Area") and Fannin, Gilmer, Union, and Lumpkin counties in Georgia (the "Non-MSA Assessment Area"). Limited-scope reviews were performed in the Athens-Clarke County MSA, Gainesville MSA, and Dalton MSA assessment areas, all in Georgia. Examiners placed greater weight on the bank's performance in the Atlanta MSA Assessment Area than in the other assessment areas due to the bank's significant concentration of loan originations and loan purchases in that MSA; 95 percent of the bank's loans and loan purchases were made in that market.

[23] Small business and residential mortgage lending were the bank's primary lending focus.

[24] The Verity Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. Examiners reviewed Verity Bank's small business and construction and land development lending activity from October 27, 2008, to September 30, 2009. These products were selected for analysis because they represented approximately 70 percent of the bank's loan portfolio.

sents reasonable responsiveness to community credit needs. Examiners also noted that Verity Bank showed excellent penetration in its construction and land development lending, and in its small business lending in moderate-income census tracts in its assessment areas.[25]

C&S Bank's Efforts Since the 2011 CRA Evaluation. CSH has provided information on the record of performance of C&S Bank since the C&S Bank Evaluation. CSH represents that in 2013, C&S Bank extended six community development loans in its assessment areas totaling $23.5 million, which funded affordable housing facilities, a church and service center, and a regional food bank. In addition, C&S Bank has funded, or committed to fund, $11.1 million in qualified investments in affordable housing projects in the bank's assessment areas, and has purchased $1.1 million of mortgage-backed securities guaranteed by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to LMI borrowers within its assessment areas. CSH also noted that the bank has provided several community development donations and sponsorships to organizations serving primarily women-owned microbusinesses and LMI entrepreneurs, as well as youth financial literacy programs.[26]

2. Fair Lending Record and Public Comments on the Application

The Board has considered C&S Bank's record in complying with fair lending and other consumer protection laws. In addition to reviewing the C&S Bank Evaluation and C&S Bank's record of performance in providing community development lending and services since its evaluation, as discussed above, the Board's consideration includes an evaluation of C&S Bank's fair lending policies and procedures. This also includes consideration of other agencies' views on C&S Bank's record of performance under fair lending laws, other confidential supervisory information, and the public comments on the proposal.

C&S Bank's Fair Lending Program. C&S Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. C&S Bank maintains a Fair Lending Compliance Program, which is part of its Consumer Compliance Program, which, in turn, is a component of the bank's overall Risk Management Program. The two primary components of C&S Bank's fair lending monitoring program are ongoing monitoring and periodic testing. The bank has created a "Director of Enterprise Risk Management" position to provide direct oversight over C&S Bank's Consumer Compliance Unit, which also includes a consumer compliance manager with oversight of four compliance officers. Each compliance officer has responsibility for overseeing specific bank functions, including lending, CRA, and fair lending compliance, as well as internal compliance monitoring. The bank maintains a policy of secondary reviews for all denials of consumer, mortgage, and commercial loans, and the Consumer Compliance Unit reviews all advertisements, website content, signage, and customer communications to ensure compliance with fair lending and other consumer protection laws and regu-

The commenter objected to the proposal on the basis that the FDIC had failed to perform a timely CRA examination of Verity Bank. However, the FDIC's examination of Verity Bank was performed in accordance with the timeframe provided in the FDIC compliance manual for examinations. The manual requires the FDIC to perform a CRA evaluation for newly chartered and insured institutions after the institution has been in operation from 0-12 months, and then again between 48-60 months. See FDIC Compliance Manual, Compliance Examinations – Examination and Visitation Frequency (December 2013). The FDIC opened a new consumer compliance and CRA examination of Verity Bank in December 2013. The Board has conferred with the FDIC regarding the examination.

[25] The Verity Bank Evaluation included a full-scope review of the Atlanta MSA Assessment Area and the Non-MSA Assessment Area.

[26] These loans, investments, and donations have not yet been evaluated by the FDIC, and the CRA does not require any specific level or type of lending, investment, or service. The next CRA examination for C&S Bank is scheduled for the second quarter of 2014. The bank will be evaluated under the Large Bank CRA Examination Procedures.

lations. Regular reports are provided to C&S Bank's Audit Committee and board of directors, which review and discuss various compliance matters, including development of new policies and procedures, special projects, results of monitoring programs, customer complaints, training, and regulatory examination status. C&S Bank's risk-management systems, and its policies and procedures for assuring compliance with fair lending laws, would be implemented at the combined organization.

Public Comment on the Application and Analysis of HMDA and CRA Data. Although the commenter did not allege specific discriminatory lending practices or cite to HMDA data disparities in lending to minorities, the commenter generally asserted that C&S Bank failed to adequately lend within its assessment areas, particularly to LMI borrowers.[27] In response to the comments, the Board analyzed C&S Bank's HMDA and CRA data. The Board's analysis included a review of C&S Bank's 2011 and 2012 HMDA data in its combined assessment areas, in the Atlanta MSA Assessment Area, in Verity Bank's assessment area, and in Barrow County.[28] The Board also consulted with the FDIC and considered examination reports of onsite evaluations by the FDIC regarding C&S Bank's compliance with fair lending laws and regulations.

C&S Bank extended approximately 80 percent of its mortgage-related loans within its combined assessment area in 2011 and 2012, and its HMDA application and origination volume nearly doubled between 2011 and 2012. Similarly, an analysis of CRA small business lending data indicates that the bank originated a greater percentage of its total loans and of its loans, to businesses with gross annual revenues of $1 million or less, in LMI tracts than the aggregate of all lenders.

C&S Bank received a greater percentage of applications from, and extended a greater percentage of its loans to, Hispanic individuals in all markets under review compared to the aggregate, except Barrow County, where the bank received no applications from Hispanic individuals. However, there are no minority census tracts in Barrow County.[29] Although C&S Bank made significant progress in increasing the number of mortgage applications from African Americans and from predominantly minority census tracts from 2012 to 2013, the Board notes that the bank continues to lag the aggregate in both respects.[30] The data do not suggest that C&S Bank is systematically excluding African American or predominantly minority geographies. The Board encourages C&S Bank to continue its progress by seeking opportunities to increase its outreach in these communities.

The Board also reviewed C&S Bank's CRA small business and small farm lending data for 2012 and from January 1, 2013, to September 30, 2013, in its combined assessment areas, in the Atlanta MSA Assessment Area, in Verity Bank's assessment area, and in Barrow County, Georgia.[31] C&S Bank extended more than 30 percent of its small business loans and loans to businesses with gross annual revenues of $1 million or less in LMI census tracts, in both cases exceeding the aggregate's percentage of such loans in 2012, often sig-

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[27] The commenter also alleged that C&S Bank failed to comply with HMDA data reporting requirements. The FDIC previously reviewed C&S Bank's 2011 HMDA data, and CSH represents that C&S Bank has filed all HMDA and CRA data as required by law. The Board consulted with the FDIC, which did not express any concerns in this regard.

[28] HMDA data do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral are not available from HMDA data.

[29] For Barrow County, the aggregate reported a small percentage (approximately 3 percent) of mortgage applications from and originations to Hispanic individuals.

[30] CSH provided C&S Bank's 2013 HMDA data to the Board, which is preliminary and has not been verified.

[31] C&S Bank was not required to report small business or small farm lending data for 2011. The bank makes few small farm loans, and the Board does not consider them to be a major product of the bank.

nificantly. Moreover, C&S Bank extended almost 60 percent of its small business loans to businesses with gross annual revenues of $1 million or less in its combined assessment areas and the Atlanta MSA Assessment Area. The data do not suggest that C&S Bank is failing to lend to small businesses.

The Board notes that C&S Bank's percentage of loan applications and originations for properties located in LMI census tracts, and involving LMI individuals, as well as of its small business loans and loans to businesses with gross annual revenues of $1 million or less in LMI census tracts, has generally met or exceeded the aggregate.

3. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. CSH stated that it would provide expanded retail and commercial banking products and services to Verity Bank's customers, including a broader range of deposit and loan products, enhanced online and mobile banking, and a higher lending limit to its customers. The capital and human resources of the combined entity would enable it to be a stronger competitor in Verity Bank's assessment areas than is presently the case. The merger also would benefit current customers of Verity Bank through access to significantly larger branch and ATM networks. The branch network available to current Verity Bank customers would increase from 2 to 41 branch locations throughout Georgia.

The commenter alleged that the proposal would not provide a clear or significant public benefit and asserted that C&S Bank plans to close both existing Verity Bank branches, which would result in a loss of jobs in the community.[32] Contrary to the commenter's assertion, CSH represents that it plans to continue operating both Verity Bank branches following completion of the bank merger. Any future branch closings or consolidations would be completed in accordance with C&S Bank's branch closing policy, which includes procedures for mitigating any potential negative impacts on the community which may result from the branch's closure. The Board consulted with the FDIC, which did not express any concerns regarding the bank's branch closing policy.

In order to ensure that CSH continues to meet its obligations under the CRA and fair lending laws, CSH has committed that, within thirty (30) days following consummation of the merger with Verity, CSH will develop and adopt a statement of goals and objectives, consistent with CSH's strategic business plan and the combined organization's size and complexity, to continue meeting the credit needs of the communities that the combined organization serves, including low- and moderate-income neighborhoods and small businesses.

[32] The commenter also asserted that the FDIC loss sharing agreements to which C&S Bank is subject create "negative lending incentives" that encourage C&S Bank to foreclose on assets acquired from the FDIC rather than extend new credit. The commenter further asserted that Verity Bank is the only remaining community bank in the local market not subject to an FDIC loss sharing agreement, the loss of which would reduce the overall availability of credit to LMI borrowers. Finally, the commenter asserted that CSH's profits would not be reinvested in its assessment areas because it is a Delaware corporation with top-tier investors that are located outside of Georgia. The Board notes that the current proposal does not involve a loss sharing agreement with the FDIC. Additionally, C&S Bank has a business model that encourages extending new credit and the record does not suggest that the proposal would reduce the overall availability of credit to LMI borrowers. The Board also notes that C&S Bank is subject to the provisions of the CRA, which require a bank to meet the credit needs of the communities in which it operates, without regard to the location of the holding company's registration, investors, or board members.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by CSH, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage and small business lending operations and compliance programs of C&S Bank and Verity Bank, review of examination reports, and consultation with the FDIC, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[33]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[34] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[35]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, CSH would have approximately $3.0 billion in consolidated assets, and by any of a number of alternative measures of firm size, CSH would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, CSH's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in

[33] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[34] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[35] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[36] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CSH with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 31, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under International Banking Act

Banque Centrale Populaire
Casablanca, Morocco

Order Approving Establishment of a Representative Office
FRB Order No. 2014–4 (March 28, 2014)

Banque Centrale Populaire ("BCP"), Casablanca, Morocco, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the

[36] The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, the commenter submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

IBA[1] to establish a representative office in Washington, D.C. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Washington, D.C. (*Washington Post*, October 12, 2012). The time for filing comments has expired, and all comments received have been considered.

Ten regional Moroccan banks, the Banque Populaires Regionales ("BPRs"), each own between approximately 2.8 and 4.9 percent of BCP's voting shares and together control 45.7 percent. Approximately 17.5 percent of the voting shares of BCP is owned, directly and indirectly, by the government of Morocco.[2] Additionally, the International Finance Corporation, an international financial institution, owns 5 percent of BCP's shares. No other shareholder owns 5 percent or more of BCP's shares.

BCP (assets of $21.1 billion)[3] engages in retail and commercial banking; corporate, project and trade finance; investment banking; correspondent banking; and foreign exchange activities. Outside Morocco, BCP's subsidiary Chaabi Bank, Paris, France, has 35 branches and offices across Europe. BCP also owns subsidiary banks in Western Africa and holds a 50 percent interest in Atlantic Bank International, Abidjan, Ivory Coast, which has banking operations in seven African countries. BCP has representative offices in six jurisdictions. BCP has no operations in the United States.

BCP is part of an association of banks originally chartered in 1926 under Moroccan law. That association, Crédit Populaire du Maroc ("CPM"), Casablanca, Morocco, includes BCP and the 10 BPRs.[4] CPM was formed to create a nationwide banking network of BCP and the BPRs. Each of BCP and the BPRs provides services to customers in a specific geographic region of Morocco, with BCP serving the Casablanca region. BCP serves as the central banking body for the BPRs.

As noted above, BCP and the BPRs operate as a nationwide banking network.[5] The proposed representative office would act as a liaison between BCP and the BPRs and their respective customers. The proposed representative office would also conduct research, solicit banking business for BCP and the BPRs, perform back-office and administrative

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1 12 U.S.C. § 3107(a).

2 The government of Morocco holds approximately 6 percent of BCP's shares. Approximately 5.1 percent of BCP's shares are held by Group Office Cherifien des Phosphates, a Moroccan phosphate mining and export company, 94 percent of the shares of which are held by the government of Morocco. Approximately 6.4 percent of BCP's shares are owned by the state-run pension fund.

3 Data are as of December 31, 2013. BCP is part of Groupe Banque Populaire ("GBP"), which also includes BCP's banking and specialized subsidiaries, the 10 BPRs, and BCP's foundations of public utility. The GBP entities together have assets of $35.1 million and are the second largest financial organization in Morocco.

4 The BPRs are independent banks operating as banking cooperatives that are owned by their customers.

5 CPM is not an incorporated organization. However, the IBA defines a "foreign bank" as "any company organized under the laws of a foreign country, . . . which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of such company." 12 U.S.C. § 3101(7). The IBA defines "company" to have the same meaning as in the Bank Holding Company Act of 1956, as amended ("BHC Act"). 12 U.S.C. § 3101(13). Section 2(b) of the BHC Act defines a company to include, among other things, any "association or similar organization." 12 U.S.C. § 1841(b). In other contexts, the Board has regarded a group of entities that are bound together in a formalized structure to constitute a "company." Because of the legally mandated structure of the CPM, the Board is treating it as a single banking entity for the purposes of providing representative functions.

functions, provide information about products and services to customers, and perform preliminary steps in connection with lending, such as assembling credit information.[6]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[7] The Board also considers additional standards set forth in the IBA and Regulation K.[8]

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.[9] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, BCP has provided certain commitments that limit the activities of the proposed representative office. It has committed to engage only in activities permissible for a representative office under Regulation K. In particular, BCP has committed that the proposed representative office would not make credit decisions nor any other decisions that would bind BCP, or engage in activities related to securities trading, foreign exchange, or money transmission. The representative office would engage only in the activi-

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[6] A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

[7] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[8] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[9] *See* 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies." 66 *Fed. Reg.* 54365 (October 26, 2001).

ties indicated in its application to the Board and would not be staffed by more than five employees.

As noted above, BCP engages directly in the business of banking outside the United States. BCP has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

In evaluating whether the scope of supervision of BCP by home country authorities meets the standards required for opening a representative office, a number of factors have been taken into consideration. The Moroccan central bank, Banque Al-Maghrib ("BAM"), supervises banks and finance companies, including BCP and its subsidiaries. BAM supervises and regulates BCP, the BPRs, CPM, and the GBP through a combination of regular on-site examinations and off-site monitoring. On-site examinations cover the major areas of operation, capital adequacy, risk management, asset quality, and internal controls. Off-site monitoring is conducted through the review of required periodic reports, which are submitted daily, monthly, biannually, and annually. BCP, BCP's subsidiaries, the BPRs, CPM, and the GBP each submit periodic reports to BAM, including accounting, prudential, and financial reports. The General Inspectorate of CPM, which is charged with its internal audit function, submits to BAM annual reports on internal controls, risk management, compliance, business continuity, and foreign branch activity.

BAM sets the scope for annual audits of BCP, the BPRs, and the GBP and requires that the audits be performed by external auditors. The external auditors annually submit a report to BAM on the internal control systems of BCP, the BPRs, and the GBP.

Based on all the facts of record, including the commitments provided by BCP limiting the activities of the proposed office, it has been determined that BCP is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

BCP appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration BCP's record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office.

Morocco is not a member of the Financial Action Task Force ("FATF"). Morocco is a member of the Middle East and North Africa Financial Action Task Force, one of several associate members of FATF, and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Morocco has enacted laws and developed regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Morocco, and Moroccan financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. BCP has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

BCP has committed to make available to the Board such information on BCP's operations and on any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, BCP has committed to cooperate with the Board to obtain any necessary consents or waivers that

might be required from third parties for disclosure of such information. In addition, subject to certain conditions, BAM may share information on BCP's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that BCP has provided adequate assurances of access to any necessary information that the Board may request.

The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of BCP in its home country; the scope of BCP's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising BCP in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to commitments made by BCP, BCP's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[10] Should any restrictions on access to information on the operations or activities of BCP and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BCP or its affiliates with applicable federal statutes, the Board may require termination of any of BCP's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by BCP with the conditions imposed in this order and the commitments made to the Board in connection with this application.[11] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 28, 2014.

Robert deV. Frierson
Secretary of the Board

Wing Lung Bank Limited
Hong Kong SAR, People's Republic of China

Order Approving Establishment of Branches
FRB Order No. 2014–1 (January 13, 2014)

Wing Lung Bank Limited ("Wing Lung"), Hong Kong SAR ("Hong Kong"), People's Republic of China, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA[1] to establish a federal branch in San Francisco, California, and to upgrade its existing limited federal branch in Alhambra,

[10] 12 CFR 265.7(d)(12).

[11] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the District of Columbia to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the District of Columbia or its agent, the District of Columbia Department of Insurance, Securities and Banking, to license the proposed office of BCP in accordance with any terms or conditions that they may impose.

[1] 12 U.S.C. § 3105(d).

California, to a full-service branch.[2] The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.[3]

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in both San Francisco (*The Recorder*, August 27, 2012) and Alhambra (*San Gabriel Valley Tribune*, August 23, 2012). The time for filing comments has expired, and the Board has considered all comments received.

Wing Lung, with total consolidated assets of approximately $27.2 billion, is the 10 largest bank in Hong Kong.[4] China Merchants Bank Co., Limited ("CMB"), Shenzhen, People's Republic of China, owns all of the shares of Wing Lung.[5]

Wing Lung is a commercial bank and engages in retail and commercial banking. Outside Hong Kong, Wing Lung operates branches in Shenzhen and Shanghai, People's Republic of China, and a branch in the Cayman Islands. In the United States, Wing Lung operates a limited federal branch in Alhambra, California, as noted. Wing Lung is a qualifying foreign banking organization under Regulation K.[6]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether: (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately; and (3) the foreign bank and any foreign bank parent are subject to compre-

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[2] As a limited branch, the Alhambra branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations. 12 CFR 211.6(a)(1). Upgrading the limited branch to a full-service branch would permit the branch to accept wholesale domestic deposits.

[3] Under the Board's Regulation K, upgrading a limited branch to a full-service branch requires Board approval. 12 CFR 211.21(l)(4) and (f).

[4] Asset and ranking data are as of June 30, 2013, and are based on the exchange rate as of that date.

[5] CMB, with total consolidated assets of approximately $620 billion, is the seventh largest bank in China. CMB is indirectly controlled by the government of China through a number of wholly-owned companies. One of these companies, China Merchants Group, Limited, Shenzhen, People's Republic of China, indirectly owns approximately 18.6 percent of CMB's total outstanding shares and is considered to control CMB for purposes of the Bank Holding Company Act. *China Merchants Bank Co., Limited*, 94 *Federal Reserve Bulletin* C24 (2008) ("CMB Order"), at n. 3. Another government-owned company, China Ocean Shipping (Group) Company, owns 6.2 percent of the shares of CMB. HKSCC Nominees Limited holds approximately 17.9 percent of the shares of CMB as the registered nominee of other shareholders. No other shareholder owns more than 5 percent of the shares of CMB. Shareholder data are as of June 30, 2013.

[6] 12 CFR 211.23(a).

hensive supervision on a consolidated basis by their home country supervisor.[7] The Board also considers additional standards as set forth in the IBA and Regulation K.[8]

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.[9] This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application provided that: (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.[10] As discussed below, this is the standard applied by the Board in this case. In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.[11]The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.[12]

As noted above, Wing Lung engages directly in the business of banking outside the United States. CMB also engages directly in the business of banking outside the United States. Wing Lung has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in Hong Kong, that those banks were subject to comprehensive supervision on a consolidated basis by their home

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[7] 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[8] 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank's record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[9] 12 U.S.C. § 3105(d)(6).

[10] 12 U.S.C. § 3105(d)(6)(A).

[11] 12 U.S.C. § 3105(d)(6)(B).

[12] *Id.*

jurisdiction supervisor, the Hong Kong Monetary Authority ("HKMA").[13] Wing Lung is supervised by the HKMA on substantially the same terms and conditions as those other banks. In this case, however, Wing Lung is part of a large financial group headquartered outside of Hong Kong. As described above, Wing Lung is wholly owned by CMB, which is in turn controlled by China Merchants Group, Limited. In 2007, the Board approved an application by CMB to operate a branch in New York. In acting on that application, the Board determined that CMB's home country supervisor was actively working to establish arrangements for the consolidated supervision of CMB, consistent with the discretionary standard in the IBA. Consequently, the Board has determined to apply the same standard in acting on this application by CMB's subsidiary bank.

Hong Kong is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Hong Kong has enacted laws and developed regulatory standards to deter money laundering and terrorist financing. Money laundering is a criminal offense in Hong Kong, and Hong Kong financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. Wing Lung has policies and procedures in place to comply with these laws and regulations, and these policies and procedures are monitored by governmental entities responsible for anti-money laundering compliance. Based on all the facts of record, it has been determined that Wing Lung's home jurisdiction supervisor is actively working, in conjunction with the relevant supervisory authorities of the People's Republic of China, to establish arrangements for the consolidated supervision of Wing Lung, and that considerations relating to the steps taken by Wing Lung and its home jurisdiction to combat money laundering are consistent with approval under this standard.

The Board previously has determined that CMB's home country supervisor is actively working to establish arrangements for the consolidated supervision of CMB and that considerations relating to the steps taken by CMB and its home jurisdiction to combat money laundering are consistent with approval under this standard.[14] Based on this finding and all the facts of record, the Board has concluded that CMB's home country supervisory authority remains actively working to establish arrangements for the consolidated supervision of CMB and that considerations relating to the steps taken by CMB and its home country to combat money laundering are consistent with approval under this standard.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account. The HKMA has no objection to the establishment of the proposed branches.

The Board has also considered the financial and managerial factors in this case. Hong Kong's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). Wing Lung's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Wing Lung are considered consistent with approval, and Wing Lung appears to have the experience and capacity to support the proposed branches. In addition, Wing Lung has established

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[13] *See* letter, dated May 14, 2007, from the Federal Reserve Bank of New York to The Hongkong and Shanghai Banking Corporation Limited; *Citic Ka Wah Bank Limited*, 89 *Federal Reserve Bulletin* 435 (2003); *The Bank of East Asia, Limited*, 84 *Federal Reserve Bulletin* 886 (1998); *Liu Chong Hing Bank*, 81 *Federal Reserve Bulletin* 905 (1995); *Hong Kong and Shanghai Banking Company*, 81 *Federal Reserve Bulletin* 902 (1995); and *Dah Sing Bank, Ltd.*, 80 *Federal Reserve Bulletin* 182 (1994).

[14] CMB Order, at C24.

controls and procedures for the proposed branches to ensure compliance with U.S. law and for its operations in general.

With respect to access to information on Wing Lung's operations, the restrictions on disclosure in relevant jurisdictions in which Wing Lung operates have been reviewed, and relevant government authorities have been contacted regarding access to information. Wing Lung has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Wing Lung has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information.[15] In addition, subject to certain conditions, the HKMA may share information on Wing Lung's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Wing Lung has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.[16] Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Wing Lung in its home jurisdiction; the scope of Wing Lung's activities, including the type of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Wing Lung in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Wing Lung and CMB, as well as the terms and conditions set forth in this order, Wing Lung's application to establish a branch in San Francisco and to upgrade its limited branch in Alhambra to a full-service branch is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[17] Should any restrictions on access to information on the operations or activities of Wing Lung and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Wing Lung or its affiliates with applicable federal statutes, the Board may require termination of any of Wing Lung's direct or indirect activities in the United States, or in the case of any such operations licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by Wing Lung and CMB with the commitments made in connection with this application and with the conditions in this order.[18] The commitments and

[15] CMB previously made these commitments. CMB Order, at C26.

[16] 12 U.S.C. § 3105(d)(3)(E).

[17] 12 CFR 265.7(d)(12).

[18] The Board's authority to approve the establishment of the branches parallels the continuing authority of the OCC to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed offices of Wing Lung in accordance with any terms or conditions that the OCC may impose.

conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective January 13, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Federal Reserve
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Legal Developments: Second Quarter, 2014

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Cullen/Frost Bankers, Inc.
San Antonio, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014–10 (May 14, 2014)

Cullen/Frost Bankers, Inc. ("Cullen/Frost"), San Antonio, Texas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with WNB Bancshares, Inc. ("WNB Bancshares"), and thereby acquire its subsidiary bank, Western National Bank, both of Odessa, Texas. In addition, Cullen/Frost's subsidiary state member bank, Frost Bank, San Antonio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with Western National Bank, with Frost Bank as the surviving entity. Frost Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and the branches of Western National Bank.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 54647 (September 5, 2013)).[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

Cullen/Frost, with consolidated assets of approximately $24.4 billion, is the 55th largest insured depository organization in the United States, controlling approximately $20.8 billion in deposits.[5] Cullen/Frost controls Frost Bank, which operates only in Texas. Frost Bank is the sixth largest depository institution in Texas, controlling deposits of $19.1 billion, which represent 2.9 percent of the total deposits of insured depository institutions in that state.[6]

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1 12 U.S.C. § 1842.
2 12 U.S.C. § 1828(c).
3 12 U.S.C. § 321. These locations are listed in the appendix.
4 12 CFR 262.3(b).
5 Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.
6 State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

WNB Bancshares, with total consolidated assets of $1.5 billion, controls Western National Bank, which operates in Texas. Western National Bank is the 45th largest insured depository institution in Texas, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Cullen/Frost would become the 53rd largest insured depository organization in the United States, controlling consolidated assets of approximately $25.9 billion. Cullen/Frost would control total consolidated deposits of approximately $22.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, Frost Bank would remain the sixth largest insured depository organization, controlling deposits of approximately $20.3 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

Cullen/Frost and WNB Bancshares have subsidiary depository institutions that compete directly in the San Antonio, Texas, banking market.[8] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by Cullen/Frost and WNB Bancshares;[9] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[10] the number of competitors that would remain in the banking market; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of

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7 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

8 The San Antonio banking market is defined as Bexar, Comal, Guadalupe, Kendall, and Wilson counties, all in Texas.

9 Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

the proposal, the banking market would remain highly concentrated, as measured by the HHI, and numerous competitors would remain.[11]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Cullen/Frost and WNB Bancshares compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Cullen/Frost and Frost Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as an exchange of shares.[12] The asset quality, earnings, and liquidity of Frost Bank and Western National Bank are consistent with approval, and Cullen/Frost appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Cullen/Frost, WNB Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition,

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[11] Cullen/Frost operates the second largest depository institution in the San Antonio banking market, with approximately $7.1 billion in deposits, which represent 13.4 percent of market deposits. WNB Bancshares operates the 34th largest depository institution in the market, controlling deposits of approximately $44.9 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Cullen/Frost would continue to operate the second largest depository institution in the market, controlling deposits of approximately $7.1 billion, which represent 13.4 percent of market deposits. The HHI would increase by two points to 3061, and 52 competitors would remain in the market.

[12] Applicants would effect the acquisition by merging Special Prairie Holding Co., a wholly owned subsidiary of Cullen/Frost, with and into WNB Bancshares (with WNB Bancshares as the survivor). At the time of the merger, each share of WNB Bancshares common stock would be converted into a right to receive Cullen/Frost common stock and cash, based on an exchange ratio. Immediately after this merger, WNB Bancshares would merge with and into Cullen/Frost (with Cullen/Frost as the survivor).

the Board has considered its supervisory experiences and those of other bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Cullen/Frost, WNB Bancshares, and their subsidiary depository institutions are each considered to be well managed. Cullen/Frost's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Cullen/Frost have substantial knowledge of and experience in the banking and financial services sectors.[13]

The Board also has considered Cullen/Frost's plans for implementing the proposal. Cullen/Frost is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Cullen/Frost would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Cullen/Frost's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Cullen/Frost is proposing to integrate Western National Bank's existing management and personnel in a manner that augments Cullen/Frost's management.

Cullen/Frost's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Cullen/Frost and WNB Bancshares in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[15] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[16]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Frost Bank and Western National Bank, data reported by Frost Bank and Western National Bank under the Home Mortgage Disclosure Act ("HMDA"),[17] other information provided by Cullen/Frost, confidential supervisory information, and the public comment received on the proposal. A commenter objected to the proposal and

[13] Both the chairman and the chief executive officer of Cullen/Frost would continue in their roles following consummation of the proposed transaction.

[14] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5); 12 U.S.C. § 2901 *et seq.*

[15] 12 U.S.C. § 2901(b).

[16] 12 U.S.C. § 2903.

[17] 12 U.S.C. § 2801 *et seq.*

alleged that Frost Bank had engaged in discriminatory lending practices in the Houston, Texas, area.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Frost Bank. Frost Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of August 11, 2008 ("Frost Bank Evaluation"). Examiners noted that Frost Bank's lending levels reflected good responsiveness to its deposit market share and area credit needs, particularly regarding loans to small businesses, and that Frost Bank's level of community development loans was high.[20] Frost Bank received "high satisfactory" ratings on both the Lending Test and Investment Test and a "low satisfactory" rating on the Service Test.[21]

For the Lending Test, examiners noted that Frost Bank's lending levels reflected good responsiveness to its deposit market share and area credit needs, particularly regarding loans to small businesses.[22] Examiners also observed that the bank's distribution of all CRA-reportable loans by income level of geography was good. Examiners did not identify any conspicuous gaps in the geographic distribution of home mortgage loans and small loans to businesses during the evaluation period, and they noted that the bank's distribution of loans inside its assessment areas was excellent. Examiners found that Frost Bank's distribution of all CRA-reportable loans by income level of the borrower was adequate.

Examiners noted that Frost Bank's performance in community development lending had a positive impact on Frost Bank's Lending Test performance in three of the bank's four full-scope assessment areas and an overall positive impact on the Lending Test conclusions. During the evaluation period, Frost Bank originated three loans totaling $90,000 within the

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[18] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

[19] 12 U.S.C. § 2906.

[20] The evaluation period for the Lending Test in the Frost Bank Evaluation was January 1, 2005, through December 31, 2007, except for community development loans, which had an evaluation period from January 1, 2005, through August 10, 2008. The evaluation period for the Investment Test and Service Test was from January 1, 2005, through August 10, 2008.

[21] The Frost Bank Evaluation was conducted using Large Institution CRA Examination Procedures and included a full-scope assessment review of four areas: the Austin-Round Rock, Texas Metropolitan Statistical Area ("MSA") ("Austin MSA"); the Houston, Texas Assessment Area ("Houston AA"); the San Antonio, Texas Assessment Area ("San Antonio AA"); and the Tarrant County, Texas Assessment Area ("Tarrant County AA"). A limited-scope review was performed in the Brownsville-Harlingen, Texas and McAllen-Edinburg-Mission, Texas MSAs; the Corpus Christi, Texas Assessment Area; the Dallas County, Texas Assessment Area; and the Willacy County, Texas Assessment Area. Examiners placed approximately equal weight on the bank's performance in the Houston AA, the SanAntonio AA, and the Tarrant County AA based on their respective shares of deposits and loans. Examiners placed less weight on the bank's performance in the Austin MSA given its smaller market share of loans and deposits.

[22] In evaluating the Lending Test, examiners placed greater weight on Frost Bank's small business lending, which represented 74 percent of the bank's CRA-reportable loans originated or purchased during the evaluation period.

Austin MSA, 14 community development loans totaling approximately $24.4 million in the Houston AA, 17 loans totaling approximately $82.8 million in the San Antonio AA, and 16 loans totaling approximately $42.5 million in the Tarrant County AA. Examiners noted that, in the Houston AA, Frost Bank originated an $8.5 million loan for the construction and short-term financing of facilities for a nonprofit organization that provided services related to the treatment and prevention of alcohol and drug abuse. Examiners noted that the majority of the beneficiaries of the organization's services were LMI individuals.

In evaluating Frost Bank's performance under the Investment Test, examiners found that Frost Bank's investments were beneficial to, and met the identified needs of, the bank's assessment areas. During the evaluation period, Frost Bank made 103 investments, grants, and donations totaling approximately $9.4 million within the Austin MSA; 103 investments, grants, and donations totaling approximately $8.8 million within the Houston AA; 147 investments, grants, and donations totaling approximately $15.7 million within the San Antonio AA; and 62 investments, grants, and donations totaling approximately $9.5 million within the Tarrant County AA. In the Houston AA, Frost Bank's investments included mortgage-backed securities totaling approximately $8.6 million and included donations to community organizations that promoted the growth of small businesses and that supported the needs of LMI individuals.

In evaluating Frost Bank's performance under the Service Test, examiners found that the bank's distribution of branches and the accessibility to its products and services in all assessment areas were adequate. Examiners noted that Frost Bank offered a payroll card product to large commercial customers to assist them with meeting the needs of the underserved and that minimum- and low-wage workers who did not have a banking relationship or a checking account benefited from the product. Examiners observed that Frost Bank provided a relatively high level of community development services in the assessment areas receiving a full-scope review.

During the course of the Frost Bank Evaluation, examiners did not find any evidence that Frost Bank engaged in discriminatory or other illegal credit practices.

CRA Performance of Western National Bank. Western National Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of October 15, 2009 ("Western National Bank Evaluation").[23] Examiners noted that Western National Bank made a substantial majority of its loans to borrowers within its CRA assessment areas, as measured by both number of loans and dollar amount.[24]

As described in the Western National Bank Evaluation, the bank's performance under the Lending Test was rated "satisfactory." Examiners found that a substantial majority of the bank's loans sampled by examiners (78 percent of the number of loans and 68 percent of the dollar amount of the loans) were made within its assessment areas. Examiners found that the bank's distribution of loans made to individuals and families of different income levels and to businesses of different sizes was reasonable and that the geographic dispersion of Western National Bank's small business loans was reasonable throughout the assessment areas.

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[23] The Western National Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed a sample of the bank's small business loans from January 1, 2007, through August 31, 2009, and a sample of the bank's residential real estate lending from January 1, 2005, through August 31, 2009. The evaluation period for the Western National Bank Evaluation was April 20, 2005, through October 15, 2009.

[24] The Western National Bank Evaluation included a full-scope assessment review of two areas: the Midland, Texas MSA ("Midland MSA") and the Odessa, Texas MSA. A limited-scope review was performed in the Bexar County, Texas Assessment Area.

Western National Bank's performance under the Community Development Test was rated "satisfactory." Examiners found that the bank's community development performance reflected an adequate responsiveness to community development needs within the assessment areas. During the evaluation period, Western National Bank made 15 loans totaling approximately $1.5 million to purchase lots and/or construct one-to-four-family residences for LMI persons in LMI census tracts within the Midland MSA. Western National Bank's qualified community development investments included donations to 19 organizations totaling approximately $4.2 million. Western National Bank also purchased equity investments of which approximately $1.7 million qualified as benefiting LMI households. Examiners noted that the bank, through its employees, was involved in a variety of community development services that reflected an adequate responsiveness to the communities' needs.

Frost Bank's efforts since the 2008 CRA Evaluation. The Federal Reserve Bank of Dallas ("Reserve Bank") began a CRA examination of Frost Bank in the second quarter of 2013.[25] Overall, examiners found that Frost Bank's CRA performance remained satisfactory.[26] Examiners found that Frost Bank's lending activity reflected good responsiveness to the bank's assessment area credit needs. The geographic distribution of loans reflected good penetration throughout the assessment areas, and the distribution of borrowers reflected good penetration among customers of different income levels and businesses of various revenue sizes. The bank's level of community development loans was adequate, and its qualified community development investments and grants in its assessment areas were significant. Frost Bank's retail services were found to be reasonably accessible to the bank's geographies and to individuals of different income levels, and the bank provided a relatively high level of community development services.

In the Houston AA, examiners found that the geographic distribution of Frost Bank's HMDA loans was good and borrower distribution was adequate. The geographic distribution of the bank's small business loans was good. During the review period, the percentage of the bank's small business loans originated in LMI census tracts and the percentage of the bank's small business loans to businesses with revenues of $1 million or less exceeded the aggregate of all reporters of such data. Examiners found that during the review period, Frost Bank originated six community development loans totaling over $39 million, including two community development loans that provided economic development to a low-income area and a loan to a Small Business Investment Company that specializes in providing long-term debt and equity capital to small businesses. In addition, Frost Bank made 79 separate investments totaling over $11 million during the review period, including investments in multiple bonds designated for affordable housing. The bank provided numerous investments to ACCION Texas, which provides credit and services to small businesses and entrepreneurs who are unable to obtain financing from traditional sources. Examiners noted that Frost Bank was also particularly responsive in teaching financial literacy and assisting the Houston area in various ways after Hurricane Ike.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the record of Frost Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Frost Bank Evaluation and Frost Bank's record of performance in helping to meet the credit needs of its communities since the Frost Bank Evaluation, considered the Reserve Bank's recent evaluation of Frost Bank's compliance with fair lending laws, evaluated Frost

[25] The review period for the Lending Test was January 1, 2010, through December31, 2011. The review period for the Investment Test and Service Test was August 11, 2008, through December 31, 2011.

[26] The findings and conclusions are in the process of being finalized.

Bank's fair lending policies and procedures, and considered the comment on the application.

HMDA Data and Fair Lending Analysis. The Reserve Bank recently conducted a review of Frost Bank's fair lending performance in Harris County, Texas, where Houston is located, and in Dallas County, Texas.[27] A commenter alleged that Frost Bank disfavors African American neighborhoods in the Houston area in Harris County with respect to access to its banking products and services and that the bank has engaged in redlining. The Reserve Bank considered the comment in connection with its review of Frost Bank's fair lending performance. The Reserve Bank analyzed Frost Bank's lending data, assessment area definitions, geographic distribution of branches, and marketing and outreach efforts, and the analysis did not confirm the commenter's assertion of redlining.

With respect to mortgage lending, Cullen/Frost represents that Frost Bank's percentage of HMDA-reportable applications in minority census tracts in the Houston, Texas MSA ("Houston MSA") approximated or exceeded that of the aggregate of all lenders in 2010, 2011, and 2012, and that Frost Bank's percentage of HMDA-reportable applications in African American census tracts in the Houston MSA exceeded that of the aggregate in all three years.[28]

The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Frost Bank excluded or denied credit to any group on a prohibited basis.[29] Fully evaluating Frost Bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

Reserve Bank examiners reviewed Frost Bank's HMDA data in the Houston area for the period 2010-13.[30] The data revealed that the bank is making mortgage loans available in areas of Harris County in which the majority of residents are either African American or Hispanic. Frost Bank generally outperformed or was approximately comparable to its peer institutions in terms of receiving applications from and originating HMDA loans in African American or Hispanic census tracts in Harris County for the period 2010-13. Frost

[27] The Reserve Bank considered data from January 1, 2010, through December 31, 2013.

[28] Frost Bank also represents that it ceased origination of one-to-four-family conventional residential mortgage loans in 2000. Home improvement lending currently is the bank's primary HMDA-reportable product.

The commenter also alleged that Frost Bank discriminates against African Americans in its provision of factoring services. Frost Bank represents that it does not actively market factoring services and provides such services to a limited number of customers as an accommodation.

[29] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

[30] The 2013 HMDA peer data are preliminary.

Bank's percentage of applications from such tracts increased between 2010 and 2013. Frost Bank's percentage of originations in such tracts also increased between 2010 and 2013.[31]

The Reserve Bank reviewed the geographic distribution of Frost Bank's branches, the bank's marketing activities, and other community outreach efforts. The examination showed that there are no differences between services available at Frost Bank branch offices located in areas with concentrations of minority residents and other areas. Examiners, using a radius based on competition from other financial institutions, found that Frost Bank's branches reached a majority of the neighborhoods in the Houston area identified by the commenter. The branches in those neighborhoods do not have shorter operating hours. In addition, Frost Bank provides mobile branch vans in Harris County that are equipped to support a variety of financial products. Frost Bank's marketing activities and community outreach efforts include partnering with local nonprofit organizations to provide outreach to LMI communities and providing financial education to individuals and small businesses.

An underwriting and pricing review was also performed as part of the fair lending examination. The Reserve Bank reviewed HMDA data for all loan applications received by Frost Bank between 2010 and 2012. The review found that the bank followed its articulated underwriting guidelines and found no evidence of illegal credit discrimination.

The Board also reviewed Frost Bank's small business lending in Harris County for the period 2010-13. The data revealed that the bank is making small business loans available in areas in which the majority of residents are either African American or Hispanic. Frost Bank's percentage of small business loan originations in African American or Hispanic census tracts decreased by less than a percentage point between 2010 and 2013 and exceeded or was approximately comparable to its peers' origination of small business loans in such tracts between 2010 and 2012. In 2013, Frost Bank's percentage of small business loan originations in African American or Hispanic census tracts trailed its peers.[32]

Frost Bank's Fair Lending Program. Frost Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and the Board has reviewed these policies. The company's legal and compliance risk-management program includes an annual fair lending risk assessment to analyze potential vulnerabilities in loan processes and controls and annual compliance training for applicable employees. Frost Bank analyzes its HMDA data at least annually for disparities in underwriting and pricing. Frost Bank's risk-management systems and its policies and procedures for ensuring compliance with fair lending laws would be implemented at the combined organization.[33]

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[31] Frost Bank originated mortgage loans for the review period in zip codes of Harris County in which the majority of residents are African American, including some in or near the particular zip codes noted by the commenter. Examiners noted that home mortgage lending opportunities may be limited in the zip codes noted by the commenter by factors such as the relatively high percentage of renters, the proportion of residents living below the poverty level, and the relatively high unemployment rate.

[32] Frost Bank originated small business loans for the review period in zip codes of Harris County in which the majority of residents are African American, including some in or near the particular zip codes noted by the commenter. The Reserve Bank's review of Dallas County, like the review of Harris County, did not disclose illegal credit discrimination based on its review of Frost Bank's assessment area, branching, lending, and marketing.

[33] Cullen/Frost has committed not to engage in any expansionary activities, including branching within its existing market areas, until such time that the Board has deemed Cullen/Frost to have clearly developed a policy to support future expansion in its compliance program, including fair lending, and to hire additional staff with requisite knowledge and experience to manage and control the bank's fair lending risk, which might be heightened by expansion.

C. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Cullen/Frost represents that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including data processing. Cullen/Frost notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers. Cullen/Frost also states that the greater resources of the combined organization would increase credit availability to consumers and businesses in the communities that Western National Bank serves today.

Cullen/Frost also states that the proposal would offer customers convenience through a broader range of financial products and services. Cullen/Frost represents that customers of WNB Bancshares would have access to additional leasing, factoring, and asset-based lending services; improved online- banking cash management services; additional treasury management products for businesses; insurance products and services; trust, custody, and wealth management products and services; and additional products for individuals, such as personal lines of credit, home equity loans, home improvement loans, and home equity lines of credit. Cullen/Frost states that WNB Bancshares customers would have access to Cullen/Frost's call center and mobile application, which would increase access to banking services.

In addition, Cullen/Frost represents that the merger would benefit current customers of Western National Bank through access to significantly larger branch and ATM networks. The branch network available to Cullen/Frost and WNB Bancshares customers would increase from 115 and 8, respectively, to 122 locations throughout Texas.[34] Customers of Western National Bank would also gain access to Cullen/Frost's network of 132 bank-owned ATMs and free access to Valero Corner Store ATMs in Texas through Frost Bank's partnership with a third-party ATM network operator.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Cullen/Frost, confidential supervisory information, the public comment on the proposal, and the commitments made by Cullen/Frost. Based on the above, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concen-

[34] Cullen/Frost proposes to close one branch of Western National Bank in SanAntonio on consummation of the merger to consolidate overlapping locations within the branch structure of the combined organization. The branch is not located in an LMI area.

trated risk to the stability of the United States banking or financial system."[35] The Dodd-Frank Act also amended the Bank Merger Act to require the Board to consider "the risk to the stability of the United States banking or financial system."[36]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[37] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[38]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Cullen/Frost would have approximately $25.9 billion in consolidated assets and, by any of a number of alternative measures of firm size, would be between the 50th and 75th largest U.S. financial institution. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, Cullen/Frost's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

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[35] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[36] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1602, codified at 12 U.S.C. § 1828(c)(5).

[37] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[38] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

Other Considerations

Cullen/Frost also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of Western National Bank.[39] The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.[40]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Cullen/Frost with all the conditions imposed in this order, including receipt of all regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the date of this order, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective May 14, 2014.

Voting for this action: Chair Yellen and Governors Tarullo, Stein, and Powell.

Robert deV. Frierson
Secretary of the Board

Appendix

Branches in Texas to Be Established by Frost Bank

Odessa
801 N. Texas Avenue
2700 West County Road
2710 Grandview
3501 Faudree Road

Midland
508 W. Wall Street
800 West Wadley
4101 North Midland Drive

San Antonio
12800 San Pedro Avenue

[39] As discussed above, Cullen/Frost proposes to close one branch of Western National Bank in San Antonio.
[40] 12 U.S.C. § 322; 12 CFR 208.6(b).

First Interstate BancSystem, Inc.
Billings, Montana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014–11 (June 30, 2014)

First Interstate BancSystem, Inc. ("FIB"), Billings, Montana, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Mountain West Financial Corp. ("MWF") and thereby indirectly acquire its subsidiary bank, Mountain West Bank, National Association ("Mountain West Bank"), both of Helena, Montana.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 15344 (2014)).[2] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

FIB, with consolidated assets of approximately $7.6 billion, is the 115th largest insured depository organization in the United States, controlling approximately $6.1 billion in deposits.[3] FIB's bank subsidiary, First Interstate Bank, operates in Montana, South Dakota, and Wyoming. First Interstate Bank is the second largest depository institution in Montana, controlling deposits of approximately $3.0 billion, which represent 15.2 percent of total deposits of insured depository institutions in that state.[4]

MWF, with total consolidated assets of approximately $639.6 million, controls Mountain West Bank, which operates only in Montana. Mountain West Bank is the sixth largest insured depository institution in Montana, controlling deposits of approximately $529.0 million, which represent 2.7 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, FIB would become the 110th largest depository organization in the United States, with total consolidated assets of approximately $8.2 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. FIB would have total deposits of approximately $6.7 billion. In Montana, FIB would become the largest depository organization, controlling deposits of approximately $3.5 billion, which represent 17.9 percent of the total deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community

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1 12 U.S.C. § 1842.

2 12 CFR 262.3(b).

3 Asset data are as of March 31, 2014, and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

4 State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings and loan associations, cooperative banks, industrial banks, and savings banks.

to be served.[5] FIB and MWF have subsidiary depository institutions that compete directly in the Montana banking markets of Bozeman, Great Falls, Helena, Kalispell, and Missoula.

A. Competitive Effects in the Banking Markets

The Board has reviewed the competitive effects of the proposal in each of the banking markets in which First Interstate Bank and Mountain West Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by FIB and MWF;[6] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[7] and other characteristics of the market.

Banking Markets within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Bozeman, Great Falls, Kalispell, and Missoula banking markets.[8] On consummation of the proposal, the Bozeman, Great Falls, and Missoula banking markets would remain moderately concentrated and the changes in market concentrations would be well within the DOJ Bank Merger Guidelines and Board precedent. The Kalispell banking market would remain highly concentrated, as measured by the HHI, and the change in the HHI in the market would be small. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The structural effects that consummation of the proposal would have on the Helena banking market[9] warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. First Interstate Bank is the fifth largest depository institution in the market, controlling approximately $69.7 million in deposits, which represent 5.7 percent of market deposits. Mountain West Bank is the third largest depository institution in the market, controlling approximately $247.0 million in deposits, which represent 20.1 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Helena banking market, controlling approximately $316.7 million in

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5 12 U.S.C. § 1842(c)(1).

6 Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent weight and deposits held by credit unions are assigned zero weight. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). The Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

7 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

8 These four banking markets and the competitive effects of the proposal in these markets are described in the appendix.

9 The Helena banking market is defined as Lewis and Clark, Meagher, and Broadwater counties, the Boulder Division in Jefferson County, and the eastern half of the Avon-Elliston Division in Powell County, all in Montana.

deposits, which would represent approximately 25.8 percent of market deposits. The HHI in this market would increase by 229 points, from 1640 to 1869.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Helena banking market.[10] Several factors indicate that the increase in concentration in the Helena banking market, as measured by the HHI and market share, overstates the potential competitive effects of the proposal in the market. After consummation of the proposal, 11 commercial bank competitors would remain, some with a significant presence in the market. The second and third largest bank competitors in the market would control approximately 21.1 percent and 19.7 percent of market deposits, respectively, and another bank competitor in the market would control approximately 6.6 percent of market deposits.

In addition, the Board has evaluated the competitive influence of American Federal Savings Bank ("American Federal"), a thrift institution operating in the Helena banking market.[11] American Federal's commercial and industrial loan portfolios are similar to those of commercial banks in the market, as measured in terms of the ratios of those types of loans to total loans and assets.[12] Moreover, American Federal provides a broad range of banking services similar to those normally provided by commercial banks. In addition, American Federal has recently announced plans to convert to a state-chartered commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two community credit unions in the Helena banking market, Helena Community Credit Union and Rocky Mountain Credit Union, each offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the Helena banking market. Accordingly, the Board finds that these circumstances warrant including the deposits of these credit unions on a 50 percent weighted basis.[13]

If the deposits held by the competitively active thrift are reweighted from 50 percent to 100 percent, and the deposits held by each of the competitively active credit unions are reweighted from zero percent to 50 percent, the pro forma deposit share of First Interstate Bank in the Helena banking market would be 22.7 percent, and the HHI would

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[10] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

[11] The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See*, *e.g.*, *Banknorth Group, Inc*., 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See* , *e.g.*, *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc*., *supra*.

[12] American Federal has a ratio of commercial and industrial loans to assets of approximately 6 percent, which is comparable to, or greater than, the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

[13] The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. *See, e.g., Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation supra*, ; *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

increase by 177 points to 1548. Reweighting the deposit shares of competitively active thrifts and credit unions in this manner is consistent with past Board precedent. The Board has concluded that the activities of these organizations exert a competitive influence that mitigates, in part, the potential effects of the proposal on the Helena banking market. In addition, numerous competitors would remain in the Helena banking market.

B. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which First Interstate Bank and Mountain West Bank compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. FIB and First Interstate Bank are well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.[14] The asset quality, earnings, and liquidity of First Interstate Bank are consistent with approval, and FIB appears to have adequate resources to absorb the costs of the proposal and to complete the integration of FIB's and MWF's operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of FIB, MWF, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with

[14] Each outstanding share of MWF common stock would be canceled and converted into a right to receive cash and FIB's Class A common stock based on an exchange ratio. FIB has the resources to fund the cash consideration portion of the transaction.

the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

FIB and its subsidiary depository institution are each considered to be well managed. FIB's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of FIB have demonstrated knowledge of and experience in the banking and financial services sectors.

The Board also has considered FIB's plans for implementing the proposal. FIB is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal. FIB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, FIB's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

FIB's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of FIB and MFW in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[16] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[17]

The Board has considered all the facts of record, including reports of examination of the CRA performance of First Interstate Bank and Mountain West Bank, information provided by FIB, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire commu-

[15] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[16] 12 U.S.C. § 2901(b).

[17] 12 U.S.C. § 2903.

[18] *See Interagency Questions and Answers Regarding Community Reinvestment,* 75 *Federal Register* 11642, 11665 (2010).

nity, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of First Interstate Bank. First Interstate Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Minneapolis ("Reserve Bank") in July 2013 ("First Interstate Bank Evaluation"). First Interstate Bank received "outstanding" ratings for the Lending Test, the Investment Test, and the Service Test.[20] In addition to the overall "outstanding" rating that First Interstate Bank received, the bank received separate overall "outstanding" ratings in the states reviewed.[21]

In evaluating the Lending Test, Reserve Bank examiners found that the bank's overall lending activity was excellent. The bank originated a substantial majority of loans within its Montana, Wyoming, and South Dakota assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners noted that the bank had an excellent record of lending to borrowers of different income levels and to businesses and farms of different sizes. Further, First Interstate Bank's overall geographic distribution of loans was excellent throughout the bank's assessment areas, including LMI geographies, and there were no unexplained gaps in the bank's lending patterns.

Examiners also noted that First Interstate Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices to serve credit needs, especially programs that support affordable homeownership. Since the previous evaluation, the bank originated 71 community development loans totaling approximately $69.0 million, which represented an approximately $22.2 million increase in community development lending from the previous evaluation.[22]

In evaluating the Investment Test, Reserve Bank examiners found that First Interstate Bank had an overall excellent level of qualified investments that demonstrated excellent responsiveness to community development needs. Examiners highlighted numerous CRA-qualified investments that the bank made, as well as donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles and made extensive use of innovative and complex investments, often in a leadership position, when opportunities existed. Examiners noted that First Interstate Bank's CRA-qualified investments increased from approximately $70.5 million to approximately $75.1 million since the prior evaluation.

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[19] 12 U.S.C. § 2906.

[20] The evaluation period was from January 1, 2011, through December 31, 2012.

[21] The First Interstate Bank Evaluation was conducted using Large Institution CRA Examination Procedures and included full-scope reviews of at least one assessment area within each state where First Interstate Bank has an office. The First Interstate Bank Evaluation included a full-scope review of four assessment areas: the Billings, Montana Metropolitan Statistical Area ("MSA"); the Missoula, Montana MSA; the Casper, Wyoming MSA; and the Rapid City, South Dakota MSA. A limited scope review was performed in the Great Falls, Montana MSA; the Bozeman, Montana Assessment Area ("AA"); the Hamilton, Montana AA; the Hardin/Miles City, Montana AA; the Helena, Montana AA; the Kalispell, Montana AA; the Cheyenne, Wyoming MSA; the Jackson, Wyoming AA; the Laramie, Wyoming AA; the Riverton, Wyoming AA; the Sheridan, Wyoming AA; the Spearfish/Belle Fourche, South Dakota AA; and the Hot Springs/Edgemont/Custer, South Dakota AA. Examiners placed the greatest weight on the bank's performance in Montana because most of the bank's lending occurs in this state.

[22] The bank also originated five loans totaling approximately $18.9 million that benefitted areas outside of the bank's Montana and Wyoming assessment areas. Because the bank's activities adequately address the community development needs of its assessment areas, loans that benefit geographies outside of the bank's assessment areas can be considered in the evaluation of the bank's community development lending.

In evaluating the Service Test, examiners noted that the bank's retail services were accessible to all portions of the bank's assessment areas, including LMI census tracts. Examiners also noted that First Interstate Bank's opening and closing of branches had not adversely affected the accessibility of its products and services throughout the assessment areas. Examiners also found that the bank's services were tailored to the convenience and needs of LMI census tracts and individuals. Further, examiners highlighted that First Interstate Bank was a leader in providing community development services throughout its assessment areas.

CRA Performance of Mountain West Bank. Mountain West Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency in December 2011 ("Mountain West Bank Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[23]

In evaluating the Lending Test, examiners noted that the bank originated a substantial majority of its loans within its assessment areas.[24] Examiners also found that the bank's geographic dispersion of loans reflected reasonable penetration throughout its assessment areas and the bank's distribution of loans by revenue and income levels reflected a reasonable penetration among individuals of different income levels and businesses of different sizes. Further, examiners concluded that Mountain West Bank's loan-to-deposit ratio was more than reasonable given Mountain West Bank's size, financial condition, and the assessment areas' credit needs.

In evaluating the Community Development Test, examiners noted that Mountain West Bank's level of community development activities represented satisfactory responsiveness to community development needs in its assessment areas through qualified investments and community development services. Examiners also found that Mountain West Bank provided an excellent level of community development services through its employee involvement in community based organizations that benefit LMI individuals.

B. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

FIB represents that the proposed transaction would provide Mountain West Bank's customers with access to additional wealth management services, cash management services, dealer financing, in-house mortgage products, adjustable rate mortgage products, and broader credit card programs. FIB also states that FIB's higher legal lending limit would allow it to provide additional credit availability and flexibility to meet the larger credit needs of Mountain West Bank's customers.

In addition, FIB represents that the merger would benefit current customers of Mountain West Bank through access to a broader network of branches and ATMs. Although FIB

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[23] The Mountain West Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial and residential real estate lending activity from August 19, 2008, to September 30, 2011, for the Lending Test. Commercial and residential real estate loans were selected for analysis because they represented 63 percent and 18 percent, respectively, of the bank's loan portfolio. The evaluation period for the Community Development Test was from August 19, 2008, to December 8, 2011.

[24] The Mountain West Bank Evaluation reviewed the bank's Helena, Montana non-MSA AA; the Great Falls, Montana MSA; and the Missoula, Montana MSA.

plans to consolidate or close several branches following the merger, as there are some Mountain West Bank branches that are located within two miles of First Interstate Bank branches, Mountain West Bank customers will continue to have access to services in each of the communities currently served by Mountain West Bank.[25] In addition, FIB represents that these customers would gain access to services at branches and ATMs in each of the communities served by First Interstate Bank, including communities in Montana, Wyoming, and South Dakota. FIB also notes that its increased market presence in Mountain West Bank's markets would result in increased community service projects and philanthropic efforts in those markets.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by FIB, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of First Interstate Bank and Mountain West Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, FIB would have approximately $8.2 billion in consolidated assets and would be the 122nd largest financial

[25] Although FIB has not determined which branches will be closed, FIB represents that the closures will be made in accordance with FIB's branch closure policies and governing law and regulations.

[26] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

institution in the United States as measured by assets. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, FIB's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.1 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by FIB with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 30, 2014.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

FIB/MWF banking markets in Montana consistent with Board precedent and DOJ Bank Merger Guidelines

Status	Rank	Amount of deposits	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Bozeman, Montana— includes Gallatin and Park counties, both in Montana.						
FIB pre-consummation	2	$381.9M	17.1	1190	44	17
MWF	13	$28.6M	1.3	1190	44	17
FIB post-consummation	2	$410.5M	18.4	1190	44	17
Great Falls, Montana—includes Teton, Cascade, Judith Basin, Glacier, Toole, and Pondera counties; and Fort Benton and Geraldine divisions in Chouteau County, all in Montana.						
FIB pre-consummation	4	$257.8M	12.5	1465	168	14
MWF	6	$139.5M	6.7	1465	168	14
FIB post-consummation	1	$397.3M	19.2	1465	168	14
Kalispell, Montana—includes Lincoln and Flathead counties; the Big Fork-Swan River Division; and the northern portion of Flathead Division that includes the communities of Polson, Finley Point, Big Arm, Elmo and Dayton in Lake County, all in Montana.						
FIB pre-consummation	2	$349.1M	16.3	2907	68	15
MWF	7	$44.7M	2.1	2907	68	15
FIB post-consummation	2	$393.8M	18.4	2907	68	15
Missoula Montana—includes Missoula County; the Superior and Alberton divisions in Mineral County; Helmville and the western half of Avon-Elliston divisions in Powell County; the southern half of Flathead Division in Sanders County; the southern portion of Flathead Division that includes the communities of Pablo, Kicking Horse, Post Creek, Moiese, Ravalli, Arlee, Charlo, Ronan, and Saint Ignatius in Lake County; the Drummond Division in Granite County; and Ravalli County (minus the eastern third of Sula-Edwards Division), all in Montana.						
FIB pre-consummation	1	$643.0M	24.2	1525	125	17
MWF	8	$69.2M	2.6	1525	125	17
FIB post-consummation	1	$712.1M	26.8	1525	125	17

Note: Deposit data are as of June 30, 2013. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

MB Financial Inc.
Chicago, Illinois

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2014–12 (June 30, 2014)

MB Financial, Inc. ("MB Financial"), Chicago, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Taylor Capital Group, Inc. ("Taylor Capital"), Rosemont, and thereby indirectly acquire its subsidiary bank, Cole Taylor Bank, Chicago, all of Illinois. Following the proposed acquisition, Cole Taylor Bank would be merged into MB Financial's subsidiary bank, MB Financial Bank, National Association ("MB Financial Bank"), Chicago.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 59938 (September 30, 2013)). The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

MB Financial, with consolidated assets of approximately $9.6 billion, is the 101st largest insured depository organization in the United States, controlling approximately $7.4 billion

[1] 12 U.S.C. § 1842.

[2] The merger of Cole Taylor Bank into MB Financial Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12U.S.C. § 1828(c).

in consolidated deposits.[3] MB Financial Bank operates in Illinois, Indiana, and Pennsylvania. MB Financial Bank is the 12th largest depository institution in Illinois, controlling deposits of approximately $7.5 billion, which represent 1.8 percent of the total deposits of insured depository institutions in the state.[4] In addition, MB Financial Bank is the 199th largest depository institution in Pennsylvania, controlling deposits of $46.7 million, and is the 168th largest depository institution in Indiana with approximately $3.0 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

Taylor Capital, with total consolidated assets of $5.7 billion, controls Cole Taylor Bank, which operates in Illinois. Cole Taylor Bank is the 18th largest insured depository institution in Illinois, controlling deposits of approximately $3.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, MB Financial would become the 81st largest insured depository organization in the United States, with total consolidated assets of approximately $15.3 billion. MB Financial would have total consolidated deposits of approximately $11.0 billion. In Illinois, MB Financial would become the ninth largest depository organization, controlling deposits of approximately $11 billion, which represent 2.8 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

MB Financial and Taylor Capital have subsidiary depository institutions that compete directly in the Chicago, Illinois, banking market.[6] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by MB Financial and Taylor Capital;[7] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[8] and other characteristics of the market.

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[3] Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

[4] State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[5] 12 U.S.C. § 1842(c)(1).

[6] The Chicago banking market is defined as Cook, Du Page, and Lake counties, all in Illinois.

[7] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[8] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concen-

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[9]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which MB Financial and Taylor Capital compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. MB Financial and MB Financial Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[10] The asset quality, earnings, and liquidity of both MB Financial Bank and Cole Taylor Bank are consistent with approval, and MB Financial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

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trated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[9] MB Financial operates the 10th largest depository institution in the Chicago banking market with approximately $7.3 billion in deposits, which represent 2.6 percent of market deposits. Taylor Capital operates the 14th largest depository institution in the same market, controlling deposits of approximately $3.8 billion, which represent 1.3 percent of market deposits. On consummation of the proposed transaction, MB Financial would operate the seventh largest depository institution in the market, controlling weighted deposits of approximately $11.0 billion, which represent 3.9 percent of market deposits. The HHI would increase by seven points to 1016, and 147 competitors would remain in the market.

[10] As part of the proposed transaction, each share of Taylor Capital common stock would be converted into a right to receive cash and MB Financial common stock based on an exchange ratio.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of MB Financial, Taylor Capital, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

MB Financial, Taylor Capital, and their subsidiary depository institutions are each considered to be well managed. MB Financial's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of MB Financial have substantial knowledge and experience in the banking and financial services sectors.

The Board has also considered MB Financial's plans for implementing the proposal. MB Financial is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. MB Financial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, MB Financial's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and MB Financial plans to integrate Cole Taylor Bank's existing management and personnel in a manner that augments MB Financial's management.

MB Financial's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of MB Financial and Taylor Capital in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[11] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[12] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[13]

The Board has considered all the facts of record, including reports of examination of the CRA performance of MB Financial Bank and Cole Taylor Bank, data reported by MB Financial Bank and Cole Taylor Bank under the Home Mortgage Disclosure Act

[11] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.
[12] 12 U.S.C. § 2901(b).
[13] 12 U.S.C. § 2903.

("HMDA"),[14] other information provided by MB Financial, confidential supervisory information, and the public comment received on the proposal. The commenter does not oppose approval of the proposal but expressed concerns about Cole Taylor Bank's lending record to minority and LMI borrowers as reflected in 2011 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[15] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[16] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of MB Financial Bank. MB Financial Bank, the lead bank for the Applicant, was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of August 12, 2013 ("MB Financial Bank Evaluation").[17] MB Financial Bank received "outstanding" ratings on both the Lending Test and the Investment Test and a "high satisfactory" rating on the Service Test.[18]

In evaluating the Lending Test, examiners observed that the bank's overall lending activity in the Chicago AA was excellent. Examiners found that the geographical distribution of the bank's home mortgage lending and small business lending in the Chicago Multi-State MSA was adequate and excellent, respectively.[19] Examiners found that the bank's distribution of home mortgage loans by income level of borrower in the Chicago Multi-State MSA was adequate, given the product lines offered by the institution, and its distribution of small loans to businesses with gross annual revenues of $1 million or less was adequate based on economic conditions and the competitive market in which the bank operates.

Examiners found that MB Financial Bank's community development lending in the Chicago AA was significant, and that the bank originated an excellent level of community development loans during the evaluation period. Examiners also noted that the bank is a

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[14] 12 U.S.C. § 2801 *et seq*.

[15] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

[16] 12 U.S.C. § 2906.

[17] The MB Financial Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January1, 2010, through December 31, 2012, except for community development loans, which had an evaluation period from April 28, 2010, through August 12, 2013. The evaluation period for the Investment Test and the Service Test was April 28, 2010, through August 12, 2013.

[18] The MB Financial Bank Evaluation included a full-scope review of three assessment areas: the Chicago, Illinois, Assessment Area ("Chicago AA"); the LaSalle County, Illinois, Assessment Area; and the Philadelphia, Pennsylvania, Assessment Area. A limited-scope review was performed in the Lake County, Illinois, Assessment Area and the Indiana Assessment Area. Examiners placed greater weight on the bank's performance in its assessment areas falling within the Chicago-Naperville-Joliet Multi-State Metropolitan Statistical Area ("Chicago Multi-State MSA"), which comprises the Chicago AA and the assessment areas selected for limited-scope review, because these areas represented the bank's most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

[19] Examiners placed more emphasis on the bank's distribution of small business loans than the distribution of home mortgage loans because of MB Financial Bank's higher market share in small business lending. MB Financial Bank's market share as of June 30, 2011, in the Chicago AA was 0.9 percent and 0.2 percent for small loans to businesses and mortgage lending, respectively. Within the home mortgage loan category, greater weight was placed on home refinance loans because they composed more than half of MB Financial Bank's home mortgage lending.

participant in a number of governmental and privately sponsored programs that are designed to provide more flexible loan terms to LMI individuals and to small businesses.

In evaluating the Investment Test, examiners found that MB Financial Bank's responsiveness to the community development needs in the Chicago AA was excellent. During the evaluation period, the bank made investments and grants in the Chicago AA totaling approximately $42 million. Examiners noted that 76 percent of the bank's qualifying investments were to organizations that focus on affordable housing, a critical need in the Chicago AA; 15 percent were made to organizations that support community development financing by financing small businesses; and 9 percent went to organizations that support the revitalization of LMI geographies.

For the Service Test, examiners found that MB Financial Bank's performance in the Chicago AA was good. Examiners observed that the bank's branch distribution in these areas was adequate, and that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners found that MB Financial Bank provided an excellent level of community development services, which had a significantly positive impact on the Service Test rating, and that the bank is a leader in providing community development services, which are highly responsive to community needs.

CRA Performance of Cole Taylor Bank. Cole Taylor Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank"), as of April 9, 2012 ("Cole Taylor Bank Evaluation"). Examiners noted that Cole Taylor Bank's lending levels reflected good responsiveness to assessment area credit needs, and that the bank was a leader in making community development loans.[20] Cole Taylor Bank received a "high satisfactory" rating for the Lending Test, and an "outstanding" rating on both the Investment Test and the Service Test.

For the Lending Test, examiners noted that Cole Taylor Bank's level of home mortgage, small business, and consumer lending activity reflected good responsiveness to assessment area credit needs considering the bank's resources, business strategy, community needs and opportunities, as well as strained economic conditions during the evaluation period.[21] Reserve Bank examiners noted that the bank's lending levels reflected good responsiveness to assessment area credit needs. Examiners found that the bank's geographic distribution of loans reflected excellent penetration throughout the assessment area, and the borrower distribution reflected adequate distribution among borrowers of different income levels and businesses of different revenue sizes. Examiners observed that the bank's 2011 performance in home mortgage lending to LMI borrowers represented an improvement over 2009 and 2010.

Examiners noted that Cole Taylor Bank is a leader in making community development loans. For example, during the evaluation period, the bank originated 57 qualified community development loans totaling approximately $173 million.

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[20] The evaluation period for the Lending Test in the Cole Taylor Bank Evaluation was from January 1, 2009, through December 31, 2011, except for community development loans, which had an evaluation period from January 19, 2010, through April 9, 2012. The evaluation period for the Investment Test and the Service Test was from January 19, 2010, through April 9, 2012. Consumer loan data for the period from January 1, 2009, through December 31, 2010, were also considered.

[21] With respect to the Lending Test, examiners placed more weight on Cole Taylor Bank's home mortgage lending activity and less weight on its performance in consumer lending because of the bank's relatively low volume of consumer lending activity. During the evaluation period, Cole Taylor Bank originated approximately $2.8 billion and $19.7 million in home mortgage loans and consumer loans, respectively.

In evaluating the Investment Test, examiners observed that the bank made an excellent level of qualified community development investments and grants, often in a leadership position. Examiners also found that Cole Taylor Bank exhibited excellent responsiveness to credit and community development needs by supporting organizations that provide financing to small businesses and affordable housing for LMI individuals.

In evaluating the Service Test, examiners found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in its assessment area. Examiners observed that Cole Taylor Bank was a leader in providing community development services within its assessment area, and that the bank provided community development services through employee and officer involvement, most notably in leadership capacities, relating to banking and financial services.

During the course of the Cole Taylor Bank Evaluation, examiners did not find any evidence that Cole Taylor Bank engaged in discriminatory or other illegal credit practices.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of MB Financial Bank and Cole Taylor Bank in complying with fair lending and other consumer protection laws.[22] As part of this consideration, the Board reviewed the MB Financial Bank Evaluation and the Cole Taylor Bank Evaluation, assessed Cole Taylor Bank's HMDA data, and considered the comment on the application criticizing Cole Taylor Bank's lending record. The Board also considered MB Financial Bank's fair lending policies and procedures and confidential supervisory information.

HMDA Data and Fair Lending Analysis. The commenter focused on Cole Taylor Bank's lending record, alleging, based on 2011 HMDA data, that Cole Taylor Bank made a lower percentage of its mortgage loans to African Americans, Hispanics, and LMI borrowers than all lenders in the Chicago, Illinois, area. The commenter expressed concern that Cole Taylor Bank's underperformance in underserved markets would compromise MB Financial Bank's above-average record of home lending to LMI borrowers and borrowers of color.

MB Financial represents that 2012 HMDA data show that Cole Taylor Bank made a larger percentage of HMDA-reportable loans to Hispanic borrowers than the aggregate of all lenders and that Cole Taylor Bank's percentage of HMDA loans to African American borrowers increased when compared to the 2011 percentage.

The Board reviewed Cole Taylor Bank's HMDA data in the Chicago area for the period 2010–13. The Board's analysis confirmed the disparities noted by the commenter for 2011. The data revealed that Cole Taylor Bank improved the number and percentage of its mortgage loans to African Americans in 2012 and 2013 but continued to lag the aggregate of all

[22] The Board has entered into a Consent Order with Cole Taylor Bank for violations of section5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) ("FTC Act"), related to disbursements of student loan funds for colleges and universities by an institution-affiliated party. Cole Taylor Bank terminated this arrangement in August 2013. As part of the Consent Order, Cole Taylor Bank has agreed that, in the event it enters into a similar relationship with another third-party student lender, it will develop a plan, acceptable to the Federal Reserve, to enhance its consumer compliance risk-management program to ensure that the soliciting, marketing, and servicing of the consumer deposit product in connection with the third party comply with all consumer protection laws and regulations, including section 5(a)(1) of the FTC Act. Cole Taylor Bank also agreed to pay a civil monetary penalty of $3.51 million. MB Financial has committed that the provisions of the Cease and Desist Order between Cole Taylor Bank and the Board that provide for restitution shall be binding upon MB Financial as a successor to Taylor Capital, taking into consideration MB Financial's plan to merge Cole Taylor Bank into MB Financial Bank.

lenders. For Hispanic borrowers, the bank improved the number and percentage of its mortgage loan originations in 2012, exceeding the aggregate. In addition, compared to 2011, the data show that in 2012, the number and percentage of Cole Taylor Bank's mortgage loan originations to LMI borrowers and the borrowers in LMI census tracts improved and were consistent with the aggregate. The 2013 data showed that the bank's home loan originations to Hispanic borrowers and to LMI borrowers and communities were generally consistent with the aggregate.[23]

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial and ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Cole Taylor Bank excluded or denied credit to any group on a prohibited basis.[24]

In response to the lending disparities identified by the commenter, the Reserve Bank conducted a combination onsite and offsite examination of Cole Taylor Bank covering the portion of the Chicago-Naperville-Joliet, Illinois, Metropolitan Division that Cole Taylor Bank delineates as its assessment area, which consists of Cook, DuPage, and Lake counties, all in Illinois. As an initial matter, Reserve Bank examiners found that Cole Taylor Bank's assessment area did not present evidence of redlining, observing that majority-minority census tracts were not arbitrarily excluded. The Reserve Bank's examination also focused on the bank's home-mortgage lending patterns, marketing materials, and lending strategies.

In evaluating home-mortgage lending patterns, Reserve Bank examiners reviewed the bank's lending data from 2010–12 and did not find a trend of increasing lending disparities. Examiners noted that the bank's lending volumes to minorities had increased and that Cole Taylor Bank's originations exceeded the aggregate. In reviewing the bank's marketing, examiners noted that the bank's marketing campaigns included the entire assessment area, and the bank's marketing practices and materials did not show evidence of redlining. Reserve Bank examiners found that the bank's loan and underwriting and pricing policies were neutral regarding the treatment of applicants. Reserve Bank examiners also reviewed the bank's policies, procedures, forms, credit applications, and lending practices for evidence of discrimination and to ensure compliance with fair lending laws.

As part of the scoping process for the Cole Taylor Bank Evaluation, underwriting and pricing analyses were performed using 2010 home mortgage data to analyze disparities by gender and ethnicity. The analysis found no statistically significant differences in denial rates or pricing factors based on gender or ethnicity.

MB Financial's Fair Lending Program. MB Financial has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes a fair lending risk assessment that is updated annually, or more frequently based on material

[23] The 2013 HMDA peer data are preliminary.

[24] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

changes to the bank's strategy, operations, products or services; fair lending training for employees involved in all stages of the credit process; pricing analyses and data accuracy reviews by the compliance department; marketing material reviews; and regular monitoring of complaints.

MB Financial's internal audit department conducted a comparative file review of residential real estate loan applications received for the period 2011 through 2012, and no evidence of discriminatory practices was found. In addition, OCC examiners found no evidence of discriminatory or other illegal credit practices as part of the MB Financial Bank Evaluation.

On consummation of the transaction, MB Financial has committed to implement a compliance management system that combines the strengths of its and Cole Taylor Bank's fair lending programs and would increase the number of compliance staff. MB Financial would maintain the dedicated mortgage compliance unit and the fair lending program management function at Cole Taylor Bank's mortgage subsidiary, Cole Taylor Mortgage, LLC, and would update MB Financial's annual fair lending risk assessment to incorporate the scale and size of Cole Taylor Bank's mortgage business, as well as its loan servicing activities. MB Financial plans to establish a Fair Lending Action Committee, currently in use at Cole Taylor Bank, to manage fair lending risk. The committee would report to MB Financial's Operational and Compliance Risk Committee, which reports to executive management and MB Financial's Enterprise Risk Committee.

MB Financial has committed that, following consummation of the merger of MB Financial Bank with Cole Taylor Bank and consistent with the combined organization's capacity and opportunities for making qualified lending and investments, the combined organization will demonstrate that it has engaged in levels of qualified lending and investments, home mortgage lending, including lending to LMI communities and minority and LMI borrowers, small business lending, and community development lending and investments in LMI communities in the combined organization's assessment area that are commensurate with or that exceed MB Financial Bank's and Cole Taylor Bank's improved performance in 2012.

C. Additional Information on Convenience and Needs to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter alleged that the proposal would not provide a clear or significant public benefit.

MB Financial represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including data processing. MB Financial notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers.

MB Financial also states that the proposal would offer customers convenience through a broader range of financial products. MB Financial represents that customers of Taylor Capital would have access to additional savings account products; general-use prepaid cards, gift cards, and secured credit cards; lower-cost remittances to Mexico; wealth management products; and additional products and services for business customers, such as capital markets services, international banking services, and treasury management products.

In addition, MB Financial represents that the merger would benefit current customers of Cole Taylor Bank through access to larger branch and ATM networks. The branch network available to MB Financial and Taylor Capital customers would increase from 85 and 9, respectively, to 94 branches. Customers of Cole Taylor Bank would also gain access to MB Financial's network of 121 bank-owned ATMs.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by MB Financial, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the lending operations and compliance programs of MB Financial Bank and Cole Taylor Bank, its review of examination reports, and its consultations with other agencies, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[25]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[26] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[27]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, MB Financial would have approximately $15.3 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be among the 75 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other

[25] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[26] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[27] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, MB Financial's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by MB Financial with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective June 30, 2014.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Old National Bancorp
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014–6 (April 7, 2014)

Old National Bancorp ("Old National"), Evansville, Indiana, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Tower Financial Corporation ("Tower") and thereby indirectly acquire its subsidiary bank, Tower Bank and Trust Company ("Tower Bank"), both of Fort Wayne, Indiana. Immedi-

[1] 12 U.S.C. § 1842.

ately following the proposed merger, Tower Bank would be merged into Old National's subsidiary bank, Old National Bank, Evansville.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 69680 (2013)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Old National, with consolidated assets of approximately $9.6 billion, is the 104th largest insured depository organization in the United States, controlling approximately $7.2 billion in deposits.[4] Old National Bank operates in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National is the fourth largest depository institution in Indiana, controlling deposits of approximately $5.4 billion, which represent 5.2 percent of total deposits of insured depository institutions in that state.[5]

Tower, with total consolidated assets of $691 million, controls Tower Bank, which operates only in Indiana. Tower is the 29th largest insured depository institution in Indiana, controlling deposits of approximately $600 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Old National would become the 101st largest depository organization in the United States, with total consolidated assets of approximately $10.3 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Old National would have total deposits of approximately $7.8 billion. In Indiana, Old National would remain the fourth largest depository organization, controlling deposits of approximately $6 billion, which represent 5.7 percent of the total deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

Old National and Tower compete directly in the Fort Wayne, Indiana banking market.[7] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in

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[2] The merger of Tower Bank into Old National Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act.

[3] 12 CFR 262.3(b).

[4] Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

[5] State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, nondeposit trust companies, savings and loan associations, cooperative banks, industrial banks, and savings banks.

[6] 12 U.S.C. § 1842(c)(1).

[7] The Fort Wayne, Indiana market is defined as Allen, DeKalb, and Whitley counties; Preble, Root, and Union townships in Adams County; Union and Jefferson townships in Wells County; Jackson and Union townships in Huntington County; Noble, Green, and Swan townships in Noble County, all in Indiana; and Carryall township in Paulding County and Hicksville township in Defiance County, both in Ohio.

insured depository institutions in the market ("market deposits") controlled by Old National and Tower;[8] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[9] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[10]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Old National and Tower compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the

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[8] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743(1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[9] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[10] Old National operates the 24th largest depository institution in the Fort Wayne, Indiana banking market with approximately $14 million in deposits, which represent less than 1 percent of market deposits. Tower operates the fifth largest depository institution in the market, controlling deposits of approximately $538 million, which represent approximately 7.8 percent of market deposits. On consummation of the proposed transaction, Old National would become the fifth largest depository institution in the market, controlling deposits of approximately $552 million, which represent 8 percent of market deposits. The HHI would increase by 3 points to 1280, and 28 competitors would remain in the market.

future prospects of the organizations involved in the proposal in light of the financial and managerial resources and proposed business plan.

The Board has considered the financial factors of the proposal. Old National and Old National Bank are well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.[11] The asset quality, earnings, and liquidity of Old National Bank are consistent with approval, and Old National appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Old National, Tower, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Old National and its subsidiary depository institution are each considered to be well managed. Old National's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Old National have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Old National's plans for implementing the proposal. Old National is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Old National would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Old National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. Furthermore, Old National has demonstrated a record of successfully integrating other banking organizations into its operations and risk-management systems after acquisitions.

Old National's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, and Old National's anti-money-laundering policies, are consistent with approval.[12]

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[11] Each outstanding share of Tower common stock would be exchanged for $6.75 in cash and 1.2 shares of Old National's common stock. The anticipated aggregate cash consideration to be paid in connection with the merger is approximately $31.6 million. Old National has the resources to fund the cash consideration portion of the transaction.

[12] On June 4, 2012, Old National Bank entered into a stipulation and consent order with the OCC relating to its Bank Secrecy Act/anti-money-laundering compliance program. Old National Bank, OCC Order No. 2012-126 (June 4, 2012). On January 14, 2014, the OCC lifted its order after verifying compliance with the order.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[13] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[14] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[15]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Old National Bank and Tower Bank, data reported by Old National Bank and Tower Bank under the Home Mortgage Disclosure Act ("HMDA"),[16] other information provided by Old National, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Old National's fair lending record as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[17] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[18] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Old National Bank. Old National Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the OCC in December 2012 ("Old National Bank Evaluation"). Old National Bank received an overall "outstanding" rating for the Lending Test and overall "high satisfactory" ratings for both the Investment and Service Tests.[19] In addition to the overall "outstanding" rating that Old National Bank received, the bank received separate overall "outstanding" or "satisfactory" ratings in each multistate metropolitan area and state reviewed.[20]

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[13] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[14] 12 U.S.C. § 2901(b).

[15] 12 U.S.C. § 2903.

[16] 12 U.S.C. § 2801 *et seq*.

[17] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[18] 12 U.S.C. § 2906.

[19] The evaluation period for the Old National Bank Evaluation was July 1, 2008, through December 31, 2012.

[20] The Old National Bank Evaluation included full-scope reviews of at least one assessment area within each state where Old National Bank had an office and of multistate metropolitan areas where Old National Bank operated branches in at least two states. The states reviewed were Illinois, Indiana, Kentucky, and Ohio, and the multistate metropolitan areas reviewed were the Evansville (Indiana-Kentucky) and Louisville (Kentucky-Indiana) metropolitan areas.

As described in the Old National Bank Evaluation, OCC examiners found that the bank's overall lending activity was excellent. The bank originated a significant majority of loans inside its assessment areas and had an excellent overall record of lending to borrowers of different income levels. Examiners noted that the bank had an excellent record of lending to home mortgage borrowers of different income levels, while its distribution of loans to businesses and farms with different revenue sizes was good. Further, Old National Bank's overall geographic distribution of loans was adequate. Specifically, the bank's geographic distribution of small loans to businesses was good, while its geographic distribution of mortgage loans and small loans to farms was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

In evaluating the Investment Test, OCC examiners found that Old National Bank had an overall good level of qualified community development investments that were highly responsive to community needs. Examiners highlighted numerous CRA-qualified investments that the bank made, including donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles. For the current CRA examination cycle, which began January 1, 2013, Old National has indicated that Old National Bank increased its corporate community development investment goal from $37.5 million to $87.5 million, an increase of 133 percent.

In evaluating the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Old National Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Further, examiners highlighted that the institution provided a relatively high level of community development services.

CRA Performance of Tower Bank. Tower Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of April 29, 2013 ("Tower Bank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.[21] For the Lending Test, examiners concluded that Tower Bank's loan-to-deposit ratio was reasonable. Further, the majority of the bank's HMDA reportable and small business loans were made in its assessment areas, and the geographic distribution of its loans reflected reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners also noted that Tower Bank's level of community development activities represented adequate responsiveness to community credit needs in its assessment areas.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Old National Bank and Tower Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Old National Bank and Tower Bank Evaluations, assessed Old National Bank's HMDA data, and considered the comment on the application and other agencies' views on Old National Bank's record of performance under fair lending laws. The Board also considered Old National Bank's fair lending policies and procedures.

Analysis of HMDA Data and Branch Closings. The Board analyzed Old National Bank's 2012 HMDA data, the most recent publicly available, as well as preliminary 2013 HMDA

[21] The Tower Bank Evaluation was conducted using examination procedures for small institutions with assets of less than $1.2 billion and greater than $296 million as of January 1, 2013. Institutions in this asset size category are referred to as intermediate small banks and are subject to CRA examinations based on performance in the following areas: loan-to-deposit ratio, lending in the assessment area, geographic distribution of lending in the assessment area, lending to borrowers of different incomes and to businesses of different sizes, responses to substantiated complaints, and community development activities.

data. The Board analyzed data related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, as well as the subset of that data related specifically to the loan products that composed the subject of the public comment received on the proposal, including conventional home purchase loans, Federal Housing Administration ("FHA"), Farm Service Agency/Rural Housing Service ("FSA/RHS") and Veteran Affairs ("VA") home purchase loans, home improvement loans and refinance loans. The Board analyzed the bank's combined assessment areas and the specific market areas addressed in the public comment (Indianapolis, Evansville, and Fort Wayne, Indiana MSAs).Within those data sets, the Board focused its review on data related to loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, *i.e.*, African Americans and Hispanics.

The commenter expressed concerns that Old National Bank was not meeting the credit needs of minority individuals in several communities served by the bank, based on 2012 HMDA data. In particular, the commenter alleged that Old National Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans, FHA, FSA/RHS and VA home purchase loans, refinance loans and home improvement loans in the Indianapolis, Evansville, and Fort Wayne, Indiana MSAs. The commenter also asserted that Old National Bank disproportionately denied applications by Hispanic applicants in each of these MSAs, suggesting a pattern of denial rate disparities.

The Board's review confirmed the levels of lending by Old National Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter. However, the Board's analysis of HMDA data for conventional home purchase loans, FHA, FSA/RHS and VA home purchase loans, refinance loans and home improvement loans by Old National Bank in its combined assessment areas, as well as in the Indianapolis, Evansville, and Fort Wayne MSAs individually, did not show any significant differences between Old National Bank's lending and the aggregate lending for 2012 and 2013.[22]

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Old National Bank excluded or denied credit to any group on a prohibited basis.[23] Fully evaluating Old National Bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

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[22] Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area.

[23] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

With respect to the specific HMDA data on home purchase, home improvement and refinance loans cited by the commenter, Old National provided information reflecting nondiscriminatory reasons for individual lending decisions (*i.e.*, credit history, inadequate collateral, and debt-to-income ratio). Old National also provided the Board with detailed information on Old National Bank's training, marketing, advertising, and underwriting guidelines reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis.

The Board has consulted with the OCC regarding its evaluation of Old National Bank's compliance with fair lending laws and regulations. In its recent Old National Bank CRA Performance Evaluation, the OCC reported that it did not find evidence of discriminatory or other illegal credit practices. In addition, an OCC March 2013 consumer compliance examination and a November 2013 targeted examination of Old National Bank's risk management program for fair lending compliance did not result in any findings of discrimination relating to Old National Bank's fair lending policies and procedures or to underwriting decisions by the bank's management.

The commenter also alleged that Old National has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities.[24] The Board analyzed Old National Bank's current branch distribution and believes it is readily accessible to LMI geographies and individuals in the bank's assessment areas. Twenty-eight percent of Old National Bank's branches are located in LMI census tracts. According to 2010 census data, the percentage of the population in LMI geographies within Old National Bank's assessment areas was 27 percent. As such, the percentage of Old National Bank branches in LMI geographies slightly exceeds the percentage of the population in LMI geographies within the Old National Bank assessment areas.

Old National has stated that Old National Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.[25] The Board has reviewed Old National Bank's branch closing policy and notes that the OCC will continue to review Old National Bank's branch closing record in the course of conducting CRA performance evaluations.

Old National's Fair Lending Program. Old National has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, fair lending officers serving within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Old National also has a centralized underwriting procedure, an automated application pro-

[24] The commenter further alleged that Old National has been closing branches for the purpose of keeping its assets slightly below $10 billion to avoid increased regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Board notes that after consummation of this transaction, Old National would have more than $10 billion in assets.

[25] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

cess, a second review process, a documented exception process, and a standard pricing sheet.

In addition, fair lending reviews are conducted quarterly of individual business units, and comprehensive corporate reviews are performed annually to ensure compliance with the bank's underwriting and pricing procedures and fair lending laws. The reviews utilize HMDA and non-HMDA data and analyze any fair lending complaints the institution receive. Further, the Compliance Department conducts quarterly fair lending testing and monitoring, including analysis of policies and procedures, reviews of loan and application data, monitoring of exceptions and overrides, and reviews of new products and initiatives. Old National's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

Old National Bank represents that it provides annual fair lending training to all employees involved in any aspect of the bank's credit transactions. Old National also states that it conducts ongoing monitoring and analysis of loan data, policies, and consumer complaints to ensure compliance with fair lending regulations.

C. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter generally questioned whether the proposal would result in the public benefits that the applicant asserts.

Old National represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Old National asserts that the transaction has the potential to benefit all aspects of Tower's operations, particularly its lending functions, asset and liability management, and data processing capabilities. Old National also states that the combined organization's larger lending limit would allow Old National to better meet the lending needs of its corporate customers and more effectively compete for larger corporate customers.

Old National states that the proposal would provide customers with an expanded network of almost 170 branches in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National notes that the combined organization would provide Tower Bank's customers with an expanded and more sophisticated range of products and services than Tower Bank currently offers, including an enhanced range of consumer services and deposit accounts. Further, insurance products will be made available to Tower Bank's customers through Old National Insurance, which offers a broad array of insurance products to individuals and businesses across the United States.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Old National, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Old National Bank and Tower Bank, and review of examination reports, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Old National would have approximately $10.3 billion in consolidated assets and would be the 101st largest financial institution in the United States. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Old National's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

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[26] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation* , FRB Order No. 2012-2 (Feb. 14, 2012).

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[29] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Old National with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective April 7, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Umpqua Holdings Corporation
Portland, Oregon

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2014–2 (March 28, 2014)

Umpqua Holdings Corporation ("Umpqua"), Portland, Oregon, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Sterling Financial Corporation ("Sterling") and thereby acquire its subsidiary bank, Sterling Savings Bank ("Sterling Bank"), both of Spokane, Washington. Immediately following the proposed acquisition, Sterling Bank would be merged into Umpqua's subsidiary bank, Umpqua Bank, Roseburg, Oregon, a state nonmember bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 63476 (2013)).[3] The time for

[29] The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

[1] 12 U.S.C. § 1842.

[2] The merger of Sterling Bank into Umpqua Bank is subject to approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. §1828(c).

[3] 12 CFR 262.3(b).

submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act. Umpqua, with consolidated assets of approximately $11.6 billion, is the 96th largest insured depository organization in the United States, controlling approximately $9.1 billion in consolidated deposits.[4] Umpqua Bank operates in California, Nevada, Oregon, and Washington. Umpqua Bank is the fifth largest depository institution in Oregon, controlling deposits of approximately $4.4 billion, which represent 7.5 percent of the total deposits of insured depository institutions in that state.[5] Umpqua Bank is the 24th largest depository institution in California with approximately $3.3 billion in deposits, the 19th largest depository institution in Washington with approximately $1.1 billion in deposits, and the 16th largest depository institution in Nevada with approximately $279.1 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

Sterling, with consolidated assets of $10.3 billion, controls Sterling Bank, which operates in California, Idaho, Oregon, and Washington. Sterling Bank is the eighth largest depository institution in Washington, controlling deposits of approximately $3.4 billion, which represent 2.9 percent of the total deposits of insured depository institutions in that state. Sterling Bank is the ninth largest depository institution in Oregon, controlling deposits of approximately $1.8 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state. Sterling Bank is the 63rd largest depository institution in California, controlling deposits of approximately $872.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In addition, Sterling Bank is the 11th largest depository institution in Idaho, controlling deposits of approximately $492.6 million, which represent 2.4 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Umpqua would become the 63rd largest insured depository organization in the United States, with consolidated assets of approximately $22.0 billion.[6] Umpqua would have consolidated deposits of approximately $16.2 billion. Umpqua would become the fourth largest depository organization in Oregon, controlling deposits of approximately $6.2 billion, which represent 10.6 percent of the total amount of deposits of insured depository institutions in that state. Umpqua would become the sixth largest depository organization in Washington, controlling deposits of approximately $4.5 billion, which represent 3.8 percent of the total amount of deposits of insured depository institutions in that state. Umpqua would become the 21st largest depository organization in California, controlling deposits of approximately $4.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the

[4] Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

[5] State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[6] The pro forma asset and deposit data for the combined organization after consummation of the proposal include the assets and deposits of the six branches that Umpqua has committed to divest, which is discussed below.

transaction is prohibited under state law.[7] However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.[8] The Board must also take into account the record of performance of the acquiring banks under the Community Reinvestment Act ("CRA")[9] and applicable state community reinvestment laws.[10] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[11] The Board also may not approve an application if the combined organization would control 30 percent or more of the total deposits of insured depository institutions in the target's home state or in any state in which the acquirer and target have overlapping banking operations.[12]

For purposes of the BHC Act, the home state of Umpqua is Oregon, and Sterling Bank's home state is Washington.[13] Sterling Bank is also located in California, Idaho, and Oregon. Umpqua is well capitalized and well managed under applicable law. Washington has a five-year minimum age requirement,[14] and Sterling Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $11.0 trillion. On consummation of the proposed transaction, Umpqua would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in the states in which Umpqua and Sterling have overlapping banking operations; these states are California, Oregon, and Washington. Also, the Board has taken into account Umpqua Bank's record of performance under the CRA and determined that it does not prohibit the Board from approving the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless

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7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

9 12 U.S.C. § 2901 *et seq*.

10 12 U.S.C. § 1842(d)(3).

11 12 U.S.C. § 1842(d)(2)(A).

12 12 U.S.C. § 1842(d)(2)(B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

13 *See* 12 U.S.C. § 1841 (o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

14 Wash. Rev. Code §§ 30.04.230, 30.04.232 (2012).

the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[15] The Board has considered the competitive effects of this proposal in light of all the facts of record. Umpqua Bank and Sterling Bank compete directly in 12 banking markets in California, Oregon, and Washington.

A. Competitive Effects in Banking Markets

The Board has reviewed the competitive effects of the proposal in the banking markets in which Umpqua Bank and Sterling Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by Umpqua and Sterling;[16] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[17] other characteristics of the markets; and, as discussed below, commitments made by Umpqua to divest six branches.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in ten of the twelve banking markets in which Umpqua's and Sterling's subsidiary banks compete directly. On consummation, nine markets would remain moderately concentrated, and one market would remain highly concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. The change in the HHI in the nine moderately concentrated markets also would be consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, a number of competitors would remain in all ten banking markets.[18]

In the Coos Bay, Oregon, banking market (the "Coos Bay banking market"),[19] Umpqua Bank is the largest depository institution, controlling approximately $334.6 million in deposits, which represent approximately 39.9 percent of deposits in that market. Sterling Bank is the second largest depository institution in that market, controlling $207.6 million in deposits, which represent approximately 24.7 percent of deposits in that market. In the Roseburg, Oregon, banking market (the "Roseburg banking market"),[20] Umpqua Bank is the largest depository institution, controlling approximately $885.9 million in deposits,

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[15] 12 U.S.C. § 1842(c)(1).

[16] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52(1991).

[17] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[18] The competitive effects of the proposal in these ten markets are described in the appendix.

[19] The Coos Bay banking market is defined as Coos County and Reedsport in Douglas County, all in Oregon.

[20] The Roseburg banking market is defined as central Douglas County, Oregon.

which represent approximately 63.1 percent of deposits in that market. Sterling Bank is the seventh largest depository institution in the Roseburg banking market, controlling $21.4 million in deposits, which represent approximately 1.5 percent of deposits in that market. To mitigate the potentially adverse competitive effects of the proposal in the Coos Bay and Roseburg banking markets, Umpqua has committed to divest six branches, which account for nearly all of Sterling Bank's approximately $229.0 million in deposits in these two markets.[21]

After the divestiture, the proposal would be consistent with Board precedent and the DOJ Bank Merger Guidelines in the Coos Bay and Roseburg banking markets. Umpqua Bank would remain the largest depository institution in the Coos Bay banking market, controlling approximately $334.6 million in deposits, which represent approximately 39.9 percent of deposits in that market. The HHI would remain unchanged at 4516. At least five other commercial banking organizations would remain in that market. Umpqua Bank would remain the largest depository institution in the Roseburg banking market, controlling approximately $885.9 million in deposits, which represent approximately 63.1 percent of deposits in that market. The HHI would remain unchanged at 4461. At least six other commercial banking organizations would remain in that market.

B. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestiture of branches as discussed above would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the 12 banking markets in which Umpqua and Sterling compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3 of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system.

[21] As a condition to consummation of the proposed merger, Umpqua has committed that it will execute an agreement to sell within 180 days of consummating the proposed merger the six Sterling Bank branches located in the Coos Bay and Roseburg banking markets to one or two purchasers determined by the Board to be competitively suitable. In addition, Umpqua has provided a similar commitment to the DOJ. If the proposed divestiture is not completed within the 180-day period, Umpqua commits to transfer the unsold branches to an independent trustee who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

The Board has considered all of these factors and, as described below, has determined that they are all consistent with approval of the application. The review was conducted in light of all the facts of record, including confidential supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Umpqua, and public comments received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Umpqua and Umpqua Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as an exchange of shares.[22] Umpqua is in satisfactory financial condition, and the asset quality, earnings, and liquidity of both Umpqua Bank and Sterling Bank are consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Umpqua, Sterling, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti–money laundering laws.

Umpqua, Sterling, and their subsidiary depository institutions are each considered to be well managed. Umpqua's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Umpqua have demonstrated knowledge and experience in the banking and financial services sectors.

The Board has also considered Umpqua's plans for implementing the proposal. Umpqua is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Umpqua would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Umpqua's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner, and Umpqua plans to integrate Sterling Bank's existing management and personnel in a manner that augments Umpqua's management.

[22] As part of the proposed transaction, each share of Sterling common stock would be canceled and converted into a right to receive cash and Umpqua common stock based on an exchange ratio.

Umpqua's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and Umpqua's anti–money laundering policies are consistent with approval.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.[23] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[24] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[25]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Umpqua Bank and Sterling Bank, data reported by Umpqua Bank and Sterling Bank under the Home Mortgage Disclosure Act ("HMDA"),[26] other information provided by Umpqua, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of Umpqua Bank's and Sterling Bank's CRA performance and fair lending records, as reflected in 2012 HMDA data.

1. Records of Performance under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[27] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[28] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Umpqua Bank. Umpqua Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of July 15, 2013 ("Umpqua Bank Evaluation").[29] Examiners noted that Umpqua Bank had a good record of meeting the credit needs of its assessment areas and a relatively high level of community

[23] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[24] 12 U.S.C. § 2901(b).

[25] 12 U.S.C. § 2903.

[26] 12 U.S.C. § 2801 *et seq*.

[27] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[28] 12 U.S.C. § 2906.

[29] The Umpqua Bank Evaluation reviewed home mortgage, small business, and community development lending data from January 1, 2010, through December 31, 2012. The evaluation also covered qualified community investments and services during the same period. All lending activities that occurred in 2010 and 2011 were

development loans. Examiners identified no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. Umpqua Bank received a "high satisfactory" rating on both the Lending and Service Tests and a "low satisfactory" rating on the Investment Test.[30]

As described in the Umpqua Bank Evaluation, FDIC examiners found that the bank's overall lending reflected good responsiveness to the credit needs of the communities it serves.[31] The bank had a good record of lending to businesses of different sizes, especially smaller-sized businesses,[32] and an adequate record of lending to retail customers, including residential mortgage borrowers, of different income levels. Examiners noted that, consistent with safe and sound banking practices, the bank was adequately serving the credit needs of low-income individuals, very small businesses, and the most economically disadvantaged portions of its combined assessment areas. Examiners also noted that Umpqua Bank used flexible lending programs in serving the credit needs of the communities it serves[33] and made 49 community development loans totaling $153.9 million during the evaluation period, which represented an approximately $37 million increase in community development lending from the previous evaluation.

With respect to the Investment Test, FDIC examiners found that Umpqua Bank had an adequate level of qualified community development investments and grants and occasionally used innovative and complex investments to support community development initiatives given current economic conditions. In particular, FDIC examiners noted that, although Umpqua Bank's current level of community development investments and grants had doubled in size as a percentage of the bank's total assets and total investments since the previous evaluation, the level of investments remained low at 0.7 percent of total assets and 3.4 percent of total investments as of March 31, 2013.[34] The dollar volume of investments, viewed in light of Umpqua Bank's capacity, the opportunity for making qualified investments in its assessment areas, and the activities of peer institutions, was a key driver in the "low satisfactory" rating assigned to the bank on the Investment Test.

compared to the 2000 U.S. Census, while lending activities that occurred in 2012were compared to the 2010 U.S. Census. The Umpqua Bank Evaluation was conducted using the Large Bank CRA Examination Procedures.

[30] The Umpqua Bank Evaluation included a full-scope review of five assessment areas: Oregon Non–Metropolitan Statistical Area ("MSA") Assessment Area; Portland-Vancouver-Hillsboro Multi-State MSA ("Portland MSA"); Sacramento-Arden-Arcade-Roseville, California MSA; Seattle-Bellevue-Everett, Washington Metropolitan Division; and Reno-Sparks, Nevada MSA. A limited-scope review was performed in the Bend, Corvallis, Eugene-Springfield, Medford, and Salem MSAs in Oregon; the Chico, Modesto, Napa, Redding, Santa Rosa-Petaluma, Stockton, Vallejo-Fairfield MSAs in California; the Oakland-Fremont-Hayward, California Metropolitan Division; the California Non-MSA Assessment Area; and the Tacoma, Washington Metropolitan Division. Examiners placed greater weight on the bank's performance in Oregon, the Portland-Vancouver-Hillsboro Multi-State MSA, and California due to the concentration of loan production and branch infrastructure in these areas.

[31] A substantial majority of the bank's loans were made within its assessment areas.

[32] FDIC examiners' conclusions with respect to small businesses were based primarily on Umpqua Bank's rate of lending to businesses with gross annual revenues ("GARs") of $1 million or less compared to other small businesses, as well as on the business demographics of the bank's assessment areas.

[33] For example, the bank provided 3,644 loans totaling $761.8 million under the Home Affordable Refinance Program; 1,598 loans totaling $308.1 million under Federal Housing Administration ("FHA") loan programs; and 937 loans totaling $211.8 million under Department of Veterans Affairs ("VA") loan programs. These programs incorporate flexible features that assist with credit needs identified by community contacts (e.g., the FHA and VA programs offer flexible underwriting terms such as low– or no–down payment requirements, and many borrowers under those programs are LMI individuals and families).

[34] In connection with the proposed transaction, Umpqua has informed the Board that the company will establish a charitable foundation, to which Umpqua will make an initial contribution of at least $10 million, for the benefit of the communities served by the combined organization. The foundation will primarily focus on youth development and education, the arts, and community development, including affordable housing and financial literacy.

In evaluating the Service Test, FDIC examiners noted that the weakest aspects of Umpqua Bank's performance were the reasonableness of services and business hours and that Umpqua Bank's branch distribution lagged the market in penetration in LMI geographies, especially penetration of moderate-income geographies. Nonetheless, examiners assigned Umpqua Bank a rating of "high satisfactory," noting that the bank's community development services carried the most weight in determining the overall rating under the Service Test. In this respect, examiners noted that Umpqua Bank is a leader in providing community development services. For example, the bank provided a total of 21,543 hours of qualified community development services during the assessment period; this represented a substantial increase from the previous evaluation in which 260 employees provided 2,477 hours of qualified community development services. Examiners also concluded that in most states in which the bank operates accessibility to the bank's delivery systems was quite good and was accessible to essentially all portions of the bank's assessment areas.[35] Moreover, examiners noted that access to the delivery systems, especially in LMI geographies and by LMI individuals, has not been adversely affected by the bank's closure and opening of branches.

CRA Performance of Sterling Bank. Sterling Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 11, 2011 ("Sterling Bank Evaluation"), with ratings of "high satisfactory" on the Lending Test and "low satisfactory" on the Investment and Service Tests.[36] Examiners noted that Sterling Bank's lending reflected good responsiveness to community credit needs and that there was excellent distribution of loans among customers of different income levels and businesses of different sizes. Examiners also noted, however, that the bank had only adequate levels of qualified community development investments and services.

For the Lending Test, examiners found that the bank's distribution of mortgage loans reflected excellent penetration among borrowers of differing income levels. Examiners noted that in 2010, the bank exceeded the aggregate of all lenders in the percentage of loans to low-income borrowers (7.2 percent compared to the aggregate's 5.6 percent) and to moderate-income borrowers (21.8 percent compared to the aggregate's 16.3 percent). In 2011, Sterling Bank's lending to moderate-income borrowers increased to 23.1 percent of its total lending, which exceeded the percentage of total families represented by moderate-income borrowers. Examiners also found that the bank's small business lending reflected good penetration among businesses of different revenue sizes. In 2010, 55.0 percent of the bank's small business lending was to businesses with GARs of $1 million or less, significantly exceeding the aggregate's percentage of 41.3 percent. Overall, examiners found that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses.

For the Investment and Service Tests, examiners found the bank's levels of qualified investments, donations, and services provided were adequate. The bank reported 117 qualified investments and donations totaling $57.9 million, an increase of $17.9 million when compared to Sterling Bank's previous examination. Examiners found that the bank occasionally utilizes innovative and complex investments to support community development initiatives. Examiners also found that the bank exhibited adequate responsiveness to credit and community economic development needs. In addition, examiners found that delivery systems were accessible to essentially all portions of the bank's assessment areas.

[35] Although Umpqua Bank's performance under the Service Test was weakest in Nevada, examiners noted that the bank only began operating in that state following an acquisition in 2010.

[36] The evaluation reflects Sterling Bank's performance in 2010 and the first half of 2011.

2. Fair Lending Record, HMDA, and Small Business Lending Analysis, and Public Comments on the Application

The Board has considered the records of Umpqua Bank and Sterling Bank in complying with fair-lending and other consumer-protection laws. As part of this consideration, the Board reviewed the Umpqua Bank and Sterling Bank Evaluations and Umpqua Bank's fair lending policies and procedures. The Board also considered other agencies' views on Umpqua Bank's record of performance under fair lending laws. In addition, the Board has taken into account the comments on the application.

Several commenters expressed concerns that Umpqua Bank and Sterling Bank are not meeting the credit needs of minority and LMI individuals in the communities served by the banks based on 2012 HMDA data. In particular, the commenters alleged that Umpqua Bank and Sterling Bank made disproportionately fewer conventional residential mortgage loans and refinance loans to African American and Hispanic borrowers than to white borrowers, and denied more applications for conventional home purchase loans by African American and Hispanic borrowers compared to white borrowers, in the Spokane, Washington MSA ("Spokane MSA") and Portland MSA.[37] Similarly, commenters asserted that both institutions made fewer home loans to Asians compared to the aggregate of all lenders in the Seattle-Tacoma-Bellevue, Washington MSA ("Seattle MSA") and Portland MSA.[38] Commenters also alleged that Umpqua Bank and Sterling Bank made a smaller percentage of home loans to LMI borrowers compared to the aggregate in the Portland, Seattle, and Eugene-Springfield, Oregon ("Eugene") MSAs.[39] One commenter contended that, while it did not believe that Umpqua Bank is consciously discriminating, the bank's business lending to African American and Hispanic borrowers and mortgage lending to minority and LMI borrowers in certain California markets showed a need for improvement.[40] Commenters also expressed concerns with respect to Umpqua Bank's lower percentage of deposits from, and branches in, LMI areas of Portland compared to the aggregate.

The Board has reviewed HMDA data for 2010 through 2012 for both Umpqua Bank and Sterling Bank, the most recent publicly available data. The Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns by Umpqua Bank and Sterling Bank. The Board generally analyzed each bank's statewide assessment areas, combined statewide assessment areas, and the specific market areas addressed in the public comments (the Portland, Eugene, Seattle, and Spokane MSAs, and Umpqua Bank's Cali-

[37] For example, commenters alleged that, in the Spokane MSA, Umpqua Bank made two conventional mortgage loans to African Americans and one to Hispanics, compared to 101 mortgage loans to whites, and that the bank denied one in four applications for mortgage loans from Hispanics, compared to only one in every six applications by whites. They further alleged that, in the Portland MSA, Umpqua Bank made eight refinance loans to African Americans and nine to Hispanics, compared to 1,052 refinance loans to whites.

[38] Commenters alleged that, in the Seattle MSA, Umpqua Bank and Sterling Bank made 7.7 and 8.3 percent of their respective home loans to Asians compared to 13.3 percent for the aggregate. They also pointed out that Umpqua Bank made 4.1 percent, and Sterling Bank made 4.3 percent, of their mortgage loans to Asians, compared to 6.7 percent for the aggregate in the Portland MSA.

[39] For example, commenters alleged that Umpqua Bank extended fewer residential mortgage loans to LMI borrowers compared to the aggregate in the Portland MSA (22.5 percent to LMI borrowers compared to 25.9 percent for the aggregate), in the Seattle MSA (18.3 percent to LMI borrowers compared to 25.6 percent for the aggregate), and in the Eugene MSA (21 percent to LMI borrowers compared to 26.1 percent for the aggregate).

[40] For example, the commenter claimed that, in the nonmetropolitan areas of the bank's California operations, Umpqua Bank had an overall low number of mortgage applications from minority and LMI borrowers, with a denial rate for Hispanics that is roughly double other demographics, and that the bank did not make any loans to African American businesses and only one loan to Hispanic businesses in 2011 and 2012.

fornia Non-MSA Assessment Area).[41] In response to a comment regarding a decline in Umpqua Bank's Small Business Administration lending in its nonmetropolitan California markets, the Board also reviewed Umpqua Bank's small business lending record from 2010 through 2012 for the bank's California Non-MSA Assessment Area and its statewide assessment areas.

Analysis of Lending to LMI Borrowers and Minorities. The Board's review confirmed the commenters' assertions that Umpqua Bank's volume of loans to LMI individuals in the Portland, Eugene, and Seattle MSAs lagged the average for all lenders in those markets. For example, 2012 data showed that Umpqua Bank's percentage of applications from and loans to LMI borrowers in the Portland MSA lagged the aggregate by 4.8 percent (21.6 percent compared to 26.4 percent) and 3.4 percent (21.0 percent compared to 24.4 percent), respectively.

However, the Interagency CRA Examination Procedures for large institutions require examiners to consider several factors, including the percentage of loans to both LMI individuals and LMI census tracts, when reviewing an institution's performance under the Lending Test.[42] The Board's review of 2012 data showed that the bank's percentage of applications from and loans to LMI tracts approximated or slightly exceeded those of the aggregate in the Portland MSA. The Board found a similar pattern in the Eugene and Seattle MSAs. Moreover, the data reviewed by the Board showed that a significant majority of both banks' mortgage applications in 2012 were for refinancing loans, most of which were from white applicants. Although refinancings increased the volume of applications and originations to LMI tracts and borrowers, it also substantially increased the volume of applications and originations to middle- and upper-income tracts and borrowers, which drove down the banks' percentages for LMI borrowers and tracts. This trend is consistent with 2012 data for the aggregate in all markets reviewed by the Board.

The data reviewed by the Board also indicated that Umpqua Bank lagged the aggregate in the percentage of loans to Asian borrowers in the Portland (2.8 percent compared to 5.6 percent) and Seattle (7.5 percent compared to 12.9 percent) MSAs, and in the percentage of applications from and loans to African American and Hispanic borrowers in the bank's Oregon statewide assessment area.[43] However, the data also revealed that Umpqua Bank's denial rates for such borrowers are relatively low as compared with the aggregate (for example, the bank's 2012 denial rate for Asian mortgage applicants was 13.4 percent in Portland and 12.3 percent in Seattle, compared to 17.2 percent and 15.9 percent for the aggregate, respectively). This indicates that the low volume of applications the bank receives from African Americans, Asians, and Hispanics is a key factor in the bank's low volume of lending to such borrowers.[44]

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[41] Umpqua Bank designates only portions of the Portland and Seattle MSAs in the bank's assessment areas. The Board's review focused on those portions of these MSAs for which the bank has CRA responsibility. In this respect, the data reviewed by the Board differ somewhat from that relied on by the commenters, which cited Umpqua Bank's lending record compared with the entire Portland and Seattle MSAs.

[42] Examiners also consider the number and amount of loans made in the institution's assessment area, its record of community development lending, and its use of innovative or flexible lending practices. For example, the Umpqua Bank Evaluation noted that the bank has promoted the use of down-payment assistance programs and has worked with a number of agencies such as the Federal Home Loan Bank to assist low-income borrowers obtain grants and low-interest loans to meet their down-payment needs to purchase homes. *See* 12 CFR 345.22 (discussing the scope of the FDIC's evaluation of the Lending Test for nonmember banks such as Umpqua Bank).

[43] Similarly, Sterling Bank's lending to African American and Hispanic borrowers, except for the Spokane MSA, lagged the aggregate in all markets under review in 2012.

[44] Umpqua's analysis indicated that Umpqua Bank's 2012 overall minority denial disparity ratio was 1.4:1 compared to the aggregate's ratio of 1.33:1.

In response to the commenters' concerns with respect to the low volume of mortgage loans to African American, Asian, and Hispanic individuals, Umpqua urges that consideration should be given to the overall low percentage these demographics represent in its markets.[45] Umpqua also asserts that its lending patterns to African American and Hispanic borrowers correlate closely to the lower credit scores and higher loan-to-value and debt-to-income ratios of minority applicants to Umpqua. Moreover, Umpqua argued that its denial rates for Asian borrowers are equal to or lower than those of the aggregate and that differences in lending patterns for these borrowers reflect a competitive mortgage lending market rather than discriminatory lending practices.[46] In addition, Umpqua argued that applications from African American and Hispanic borrowers in the Portland MSA, as well as from Asian borrowers in the Corvallis, Eugene, Portland, Sacramento, Seattle, and Tacoma MSAs generally increased from 2011 to 2012, in part due to the bank's increased community engagement efforts.

Analysis of Small Business Lending. The Board also reviewed Umpqua Bank's small business lending. In the California Non-MSA Assessment Area, the Board's review showed that the bank's percentage of small business loans to LMI tracts exceeded the aggregate in both 2010 and 2011. In 2012, the bank's percentage of loans to LMI tracts was 12.3 percent, which slightly lagged the aggregate's 14.0 percent. However, Umpqua Bank's percentage of loans in the California Non-MSA Assessment Area to predominantly minority census tracts generally exceeded the aggregate in 2010, 2011, and 2012.

The Board also reviewed Umpqua Bank's small business lending record in the bank's Oregon, California, and Washington statewide assessment areas. Although the bank's percentage of loans in predominantly minority tracts lagged the aggregate in its Oregon and California assessment areas, it generally approximated the aggregate in its Washington assessment area. The bank's percentage of small business loans to LMI tracts generally exceeded the aggregate for each of the three statewide assessment areas. In addition, the Board notes that in the Umpqua Bank Evaluation, examiners found Umpqua Bank's overall distribution of loans to small businesses to be good, compared to the business demographics of the markets reviewed.

Other Fair Lending Considerations. The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Umpqua Bank or Sterling Bank have excluded or denied credit to any group on a prohibited basis.[47] In evaluating Umpqua Bank's compliance with fair lending laws and regulations overall, the Board has considered other information, including the bank's loan application and underwriting policies and procedures and examination

[45] For example, 2010 census data show that, in Umpqua Bank's Oregon statewide assessment area, Asian, African American, and Hispanic borrowers accounted for 4.98 percent, 2.51 percent, and 11.45 percent of the population, respectively.

[46] In particular, Umpqua noted, and FDIC staff confirmed, that Asian-owned banks and other lenders attract a significant portion of the applications from Asian borrowers in Washington, Oregon, and California.

[47] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

reports that provide on-site evaluations of compliance by the bank with fair lending laws and regulations.

The Board has consulted with Umpqua Bank's primary federal regulators, the FDIC and the Consumer Financial Protection Bureau, regarding their evaluations of the bank's compliance with fair lending laws and regulations overall. Based on its recent review, the FDIC reported that it did not find evidence that Umpqua Bank engaged in discriminatory conduct in making its credit decisions and expressed no concern regarding the adequacy of Umpqua Bank's fair lending policies and procedures.

In response to the commenters' concerns about the racial and income disparities in the bank's lending practices, the FDIC conducted a review to determine whether Umpqua Bank has been making credit decisions fairly, based on the creditworthiness of the borrower.[48] The FDIC's review confirmed gaps in the bank's lending, some of which were noted by the commenters.[49] The analysis, however, did not reveal any indications of disparate treatment based on racial characteristics of the applicants. The FDIC's review also identified some gaps in distribution in predominantly minority census tracts, but after further investigation, including mapping, policy review, interviews with management, and marketing review, no evidence of redlining was apparent. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of Sterling Bank into Umpqua Bank and has approved the merger under the Bank Merger Act.[50]

As noted above, the Board's review indicates that low volume of loan applications is a key factor in Umpqua Bank's relatively low volume of lending to LMI individuals, to African American, Asian, and Hispanic individuals, and to small businesses in predominantly minority census tracts, in certain of its assessment areas, as compared with the aggregate. To that end, Umpqua has committed that, within 60 days following consummation of the merger with Sterling, Umpqua will develop a plan consistent with the combined organization's size and complexity, to assist the combined organization in continuing to help meet the credit needs of its communities, in accordance with the CRA. The plan will establish specific performance goals and measures to assist the combined organization in helping to meet community credit needs, including through outreach and marketing of its products and services to LMI and underserved individuals and communities and by identifying opportunities for community development–related investments in its communities.

Umpqua Bank's Fair Lending Program. The Board has reviewed the policies and procedures that Umpqua has instituted to help ensure compliance with all fair-lending and other consumer-protection laws and regulations. The company's legal- and compliance-risk-management program includes an annual review of fair lending policies to ensure effective controls and compliance with laws and regulations, a system for determining risk and investigation of fair lending violations, annual training to keep applicable employees informed of fair lending risk and related regulatory requirements, an automated underwriting system to limit the risk of individual decision making on loan approvals, and a secondary review of all proposed loan denials and counteroffers to ensure compliance. In addition, Umpqua Bank has established a system for tracking and reviewing canceled, withdrawn, and denied applications by individual business units, which report findings from these reviews to

[48] The review was conducted as part of the FDIC's evaluation of the application by Umpqua Bank to merge with Sterling Bank.

[49] The commenters noted numerous gaps in the bank's lending record that the FDIC could not substantiate.

[50] The Board notes that the State of Oregon has approved the merger of Umpqua Bank and Sterling Bank. Letter from Jacob P. Mundaden, Program Manager – Banks & Trust Companies, Oregon Department of Consumer and Business Services, to Patricia A. Robinson, Wachtell, Lipton, Rosen & Katz (Jan. 24, 2014).

management on a weekly basis. Umpqua plans to leverage the strengths of its and Sterling's compliance programs to develop an enhanced compliance management system, and to increase the number of dedicated compliance and CRA staff, for the combined organization on consummation of the transaction. Umpqua has stated that Sterling Bank has a robust compliance testing program embedded in key production units of the bank that includes systematic reporting of testing results to management each month. Umpqua plans to integrate Sterling Bank's testing program into Umpqua Bank's Compliance Monitoring Program to address the expected increased volume in transactions and potentially new risks associated with offering different or new products and services.

3. Additional Information on Convenience and Needs to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.[51] Umpqua represents that the proposal would create a regional institution of size, with almost 375 branches across five states, that will increase the competitiveness of, and result in cost savings for, the combined organization. The combined organization will use Umpqua's branch and operating strategy and combine the business-line strengths of both companies. Umpqua notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would allow for enhanced levels of products and services.

Umpqua also states that the proposal would offer customers convenience through an expanded branch network and a broader range of financial products. Umpqua Bank customers will benefit from Sterling Bank's strong multifamily lending program, and Sterling Bank's business customers will have access to Umpqua Bank's commercial-lending and equipment-leasing platforms. In addition, current customers of Sterling Bank would benefit from the international trade finance products and interest rate swap products offered by Umpqua Bank. Umpqua also asserted that the proposal would strengthen the operations of the combined organization because of the complementary aspects of the organizations' businesses, including geographic coverage and compatibility of their management and operating styles, and the combined experience and expertise of the management and employees of the two organizations.

Contrary to the commenter's assertion, Umpqua represents that it has not made any decisions with respect to the closure or consolidation of branches, with the exception of the six branches to be divested, as discussed above. Umpqua Bank further represents that it maintains a branch-closing policy and completes a full CRA and fair lending impact analysis prior to closing or consolidating any branches. The FDIC determined that Umpqua Bank's branch closing policy is in compliance with regulatory requirements.

[51] Two commenters alleged that the proposal would not provide a clear or significant public benefit. The commenters specifically urged that, to demonstrate satisfactorily the public benefits of the proposal, Umpqua should, among other things, commit to a plan to open branches in underserved areas, partner with local community groups, and increase lending to LMI and minority borrowers to the industry aggregate levels. In addition, a commenter alleged that the proposal would lead to branch closures by the combined organization that would further restrict access to banking services in LMI communities. A commenter also suggested that a conflict of interest exists because a former Secretary of the Treasury will be affiliated with a shareholder of the combined organization. No evidence of a conflict was presented, and the Board expects that the parties involved will abide by all laws governing conflicts of interest.

4. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Umpqua, confidential supervisory information, and public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of Umpqua Bank's and Sterling Bank's lending operations and compliance programs, review of examination reports, and consultations with other agencies, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[52]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[53] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[54]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Umpqua would have approximately $21.3 billion in consolidated assets and by any of a number of alternative measures of firm size, Umpqua would be between the 50th and 75th largest U.S. insured depository organization. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, Umpqua's intrafinancial assets and liabilities would constitute a neg-

[52] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[53] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[54] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

ligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, the Board concludes that this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[55] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Umpqua with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective March 28, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[55] The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

Appendix

Umpqua/Sterling banking markets in California, Oregon, and Washington consistent with Board precedent and DOJ Bank Merger Guidelines

Status	Rank	Amount of deposits	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Crescent City, California–Oregon—includes Central Del Norte County, California, and southern Curry County, Oregon.						
Umpqua pre-consummation	3	$57.5M	14.8	1792	204	6
Sterling	7	$26.7M	6.9	1792	204	6
Umpqua post-consummation	2	$84.1M	21.7	1792	204	6
Santa Rosa, California— includes the Santa Rosa metropolitan area in Sonoma County.						
Umpqua pre-consummation	16	$21.2M	0.3	1319	4	17
Sterling	6	$479.4M	6.4	1319	4	17
Umpqua post-consummation	6	$500.6M	6.7	1319	4	17
San Francisco–Oakland–San Jose, California— includes the San Francisco-Oakland-San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties; the southern portions of Sonoma and Solano Counties; the northern portion of San Benito County; and the southern edge of Napa County.						
Umpqua pre-consummation	32	$362.5M	0.1	1873	0	85
Sterling	39	$246.5M	0.1	1873	0	85
Umpqua post-consummation	26	$609.0M	0.2	1873	0	85
Deschutes County, Oregon—includes Deschutes County.						
Umpqua pre-consummation	8	$110.5M	4.5	1455	24	11
Sterling	10	$62.5M	2.6	1455	24	11
Umpqua post-consummation	6	$173.0M	7.1	1455	24	11
Eugene, Oregon—includes the Eugene metropolitan area in Lane and Linn counties.						
Umpqua pre-consummation	2	$646.9M	16.7	1276	17	12
Sterling	14	$19.3M	0.5	1276	17	12
Umpqua post-consummation	2	$666.2M	17.2	1276	17	12
Grants Pass, Oregon— includes eastern Josephine County, western Jackson County, and Glendale in Douglas County.						
Umpqua pre-consummation	1	$246.3M	21.3	1281	141	10
Sterling	11	$38.3M	3.3	1281	141	10
Umpqua post-consummation	1	$284.5M	24.6	1281	141	10
Medford, Oregon—includes the Medford metropolitan area in Jackson County.						
Umpqua pre-consummation	3	$370.6M	13.4	1292	131	12
Sterling	10	$134.1M	4.9	1292	131	12
Umpqua post-consummation	2	$504.7M	18.3	1292	131	12
Portland, Oregon–Washington—includes the Portland metropolitan area in Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill counties, Oregon, and Clark County, Washington.						
Umpqua pre-consummation	6	$1.6B	4.3	1500	22	37
Sterling	8	$957.4M	2.6	1500	22	37
Umpqua post-consummation	5	$2.5B	6.8	1500	22	37
Salem, Oregon—includes the Salem metropolitan area in Marion and Polk counties.						
Umpqua pre-consummation	6	$270.5M	6.9	1213	26	14
Sterling	13	$74.2M	1.9	1213	26	14
Umpqua post-consummation	5	$344.7M	8.8	1213	26	14
Seattle, Washington—includes the Seattle metropolitan area in King, Pierce, and Snohomish counties; the southeastern portion of Island County; and Bainbridge Island in Kitsap County.						
Umpqua pre-consummation	15	$775.2M	1	1297	2	57
Sterling	11	$867.6M	1.1	1297	2	57
Umpqua post-consummation	9	$1.6B	2.1	1297	2	57

Note: Data are as of June 30, 2013. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

Order Issued Under Section 4 of the Bank Holding Company Act

PacWest Bancorp
Los Angeles, California

CapGen Capital Group II LP
New York, New York

CapGen Capital Group II LLC
New York, New York

Order Approving the Acquisition of an Industrial Bank and Nonbanking Subsidiaries
FRB Order No. 2014–3 (April 1, 2014)

PacWest Bancorp ("PacWest"), Los Angeles, California, a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), and its controlling shareholders, CapGen Capital Group II LP ("CapGen LP") and CapGen Capital Group II LLC ("CapGen LLC," and collectively with PacWest and CapGen LP, "Notificants"), both of New York, New York,[1] have requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[2] to acquire CapitalSource Inc. ("CapitalSource") and thereby indirectly acquire its subsidiary industrial bank, CapitalSource Bank ("CSB"), both of Los Angeles. Immediately following the proposed acquisition, CSB would be merged into PacWest's subsidiary bank, Pacific Western Bank ("PWB"), Los Angeles.[3] In addition, Notificants have requested approval to acquire other nonbanking subsidiaries of CapitalSource and thereby engage in extending credit and servicing loans in accordance with section 225.28(b)(1) of the Board's Regulation Y[4] and in leasing personal property in accordance with section 225.28(b)(3) of the Board's Regulation Y.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Fed. Reg*. 54,648 (Sept. 5, 2013)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 4 of the BHC Act.

PacWest, with total consolidated assets of approximately $6.5 billion, is the 144th largest depository organization in the United States, controlling approximately $5.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] PWB operates branches only in California. PWB is the 20th largest depository institution in California, controlling deposits of $5.6 billion, which represent less than 1 percent of the total deposits of insured depository

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1 CapGen LP and CapGen LLC are bank holding companies under the BHC Act because they control PacWest. The only activity of CapGen LP is to own shares of PacWest common stock. CapGen LLC is the sole general partner of CapGen LP.

2 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

3 The merger of CSB into PWB is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act. The FDIC approved the merger on March 6, 2014.

4 12 CFR 225.28(b)(1).

5 12 CFR 225.28(b)(3).

6 Asset and nationwide deposit ranking data are as of December 31, 2013. In general, Board orders on banking applications and notifications define insured depository institutions to include commercial banks, savings banks, and savings associations for the purposes of asset and deposit ranking data. *See, e.g., Investors Bancorp, MHC*, FRB Order No. 2013-16 at 2 (December 23, 2013). In this case, because CSB is an industrial bank, in this context, insured depository institutions also include industrial banks and industrial loan companies.

institutions in that state.[7] PWB also engages in asset-based lending in various states in the western United States and in equipment leasing nationwide.

CapitalSource, with total consolidated assets of approximately $8.9 billion, controls CSB, its only insured depository institution. As an industrial bank, CSB does not accept demand deposits. Rather, CSB offers a limited set of deposit products through retail branches in southern and central California. CSB also operates loan origination offices throughout the country and engages primarily in commercial lending. In addition to owning CSB, CapitalSource also engages in a limited amount of commercial lending and equipment leasing through nonbank subsidiaries.[8]

On consummation of the proposal, PacWest would become the 81st largest depository organization in the United States, with total consolidated assets of approximately $15.4 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. PacWest would control total consolidated deposits of approximately $11.6 billion. In California, PacWest would become the 14th largest depository organization, controlling deposits of approximately $11.6 billion, which represent 1.14 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of an industrial bank by a bank holding company and other nonbanking activities for which PacWest has requested approval are closely related to banking for purposes of section 4(c)(8) of the BHC Act.[9] PacWest has committed that all the activities of CapitalSource and the other nonbanking subsidiaries of CapitalSource that it proposes to acquire engage in activities that will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.[10]

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of CapitalSource and its nonbanking subsidiaries "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[11] As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public

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7 State deposit and asset data are as of June 30, 2013.

8 Through nonbank subsidiaries, CapitalSource satisfies existing loan commitments made prior to the formation of CSB in 2008. Excluding loans held by CSB, CapitalSource had a total outstanding loan principal balance of approximately $141 million as of September 30, 2013.

9 12 CFR 225.28(b)(1), (3), and (4).

10 CapitalSource controls certain assets that are not permissible for a bank holding company to control under section 4 of the BHC Act and Regulation Y. CapitalSource acquired these assets in satisfaction of debts previously contracted. PacWest has committed that it will divest all such assets not later than two years from the date that the proposed transaction is consummated, consistent with section 4(c)(2) of the BHC Act. 12 U.S.C. § 1843(c)(2).

11 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform andConsumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1601 (2010) ("Dodd-Frank Act"), added the "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

benefits of the proposal.[12] In acting on a notice to acquire an industrial bank, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13]

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board has considered the competitive effects of Notificants' acquisition of CapitalSource and its nonbanking subsidiaries in light of all the facts of record. Notificants and CapitalSource both engage in commercial lending,[14] commercial real estate financing, and equipment leasing. The Board previously has determined that the geographic markets for commercial lending, commercial real estate financing, and equipment leasing are either regional or national in scope.[15] The record in this case indicates that there are numerous competitors that would continue to engage in these businesses on consummation. Further, the markets for these services would remain unconcentrated, and Notificants' and CapitalSource's levels of participation are relatively small.

In addition, Notificants and CapitalSource both engage in community development activities. The Board previously has determined that the geographic market for community development activities is local in scope.[16] The market for community development activities is unconcentrated, and there are numerous market participants who engage in these activities.

The Department of Justice has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not be likely to have a significantly adverse effect on competition in any relevant market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction would not have a significantly adverse effect on competition or on the concentration of resources in any relevant market. Accordingly, the Board has determined that competitive considerations weigh in favor of approval.

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[12] *See* 12 CFR 225.26; *see, e.g., Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) ("Capital One Order"); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008) ("Bank of America Order"); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

[13] The Dodd-Frank Act amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the bank holding company and the applicant controls, or would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8). For purposes of the BHC Act, the home state of Notificants and CSB is California and, therefore, section 4(i)(8) of the BHC Act does not apply to this transaction. Also, as noted, consummation of the proposal would result in Notificants controlling less than 1 percent of the deposits of U.S. insured depository institutions.

[14] Notificants engage in commercial lending to businesses of various sizes. CapitalSource engages in commercial lending primarily to medium and large businesses.

[15] *See, e.g., M&T Bank Corporation*, 89 *Federal Reserve Bulletin* 222 (2003) (commercial real estate lending and equipment leasing); *Deutsche Bank AG*, 85 *Federal Reserve Bulletin* 509 (1999) (commercial lending); and *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 858 (1998) (commercial lending).

[16] *See, e.g., Bank of Montreal* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 24 (3rd Quar. 2011).

Financial and Managerial Resources

The Board considered the financial and managerial resources of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Notificants are well capitalized and would remain so on consummation of the proposal. PWB and CSB are also well capitalized and would remain so after consummation. The proposed transaction is structured as a cash and share exchange, and the total consideration for the transaction would be approximately $2.3 billion. Notificants are in satisfactory condition, and the asset quality, earnings, and liquidity of PWB and CSB weigh in favor of approval. Based on its review of the record, the Board finds that the organizations have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Notificants, PWB, CapitalSource, and CSB, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws.

PacWest and PWB are considered to be well managed. PacWest's existing risk-management program and its directorate and senior management weigh in favor of approval. The directors and senior executive officers of PacWest have substantial knowledge of, and experience in, the banking and financial services sectors. PacWest has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Since 2000, PacWest has acquired and successfully integrated into its operations more than 20 banking organizations.

The Board also has considered Notificants' plans for implementing the proposal. PacWest is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. PacWest would implement risk-management policies, procedures, and controls at the combined organization that include elements of existing policies of both PacWest and CapitalSource as well as certain new policies. In addition, PacWest's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and PacWest plans to integrate CSB's existing management and personnel in a manner that augments PWB's management team.

PacWest's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors weigh in favor of approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and PacWest's anti-money-laundering policies on balance weigh in favor of approval.

Record of Performance under the CRA

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.[17] The CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the convenience and needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[18]

The Board has considered all the facts of record, including reports of examination of the CRA performance records of PWB and CSB, information provided by PacWest, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of PWB's CRA performance record.

A. Records of Performance under the CRA

As provided in the CRA, the Board has evaluated the proposal in light of the examinations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions.[19] The CRA requires that the appropriate federal financial supervisory agency for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[20] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of PWB. PWB was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in October 2010 ("PWB Evaluation"). PWB was evaluated using the large bank examination procedures, which evaluate the institution's performance under the Lending, Investment, and Service Tests within the assessment areas it serves.[21] The PWB Evaluation covered the Los Angeles, San Diego, Riverside-San Bernardino East, Murrieta-Temecula, and San Francisco assessment areas.[22] PWB received "low satisfactory" ratings for the Lending, Investment, and Service Tests.[23]

As described in the PWB Evaluation, FDIC examiners found that the bank's overall volume of lending was good and reflected good responsiveness to its assessment areas' credit needs.[24] Examiners found that PWB's geographic distribution of loans was good, emphasizing that a substantial majority of its small business loan originations were made inside

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[17] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[18] 12 U.S.C. § 2903.

[19] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Fed. Reg*. 11,642 at 11,665 (March 11, 2010).

[20] 12 U.S.C. § 2906.

[21] *See* 12 CFR 345.21(a)(1).

[22] Examiners conducted a full-scope review of the Los Angeles assessment area and a limited-scope review of the other assessment areas.

[23] The evaluation period for the Lending Test in the PWB Evaluation was January 1, 2009 to September 30, 2010, except for community development loans, for which the evaluation period was from December 15, 2008 through October 18, 2010. The evaluation period for the Investment and Service Tests was from December 15, 2008 through October 18, 2010.

[24] Small- and medium-sized business lending is the bank's primary lending focus.

its assessment areas.[25] Examiners also determined that PWB exhibited an adequate record of serving the needs of the highly economically disadvantaged in its assessment areas. Further, examiners found that PWB made an adequate level of community development loans. However, the examiners also noted that PWB's distribution of borrowers reflected poor penetration among business customers of different revenue sizes and that PWB made limited use of innovative or flexible lending practices.

With respect to the Investment Test, examiners noted that PWB had an adequate level of qualified community development investments and grants, particularly those that are not routinely provided by private investors. Examiners also highlighted PWB's occasional use of innovative and/or complex investments to support community development initiatives, as well as the institution's adequate level of responsiveness to credit and economic development needs.

With respect to the Service Test, examiners noted that delivery systems were reasonably accessible to essentially all portions of the institution's assessment areas. Examiners also noted that PWB's opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Further, examiners highlighted that PWB's services did not vary in a way that inconvenienced portions of its assessment areas and that the institution provided an adequate level of community development services.

CRA Performance of CSB. CSB was assigned an "outstanding" rating at its most recent CRA performance evaluation by the FDIC in June 2013 ("CSB Evaluation").[26] CSB was evaluated using the wholesale bank examination procedures, which evaluate an institution's community development performance based on community development lending, qualified investments, and community development services.[27] The CSB Evaluation covered the Los Angeles, Fresno, Kern, Tulare, and Kings assessment areas. Examiners highlighted CSB's high level of community development loans and excellent record of performance in meeting the credit needs of its assessment areas. Examiners noted that, during the evaluation period, CSB extended or purchased a total of 106 community development loans for $366.6 million. Further, examiners noted that the institution had a high level of qualified investments and donations and occasionally used innovative or complex qualified investments. During the evaluation period, CSB made 22 new qualified investments for $41.7 million, 368 qualified donations for $1.1 million, and maintained its investments in qualified mortgage-backed securities. Examiners also noted CSB's high level of community development services, including technical assistance offerings to, and service on boards of directors of, organizations committed to serving LMI communities. During the evaluation period, CSB contributed 6,613 qualified community service hours in its assessment areas, which represented an 85 percent increase from the prior evaluation.

PWB's Efforts Since the 2010 CRA Evaluation. PacWest represents that since the PWB Evaluation, PWB has extended 133 community development loans totaling $350.6 million. In addition, PacWest stated that the percentage of PWB's loans to small businesses with gross annual revenues of $1 million or less has increased from 27 percent to 35 percent since the PWB Evaluation. PacWest reported that PWB has added three Small Business Administration loan programs, including one program focused on small businesses owned by military veterans. Further, PacWest reported that PWB has made 431 charitable contributions totaling more than $1.1 million to community-based nonprofit organizations in its

[25] In this context, "small business loans" are loans with original amounts of $1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to borrowers in the United States.

[26] The evaluation period for the CSB Evaluation was July 1, 2010 to June 17, 2013.

[27] *See* 12 CFR 345.21(a)(2) and 345.25.

assessment areas since the PWB Evaluation. PacWest also noted that PWB executives, officers, and employees have provided approximately 8,700 community development service hours to various organizations throughout its assessment areas since the PWB Evaluation.[28]

B. Public Comments on the Application

Commenters expressed concerns about the proposed acquisition of CSB by PWB, in light of PWB's record of performance under the CRA. Specifically, commenters criticized PWB's "low satisfactory" ratings for the Lending, Service, and Investment tests in the PWB Evaluation. In addition, commenters asserted that PWB's small business lending is generally targeted to businesses with annual revenues of more than $1 million. Specifically, commenters asserted that, of PWB's small business loans, only 32 percent in 2012 and 35 percent in the first nine months of 2013 were made to businesses with less than $1 million in revenue, whereas CSB made 54 percent of its small business loans to such businesses in 2012. Commenters also contended that the penetration of PWB's branches in LMI neighborhoods is low. Specifically, commenters argued that only 21 percent of PWB's branches are in LMI neighborhoods, which commenters stated was lower than PWB's peers. Commenters also expressed concern that PWB would close certain branches of CSB in LMI neighborhoods following consummation of the proposal. Further, commenters criticized PWB's level of support for affordable housing development.[29]

In its evaluation of the proposal, the Board has considered that, although PWB received "low satisfactory" ratings for the Lending, Service, and Investment tests in the PWB Evaluation, the FDIC assigned PWB an overall "satisfactory" CRA rating. In addition, the Board has considered PWB's efforts since the PWB Evaluation. As noted above, PacWest represents that PWB has provided loans, investments, contributions, and service hours to meet the credit needs of its communities since the PWB Evaluation. PacWest reports that PWB originated $88.5 million and $155 million in community development loans in 2012 and 2013, respectively, compared to $24 million in 2009. Further, PacWest reports that PWB has more than doubled the dollar volume of qualified equity investments and charitable contributions since the PWB Evaluation. The Board's analysis of the CRA-related activities reported by PWB—including $57 million of qualified equity investments, $1.1 million of charitable contributions, and approximately 8,700 community development service hours—indicates that PWB has demonstrated continued commitment to meeting the credit needs of the communities it serves.

PWB made 1,109 small business loans in 2012, of which 32 percent were made to businesses with less than $1 million in revenue. In comparison, within PWB's CRA assessment areas, lenders in the aggregate made 47 percent of their small business loans in 2012 to businesses with less than $1 million in revenue. Importantly, focusing only on LMI census tracts in PWB's assessment areas, PWB made 26 percent of its small business loans to businesses with less than $1 million in revenue, compared to 23 percent for lenders in the aggregate. Further, as noted above, based on data reported by PacWest, PWB has increased the percentage of loans to small businesses with gross annual revenues of $1 million or less in its assessment areas to 37 percent as of December 31, 2013.

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[28] These loans, investments, contributions, and service hours have not yet been evaluated by the FDIC.

[29] Commenters also expressed concern that PWB would not meet the credit needs of certain rural communities currently served by CSB. The CRA requires a bank to meet the credit needs of the communities in which it operates. 12 CFR part 228. PacWest has represented that it plans to meet the credit needs of the borrowers in the rural communities served by CSB and that PWB has hired a new community development officer whose responsibilities will include the rural communities cited by commenters. The FDIC will review PWB's record of meeting the credit needs of the rural communities currently served by CSB in the course of conducting CRA performance evaluations.

Commenters expressed concern about the number of branches operated by PWB in LMI areas. Twenty-one percent of PWB's branches are located in LMI census tracts. In 2010, the FDIC concluded in the PWB Evaluation that PWB's delivery systems were reasonably accessible to essentially all portions of PWB's assessment areas. PWB's branch penetration in LMI census tracts has not changed materially since the FDIC determined that PWB's delivery systems were reasonably accessible. Since 2010, PWB has added two branches in low-income census tracts. Although PWB has reduced its presence in moderate-income census tracts by five branches since 2010, the overall decline of three LMI branches was less than PWB's reduction of seven branches in non-LMI census tracts.

On December 13, 2013, PWB provided notice to the FDIC and the California Department of Business Oversight that it intends to close 12 branches of CSB and one branch of PWB upon consummation of the proposal. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch.[30] The commenters have been afforded the opportunity to address planned branch closures in the context of the branch closings notice. The Board has reviewed PWB's branch closing policy in connection with this notice and notes that the FDIC will continue to review PWB's branch closing record in the course of conducting CRA performance evaluations.

The Board has verified that two of the CSB branches that PWB proposes to close are located in LMI communities. One such branch is approximately 250 feet from an existing PWB branch. The other CSB branch to be closed in an LMI area is approximately 5.5 miles away from the nearest PWB branch. In both cases, the PWB branch would offer certain services not offered by the CSB branch, such as demand deposit accounts and an automated teller machine. In addition, there are six other full-service branches of other banks within a one-mile radius of the CSB branch.

The Board has considered PWB's record of support for affordable housing development. In the PWB Evaluation, the FDIC noted that PWB had made approximately $17.6 million in affordable-housing-related loans between January 2009 and October 2010. As noted above, the FDIC concluded in the PWB Evaluation that PWB's community development lending was adequate. PacWest reported that, between November 2010 and December 2013, PWB made at least eight loans totaling $20.5 million for affordable housing projects and an $11 million loan to a community enhancement corporation, a portion of which will be used to provide affordable housing to LMI individuals and families. Further, PacWest reported that it has invested at least $56.7 million in qualified investments, a portion of which is related to affordable housing, since the PWB Evaluation. The Board's analysis of PWB's support for affordable housing, as well as other lending, investments, and services, indicates that PWB has made continued efforts to meet the credit needs of the communities it serves.

The Board has consulted with the FDIC, PWB's primary federal regulator, regarding its evaluation of the bank's performance under the CRA and other commenter concerns. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of CSB into PWB and has approved the merger under the Federal Deposit Insurance Act.

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[30] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg*. 34,844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

C. Conclusion on CRA Performance

The Board has considered all the facts of record, including the CRA performance records of the institutions involved, information provided by PacWest, comments received on the proposal and responses to those comments,[31] and confidential supervisory information. Based on the Board's evaluation of PWB's and CSB's CRA performance records, its review of examination reports, and its consultations with the FDIC, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, weighs in favor of approval of the application.

Some commenters urged the Board to require PacWest to provide specific pledges or plans to meet the credit needs of the communities it serves. The Board generally focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal.[32] Nevertheless, the Board notes that PWB has developed a "CRA Community Development Plan" establishing performance standards for the bank during 2014 in support of its CRA compliance objectives. The CRA Community Development Plan outlines specific goals for small business lending, community development lending, qualified investments, charitable contributions, and community development services, taking into account consummation of the proposed transaction. PacWest represents that the CRA Community Development Plan is designed to improve PWB's CRA performance record, with a goal of achieving an "outstanding" rating within three years.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act.[33] To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[34] In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that

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[31] Some commenters also questioned PWB's efforts in awarding contracts to minority- and women-owned businesses. Although the Board fully supports programs designed to promote equal opportunity and economic opportunities for all members of society, the comments about supplier diversity practices are beyond the factors the Board is authorized to consider under the BHC Act. *See, e.g., Bank of America Order* at C90. Some commenters also criticized PWB's charitable contributions as a percentage of its deposits in California. The Board notes that neither the CRA nor the banking agencies' implementing rules require that financial institutions engage in any type of philanthropy.

[32] *See Bank of America Order* at C87 (2008).

[33] Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

[34] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[35]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, PacWest would have approximately $15.4 billion in consolidated assets, and by any of a number of alternative measures of firm size, PacWest would be outside the 75 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. PacWest engages in and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, PacWest's intrafinancial system assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that financial stability considerations relating to this proposal weigh in favor of an approval.

Additional Public Benefits of the Proposal

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[36]

In addition to considering the effects discussed above, the Board has considered that the proposal would allow PWB to expand the range of financial products and services available to existing customers of CSB. Currently, CSB provides only a limited range of deposit and commercial loan products and is prohibited by its charter from offering demand deposit accounts. Following the acquisition, CSB's customers would gain access to PWB's deposit products and services, including demand deposit accounts, value checking accounts, value interest checking accounts, high-yield checking accounts, and high-yield money market accounts. PWB's value checking and value interest checking accounts may be particularly beneficial to CSB's LMI customers, as these accounts have low opening deposit requirements, lower monthly service charges compared to traditional checking accounts, and lower monthly balances required to waive monthly service charges. In addition, CSB's customers

[35] For further discussion of the financial stability standard, *see Capital One Order* at 28.
[36] 12 U.S.C. § 1843(j)(2).

would gain access to a broader range of basic lending and banking products and services, including consumer unsecured personal loans and lines of credit, secured home equity lines of credit, secured loans for property such as automobiles and boats, and overdraft lines of credit linked to demand deposit accounts. PacWest's customers would benefit from additional, more specialized commercial lending products CapitalSource provides. In addition, customers of both institutions would benefit from a more expansive branch network.

The proposal would provide the opportunity for operational efficiencies, cost savings, and revenue enhancement for the combined organization. By improving efficiencies and recognizing such savings, PacWest would be better placed to provide credit and banking services to its entire customer base, including current customers of CapitalSource.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order are not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system.

On the basis of the entire record, including the commitments made in this case and conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of this proposal. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.[37] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Notificants with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[38] and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in

[37] Several commenters requested that the Board hold public hearings on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

[38] 12 CFR 225.7 and 225.25(c).

connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco acting pursuant to delegated authority.

By order of the Board of Governors, effective April 1, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

Mercantile Bank Corporation
Grand Rapids, Michigan

Order Approving the Merger of Bank Holding Companies and Determination on a Financial Holding Company Election
FRB Order No. 2014–8 (May 7, 2014)

Mercantile Bank Corporation ("Mercantile"), Grand Rapids, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Firstbank Corporation ("Firstbank Corp."), Alma, and thereby indirectly acquire its subsidiary banks, Firstbank, Mount Pleasant, and Keystone Community Bank ("Keystone"), Kalamazoo, all of Michigan. Following the proposed acquisition, Firstbank and Keystone would be consolidated into Mercantile's subsidiary bank, Mercantile Bank of Michigan ("Mercantile Bank"), Grand Rapids, a state nonmember bank.[2] As part of its proposal, Mercantile also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (*l*) of the BHC Act and section 225.82 of the Board's Regulation Y.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 59689 (2013)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Mercantile, with consolidated assets of approximately $1.4 billion, is the 478th largest insured depository organization in the United States, controlling approximately $1.1 billion in deposits.[5] Mercantile controls Mercantile Bank, which operates only in Michigan. Mercantile Bank is the 18th largest depository institution in Michigan, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

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1 12 U.S.C. § 1842.

2 The consolidation of Firstbank and Keystone into Mercantile Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

3 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.

4 12 CFR 262.3(b).

5 Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

6 State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Firstbank Corp., with consolidated assets of approximately $1.5 billion, is the 464th largest insured depository organization in the United States, controlling approximately $1.2 billion in deposits. Firstbank Corp. controls Firstbank and Keystone, which both operate only in Michigan. Firstbank and Keystone together control deposits of approximately $1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Mercantile would become the 262nd largest depository organization in the United States, with consolidated assets of approximately $2.9 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Mercantile would control total deposits of approximately $2.4 billion. Mercantile would become the 13th largest insured depository organization in Michigan, controlling 1.4 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

Mercantile and Firstbank Corp. have subsidiary depository institutions that compete directly in the Grand Rapids and Lansing, Michigan, banking markets.[8] The Board has considered the competitive effects of the proposal on these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by Mercantile and Firstbank Corp.; the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[9][10] and other characteristics of the markets.

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[7] 12 U.S.C. § 1842(c)(1).

[8] The Grand Rapids, Michigan, market is defined as Kent County (except Oakfield and Spencer townships); Thornapple, Irving, Carlton, Yankee Springs, Rutland, and Hastings townships in Barry County; Casnovia Township in Muskegon County; Salem, Dorr, and Leighton townships in Allegan County; and Jamestown, Georgetown, Blendon, Allendale, Tallmadge, Polkton, Wright, and Chester townships in Ottawa County, all in Michigan. The Lansing, Michigan, market is defined as Clinton, Eaton, and Ingham counties; Portland and Danby townships in Ionia County; Woodland and Castleton townships in Barry County; and Fairfield, Middlebury, Sciota, Woodhull, Perry, and Antrim townships in Shiawassee County, all in Michigan.

[9] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc* ., 77 *Federal Reserve Bulletin* 52 (1991).

[10] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the postmerger HHI is under 1000, moderately concentrated if the postmerger HHI is between 1000 and 1800, and highly concentrated if the postmerger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the postmerger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in both markets. On consummation, the Grand Rapids market would remain moderately concentrated, and the Lansing market would remain unconcentrated, as measured by the HHI. The change in concentration in each market resulting from the transaction would be minimal. In addition, numerous competitors would remain in both markets.[11]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Mercantile and Firstbank Corp. compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Mercantile and Mercantile Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.[12] The asset quality, earnings, and liquidity of Mercantile Bank, Firstbank, and Keystone are consistent with approval, and Mercantile appears to have

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[11] Mercantile operates the fifth largest depository institution in the Grand Rapids banking market with approximately $898.2 million in deposits, which represent 6.5 percent of market deposits. Firstbank Corp. operates the 22nd largest depository organization in the market, controlling deposits of approximately $39.1 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Mercantile would continue to operate the fifth largest depository institution in the market, controlling deposits of approximately $937.3 million, which represent 6.8 percent of market deposits. The HHI would increase by four points to 1111, and 26 competitors would remain in the market.

Mercantile operates the 13th largest depository institution in the Lansing banking market, with approximately $112.1 million in deposits, which represent 2.2 percent of market deposits. Firstbank Corp. operates the 16th largest depository organization in the market, controlling deposits of approximately $79.1 million, which represent 1.6 percent of market deposits. On consummation of the proposed transaction, Mercantile would operate the 10th largest depository institution in the market, controlling deposits of approximately $191.2 million, which represent 3.8 percent of market deposits. The HHI would increase by 7 points to 838, and 22 competitors would remain in the market.

[12] As part of the proposed transaction, each share of Firstbank Corp. common stock would be exchanged for one share of Mercantile common stock.

adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Mercantile, Firstbank Corp., and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Mercantile, Firstbank Corp., and their subsidiary depository institutions are each considered to be well managed. Mercantile's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Mercantile have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Mercantile's plans for implementing the proposal. Mercantile is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Mercantile would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Mercantile's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Mercantile is proposing to integrate Firstbank's and Keystone's existing management and personnel in a manner that augments Mercantile's management.[13]

Mercantile's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Mercantile and Firstbank Corp. in combatting money laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[15] and requires the appropriate federal financial supervisory agency to take into account a relevant

[13] On consummation, the combined organization will have six directors on the board of directors. Three directors currently serving on Mercantile's board of directors and three directors currently serving on Firstbank Corp.'s board of directors would serve on the board of the combined organization. The President and Chief Executive Officer of Mercantile will continue to serve in his role following the merger, and the current President and Chief Executive Officer of Firstbank Corp. would serve as chairman of the board.

[14] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[15] 12 U.S.C. § 2901(b).

depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[16]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Mercantile Bank, Firstbank, and Keystone, data reported by Mercantile Bank, Firstbank, and Keystone under the Home Mortgage Disclosure Act ("HMDA"),[17] other information provided by Mercantile, confidential supervisory information, and the public comments received on the proposal. The Board received one comment that objected to the proposal on the basis of Mercantile's fair lending record in the Grand Rapids-Wyoming, Michigan Metropolitan Statistical Area ("Grand Rapids MSA"), as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Mercantile Bank. Mercantile Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of March 26, 2012 ("Mercantile Bank Evaluation"). Mercantile Bank received an "outstanding" rating for the Lending Test and "high satisfactory" ratings for both the Investment and Service Tests. Examiners considered Mercantile Bank to have an excellent record of lending inside its assessment areas and noted that Mercantile Bank was a leader in community development lending.[20]

As described in the Mercantile Bank Evaluation, FDIC examiners found that the bank's overall lending activity was excellent.[21] The bank originated a substantial majority of its loans within its designated assessment areas during the review period. Examiners found that the overall distribution of small business loans reflected excellent penetration among businesses of different sizes. They also found that the geographic distribution of home mortgage and small business loans reflected excellent penetration throughout the bank's assessment areas, including LMI geographies.

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[16] 12 U.S.C. § 2903.

[17] 12 U.S.C. § 2801 *et seq*.

[18] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[19] 12 U.S.C. § 2906.

[20] The Mercantile Bank Evaluation was conducted using Large Institution CRA Examination Procedures, and examiners reviewed loan data and small business lending activity reported by Mercantile Bank from January 1, 2009, to December 31, 2011. The home mortgage lending data reviewed included data for the bank's then mortgage company, Mercantile Bank Mortgage Company, LLC ("Mercantile Mortgage"), which was dissolved in January 2013.

[21] Examiners placed greater weight on the bank's performance in small business lending over home mortgage lending because commercial lending is the bank's primary focus. Examiners also placed greater weight on the bank's performance in the portions of its assessment areas falling within three MSAs: the Grand Rapids MSA, the Holland-Grand Haven, Michigan MSA ("Holland MSA"), and the Lansing-East Lansing, Michigan MSA ("Lansing MSA").

Examiners also noted that Mercantile Bank is a leader in community development lending. During the evaluation period, the bank originated 28 qualifying community development loans totaling approximately $59.7 million in the Grand Rapids MSA, three loans totaling approximately $1.6 million in the Holland MSA, and one loan of $223,000 in the Lansing MSA.

In evaluating the Investment Test, examiners found that Mercantile Bank had a significant level of qualified community development investments. Examiners highlighted numerous CRA-qualified investments that the bank made, including donations to organizations with a community development focus. Examiners also noted that Mercantile Bank participated in various CRA-qualified investment vehicles.

In evaluating the Service Test, examiners observed that the bank's delivery systems were accessible to essentially all portions of its assessment areas and individuals of different income levels. Examiners also noted that Mercantile Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Examiners noted that Mercantile Bank offered alternative delivery systems that increased the availability of its loan and deposit products, including online banking, a 24-hour telephone banking system, mobile and other electronic banking products, and courier services. Examiners also found that the bank provided a relatively high level of community development services.

Examiners noted that Mercantile Bank had not received any complaints regarding its performance in meeting the credit needs of its assessment areas. The examination did not result in any findings of discrimination relating to Mercantile Bank's fair lending policies and procedures or to underwriting decisions by the bank's management. The Board has consulted with the FDIC regarding the Mercantile Bank Evaluation.

CRA Performance of Firstbank. Firstbank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 27, 2011 ("Firstbank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.[22] Examiners noted that Firstbank's CRA performance demonstrated a practice of providing for the credit needs of its assessment area.[23]

In evaluating the Lending Test, examiners noted that the bank originated a majority of its loans within its assessment area, illustrating reasonable performance. Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment area and that the bank's distribution of loans to borrowers reflected a reasonable penetration of individuals of different income levels, including LMI individuals, and businesses of different sizes.

With respect to the Community Development Test, examiners noted that Firstbank's community development performance reflected adequate responsiveness to the community's development needs in the assessment area. Examiners also found that Firstbank provided an adequate level of community development services through its employee involvement in community development organizations and its retail banking services that benefit LMI individuals.

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[22] The Firstbank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial and residential lending activity from July 21, 2008, to July 29, 2011. These products were selected for analysis because they represented 51 percent and 30 percent, respectively, of the bank's loan portfolio. At the request of Firstbank's management, examiners also considered the lending activity of Firstbank Mount Pleasant Mortgage Company, which, at that time, was a subsidiary of Firstbank.

[23] The Firstbank Evaluation reviewed the bank's non-MSA assessment area, which includes Wexford, Missaukee, Osceola, Clare, Mecosta, Isabella, and Montcalm counties, all in Michigan.

CRA Performance of Keystone. Keystone was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of August 17, 2009 ("Keystone Evaluation").[24] Examiners noted that the bank's CRA performance demonstrated a reasonable responsiveness to the credit needs of its assessment area. Examiners found that a majority of the small business and residential real estate loans originated by Keystone were made within the bank's assessment area.[25] Examiners also noted that Keystone's overall distribution of loans reflected a reasonable dispersion within its assessment area and that Keystone's penetration of loans among individuals of different income levels, including LMI individuals and businesses of different sizes, was reasonable given the demographics of the assessment area.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Mercantile Bank, Firstbank, and Keystone in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Mercantile Bank, Firstbank, and Keystone Evaluations, assessed Mercantile Bank's HMDA data, and considered the comment on the application and other agencies' views on Mercantile Bank's record of performance under fair lending laws. The Board also considered Mercantile Bank's fair lending policies and procedures.

Analysis of HMDA Data The Board analyzed Mercantile Bank's and Mercantile Mortgage's 2011 and 2012 HMDA data, the most recent publicly available in the specific market area addressed in the public comment (Grand Rapids MSA). The commenter expressed concerns that Mercantile was not meeting the credit needs of minority individuals in the Grand Rapids MSA, based on 2012 HMDA data. In particular, the commenter alleged that Mercantile did not originate loans to African Americans or Hispanics across a range of loan products, including conventional home purchase loans, refinance loans, and home improvement loans in the Grand Rapids MSA. The commenter also asserted that Mercantile disproportionately denied applications by African American applicants for refinance loans in the Grand Rapids MSA.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Mercantile Bank excluded or denied credit to any group on a prohibited basis.[26] Fully evaluating Mercantile Bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the

[24] The Keystone Evaluation was conducted using the Small Bank CRA Examination Procedures in Keystone's single assessment area of Kalamazoo and Van Buren counties, both in Michigan. Examiners reviewed loan data reported by Keystone from January 1, 2007, to June 30, 2009. Examiners also considered a sample of business loans originated by Keystone from January 1, 2007, to June 30, 2009.

[25] Examiners did not consider loans originated by Keystone Mortgage Services, LLC, Keystone's mortgage subsidiary, in their determination of whether Keystone's small business and residential real estate loans were made within its assessment area.

[26] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review in this case generally confirmed the levels of lending by Mercantile to African American and Hispanic borrowers and the denial disparity ratio noted by the commenter. Mercantile states that the low level of applications received from African Americans and Hispanics is due to several factors: the effect of persistently weak economic conditions on minorities in Grand Rapids, the very low percentage of applications received by all home mortgage reporters from African Americans and Hispanics in the Grand Rapids MSA, strong competition from other banks in the market to attract home mortgage applications from minorities, and the fact that home mortgage loans to individuals account for only a small portion of Mercantile's total lending.[27] In light of the low levels of applications received by Mercantile from African Americans and Hispanics in the Grand Rapids MSA, the Board conducted a lending analysis for 2012 comparing Mercantile to its peers in minority tracts of the MSA and did not find statistically significant disparities.[28]

The Board has consulted with the FDIC, the primary supervisor of each of the banks involved in the proposal. In connection with the bank merger application, the FDIC received, and conducted an analysis of, an identical comment on Mercantile's record of lending to African Americans and Hispanics in the Grand Rapids MSA. The FDIC considered the HMDA data cited by the commenter; Mercantile Bank's CRA, consumer compliance, and fair lending record; the bank's targeted marketing to African Americans and Hispanics; and other community outreach efforts. The FDIC concluded that it did not find evidence of Mercantile Bank engaging in discriminatory or other illegal credit practices, and that the public comment should not preclude approval of the proposal.

Mercantile's Fair Lending Program. Mercantile has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes a review of the bank's marketing and advertising, compliance training for applicable employees, comparative loan file reviews, and risk reviews of all potential fair lending complaints. Mercantile reported that all consumer loan and mortgage denials are subject to independent second reviews, and all commercial loan denials are reviewed by the bank's Compliance Officer. Mercantile reported that the bank's compliance and internal audit departments conduct annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls and ensure that the bank's lending policies are consistently and fairly applied. In addition, the bank engages in monthly monitoring to ensure compliance with federal and state laws and regulations, and all customer complaints received by the bank are reviewed by the bank's Compliance Officer and Risk Management Director.[29] Mercantile's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

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[27] Commercial real estate and commercial and industrial loans account for approximately 80 percent of Mercantile's total lending, while residential real estate loans only account for approximately seven percent of the bank's loan portfolio, based on the dollar amount of loans outstanding as of December 31, 2013.

[28] In this case, minority tracts are those in which the majority of residents are African American or Hispanic.

[29] A commenter criticized Mercantile Bank for providing its 2013 HMDA loan/application register in paper format rather than in electronic format as he had requested. As a result, the commenter requested an extension of the comment period for the proposal. However, Mercantile Bank provided its HMDA loan/application register to the commenter in accordance with the Consumer Financial Protection Bureau's regulations. *See* 12 CFR Part 1003, Supplement I §1003.5(b)(2). The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter's request for additional time does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the public comment period.

In addition, Mercantile stated that the bank performs an annual fair lending self-assessment, in which the bank's Compliance Officer reviews all residential home mortgage loan denials and home equity loan denials to ensure consistent application of underwriting practices. Mercantile also reported that the compliance department conducts a comparative file review to ensure that similarly situated borrowers receive equal treatment and that underwriting practices are consistently applied. The fair lending assessment also includes a review of the bank's marketing and advertising and evaluates the bank's assessment area to ensure that it does not arbitrarily exclude LMI or minority areas.

Mercantile Bank's 2012 fair lending self-assessment found that the bank's policies, procedures, and underwriting practices were appropriate and consistently followed. The self-assessment also recommended that the second review process be expanded to include withdrawn and incomplete applications, that the bank implement requirements for using alternative credit references, and that the bank increase the scope of billboard advertising closer to LMI areas. The self-assessment noted a decline in home mortgage applications from African Americans and Hispanics, but stated that the bank had increased its advertising and outreach to those communities. Although Mercantile indicated that it generally does not advertise home mortgage loans, during 2012 and 2013, it placed a number of mortgage-related advertisements targeted to the African American and Hispanic communities in Grand Rapids. The bank also expanded the focus of its financial education seminars to include managing credit and buying or refinancing a home; these seminars were held at an African American church and a community center located in a predominantly African American census tract.

Mercantile indicates that these targeted marketing efforts have been successful in increasing the number of applications from and mortgages to minority borrowers. Mercantile reports that minority borrowers (including joint race and joint ethnicity applicants[30]) accounted for 8.4 percent of the bank's HMDA-reportable applications for the first three quarters of 2013, an increase from the average of .5 percent from 2009 to 2012. Mercantile also states that minority borrowers accounted for 9.6 percent of home mortgage applications for all of 2013, the highest level over the last five years.

C. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Mercantile represents that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including data processing. Mercantile notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers. Mercantile also states that the combined organization will have greater financial and managerial resources, a more diversified asset base, and access to a broader range of markets, enabling it to be a more effective competitor in its markets.

[30] A joint race application is an application in which one applicant reports a single racial designation of "white" and the other applicant reports one or more minority racial designations. A joint ethnicity application is an application in which one applicant reports ethnicity as Hispanic or Latino and the other applicant reports ethnicity as not Hispanic or Latino.

Mercantile also states that the proposal would offer customers convenience through a broader range of financial products and services not currently available at all of the banks. Mercantile asserts that the merger would allow customers of the combined organization to benefit from the experience of each organization. In particular, Mercantile's customers would benefit from expanding Firstbank Corp.'s home mortgage and consumer lending products in areas currently served by Mercantile. Firstbank Corp.'s customers would benefit from Mercantile's commercial lending focus and expanding Mercantile's small business lending in areas currently served by Firstbank Corp. In addition, the merger would benefit Mercantile's and Firstbank Corp.'s current customers through access to significantly larger branch and ATM networks. The branch network available to Mercantile and Firstbank Corp. customers would increase from 7 and 48, respectively, to 56 locations throughout Michigan.[31]

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Mercantile, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the lending operations and compliance programs of Mercantile Bank, Firstbank, and Keystone, review of examination reports, and consultations with other agencies, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[32]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative

[31] A commenter also asserted that, based on public statements made by senior executives of Mercantile and Firstbank Corp., the combined organization would not expand into banking markets located in southeast Michigan. The CRA does not require an institution to expand into new markets. The CRA does require Mercantile Bank to help meet the credit needs of the communities in which it operates. As noted above, Mercantile Bank received an "outstanding" CRA rating from the FDIC, which demonstrates the bank's efforts in meeting the credit needs of its communities.

In addition, a commenter provided the Board with a copy of a class action lawsuit filed against Mercantile in the state of Michigan, alleging that the company engaged in discriminatory lending practices against African Americans. The litigation is in its preliminary stages, and no wrongdoing has been adjudicated.

[32] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[33] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Mercantile would have approximately $2.9 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not rank among the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, crossborder activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Mercantile's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Financial Holding Company Election

As noted above, Mercantile has elected to become a financial holding company in connection with the proposal. Mercantile has certified that it and Mercantile Bank are well capitalized and well managed and has provided all the information required under the Board's Regulation Y.[35] Mercantile also has stated that upon consummation of the proposal, Mercantile and each depository institution it would control would be well capitalized and well managed. Based on all the facts of record, the Board has determined that Mercantile's election will become effective upon consummation of the proposal if, on that date, Mercantile is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have a CRA rating of at least "satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[36] In reaching its conclusion, the Board has con-

[34] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[35] *See* section 606(a) of the Dodd-Frank Act; 12 CFR 225.82(b).

[36] A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, the

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Mercantile with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting under delegated authority.

By order of the Board of Governors, effective May 7, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under International Banking Act

CaixaBank, S.A.
Barcelona, Spain

Order Approving Establishment of a Representative Office
FRB Order No. 2014–09 (May 12, 2014)

CaixaBank, S.A. ("CaixaBank"), Barcelona, Spain, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Times*, July 11, 2013). The time for filing comments has expired, and all comments received have been considered.

CaixaBank, with total consolidated assets of approximately $470 billion, is the third largest bank in Spain.[2] CaixaBank engages in a range of commercial and retail banking activities in Spain and internationally and currently has no direct operations in the United States. Outside Spain, CaixaBank operates branches in Poland, Romania, and Morocco. It also maintains representative offices in Europe, Asia, the Middle East, and South America.

commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The request does not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing would otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

[1] 12 U.S.C. § 3107(a).

[2] Asset and ranking data are as of December 31, 2013.

CaixaBank owns approximately 46 percent of the shares of Banco BPI S.A., Porto, Portugal.[3] Approximately 64 percent of CaixaBank's shares are owned by Caja de Ahorros y Pensiones de Barcelona ("La Caixa"), Barcelona, a licensed savings bank.[4] No other shareholder owns 5 percent or more of CaixaBank's shares.

The proposed representative office would act as a liaison between CaixaBank's head office and customers in the United States. The proposed representative office would also conduct research, perform preliminary and servicing steps in connection with lending, and perform back-office functions.[5]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[6] The Board also considers additional standards set forth in the IBA and Regulation K.[7]

As noted above, CaixaBank engages directly in the business of banking outside the United States.[8] CaixaBank also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

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[3] In November 2013, the Board approved the establishment of representative offices in New Jersey and Massachusetts by Banco BPI. *Banco BPI, S.A* ., FRB Order No. 2013-9 (November 18, 2013). CaixaBank also owns approximately 17 percent of the shares in *Bank of East Asia* ("BEA"), Hong Kong, which is a bank holding company for the purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"). CaixaBank has provided passivity commitments to the Board to help assure that CaixaBank's ownership in, and business relationships with, BEA would not enable CaixaBank and its affiliates to exercise a controlling influence over BEA for the purposes of the BHC Act.

[4] La Caixa does not issue shares and is not owned by any other company or individual. It is governed, represented, and controlled by a General Assembly, a board of directors and a Control Committee. These governing bodies comprise representatives of deposit holders, founding entities, community-interest institutions, local authorities, and employees.

[5] A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

[6] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[7] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[8] La Caixa engages in the business of banking outside the United States indirectly through CaixaBank.

The Board has previously determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, the Bank of Spain.[9] CaixaBank and La Caixa are supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that CaixaBank and La Caixa are subject to comprehensive supervision on a consolidated basis by their home country supervisor. The Bank of Spain has no objection to the establishment of the proposed representative office.

CaixaBank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration CaixaBank's record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Spain has enacted laws and developed regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and Spanish financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. CaixaBank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

CaixaBank and La Caixa have committed to make available to the Board such information on their operations and on any of their affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, CaixaBank and La Caixa have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Bank of Spain may share information on CaixaBank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that CaixaBank and La Caixa have provided adequate assurances of access to any necessary information that the Board may request.

The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of CaixaBank in its home country; the scope of CaixaBank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising CaixaBank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

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[9] *See, e.g., Bankia, S.A.* (order dated December 16, 2011), 98 *Federal Reserve Bulletin* 42 (4th Quar. 2011); Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja, et al. (order dated December 17, 2010), 97 *Federal Reserve Bulletin* 4 (4th Quar. 2010); and Caja de Ahorros y Monte de Piedad de Madrid, et al. (order dated October 16, 2008), 95 *Federal Reserve Bulletin* B23 (2009).

On the basis of all the facts of record, and subject to commitments made by CaixaBank and La Caixa, CaixaBank's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[10] Should any restrictions on access to information on the operations or activities of CaixaBank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by CaixaBank or its affiliates with applicable federal statutes, the Board may require termination of any of CaixaBank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by CaixaBank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[11] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective May 12, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

The Joyo Bank, Ltd.
Mito City, Japan

Order Approving Establishment of a Representative Office
FRB Order No. 2014–7 (April 18, 2014)

The Joyo Bank, Ltd. ("Joyo"), Mito City, Japan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, August 30, 2013). The time for filing comments has expired, and all comments received have been considered.

Joyo, with total assets of approximately $82 billion, is the 13th largest bank in Japan by asset size.[2] Joyo engages in a range of commercial and retail banking activities through its

[10] 12 CFR 265.7(d)(12).

[11] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of CaixaBank in accordance with any terms or conditions that they may impose.

[1] 12 U.S.C. § 3107(a).

[2] Asset and ranking data are as of December 31, 2013. Northern Trust Company ("NTC") owns approximately 5.3 percent of the shares of Joyo, as of March 31, 2013. NTC holds these shares in registered nominee accounts for various beneficial owners, including Silchester Partners Limited, London, England, which, when it last notified Joyo as required by Japanese law, owned 5.1 percent of the shares of Joyo. No other shareholder owns 5 percent or more of the outstanding shares of Joyo.

150 domestic branches. Outside Japan, Joyo operates representative offices in the People's Republic of China and Singapore. Joyo has no operations in the United States.[3]

The proposed representative office would act as a liaison between Joyo and its U.S. customers and correspondent banks. The proposed representative office would also engage in other representational activities, including gathering information and conducting research.[4]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[5] The Board also considers additional standards set forth in the IBA and Regulation K.[6]

As noted above, Joyo engages directly in the business of banking outside the United States. Joyo also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

The Board has previously determined, in connection with applications involving other banks in Japan, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, Japan's Financial Services Agency ("FSA").[7] Joyo is supervised by the FSA on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that Joyo is subject to comprehensive supervision on a consolidated basis by its home country supervisor. The FSA has no objection to the establishment of the proposed representative office.

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[3] In 1987, Joyo opened a representative office in New York, which was converted to a branch in 1989 and closed in 2002.

[4] A representative office may engage in representational and administrative functions inconnection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreignbank's head office and customers in the United States, performing preliminary andservicing steps in connection with lending, and performing back-office functions. Arepresentative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

[5] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[6] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[7] *See, e.g., Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November14, 2012); *The Bank of Fukuoka, Ltd.* (order dated September 27, 2011), 97 *Federal Reserve Bulletin* 14 (3rd Quar. 2011); *Mitsubishi UFJ Financial Group, Inc*. (order dated June 14, 2011), 97 *Federal Reserve Bulletin* 10 (2nd Quar. 2011).

Joyo appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Joyo's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office.

Japan is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Japan has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Japan, and Japanese financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Joyo has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

Joyo has committed to make available to the Board such information on the operations of Joyo and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Joyo has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the FSA may share information on Joyo's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Joyo has provided adequate assurances of access to any necessary information that the Board may request.

The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Joyo in its home country; the scope of Joyo's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Joyo in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by Joyo, Joyo's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[8] Should any restrictions on access to information on the operations or activities of Joyo and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Joyo or its affiliates with applicable federal statutes, the Board may require termination of any of Joyo's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Joyo with the conditions imposed in this order and the commitments made to the Board in connection with this application.[9] For purposes of this action, these commitments and conditions are deemed to

[8] 12 CFR 265.7(d)(12).

[9] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this

be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective April 18, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of Joyo in accordance with any terms or conditions that they may impose.

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Legal Developments: Third Quarter, 2014

Orders Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

Old National Bancorp
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014–13 (July 14, 2014)

Old National Bancorp ("Old National"), Evansville, Indiana, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with United Bancorp, Inc. ("United"), and thereby indirectly acquire its subsidiary bank, United Bank & Trust ("United Bank"), both of Ann Arbor, Michigan. Immediately following the proposed merger, United Bank would be merged into Old National's subsidiary bank, Old National Bank, Evansville.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 12194 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Old National, with consolidated assets of approximately $10.3 billion, is the 101st largest insured depository organization in the United States,[4] controlling approximately $7.8 billion in deposits. Old National controls Old National Bank, which operates in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National Bank is the 26th largest insured depository institution in Michigan, controlling approximately $606 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

United, with consolidated assets of approximately $899 million, is the 745th largest insured depository organization in the United States,[5] controlling approximately $790 million in deposits. United controls United Bank, which operates only in Michigan. United Bank is the 23rd largest insured depository institution in Michigan, controlling approximately

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1 12 U.S.C. § 1842.

2 The merger of United Bank into Old National Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of December 31, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014.

5 Asset and nationwide deposit-ranking data are as of December 31, 2013. As of March, 31, 2014, United had consolidated assets of approximately $922 million.

$800 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

On consummation of this proposal, Old National would become the 98th largest depository organization in the United States, with consolidated assets of approximately $11.2 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Old National would have total deposits of approximately $8.6 billion. In Michigan, Old National would become the 15th largest banking organization, controlling approximately $1.4 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[7] However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.[8] The Board also must take into account the record of performance of the acquiring bank under the Community Reinvestment Act ("CRA")[9] and applicable state community reinvestment laws.[10] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[11] The Board also may not approve an application if the combined organization would control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[12]

For purposes of the BHC Act, the home state of Old National is Indiana, and United's home state is Michigan.[13] Old National is well capitalized and well managed under applicable law. Michigan has no minimum age requirement and United Bank has been in existence for more than five years.

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[6] All Michigan statewide and market-level deposit data are as of June 30, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

[7] 12 U.S.C. § 1842(d)(1)(A).

[8] 12 U.S.C.§ 1842(d)(1)(B).

[9] 12 U.S.C.§ 2901 *et seq*.

[10] 12 U.S.C. §1842(d)(3).

[11] 12 U.S.C. § 1842(d)(2)(A).

[12] 12 U.S.C. § 1842(d)(2)(B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

[13] *See* 12 U.S.C. § 1841 (o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $11.0 trillion. On consummation of the proposed transaction, Old National would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Michigan, the only state in which Old National and United have overlapping banking operations. The Board has taken into account Old National's record of performance under the CRA and determined that it does not prohibit the Board from approving the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[14] Old National Bank and United Bank compete directly only in the Lenawee, Michigan, banking market (the "Lenawee banking market").[15]

The Board has considered the competitive effects of this proposal on the Lenawee banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Old National and United;[16] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[17] and other characteristics of the market.

In the Lenawee banking market, Old National Bank is the seventh largest depository institution, controlling approximately $32 million in deposits, which represent approximately 2.8 percent of market deposits. United Bank is the largest depository institution in the market, controlling approximately $396 million in deposits, which represent approximately

[14] 12 U.S.C. § 1842(c)(1).

[15] The Lenawee banking market is defined as Lenawee County, Michigan. Deposit, market share, and ranking data for the market are all as of June 30, 2013.

[16] Deposit and market share data are as of June 30, 2013, updated to reflect mergers involving parties to this proposal which have been consummated through April 25, 2014 and, unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[17] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its DOJ Bank Merger Guidelines, which were issued in 1995, were not modified

34.4 percent of market deposits. On consummation, Old National Bank would become the largest depository institution in the market, controlling approximately $428 million in deposits, and its pro forma market share would be approximately 37.2 percent. The HHI would increase by 191 points, from 1877 to 2068.

The Board has considered factors that mitigate the competitive effects of the proposal in the Lenawee banking market.[18] First, a bank made a de novo entry into the market by opening a branch in 2012, suggesting that the market may be attractive for future entry. Second, there are two other competitors in the Lenawee banking market with market shares over 10 percent,[19] and five other competitors with market shares over 5 percent. The total number of institutions with market shares over 5 percent in the Lenawee banking market indicates a relatively balanced market structure in which many institutions have a strong competitive presence in the market and are able to exert competitive pressure on the largest firm in the market.[20] Accordingly, the Board has concluded that these factors mitigate, in part, the potential effects of the proposal on the Lenawee banking market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Lenawee banking market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

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[18] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

[19] One of these competitors has an actual market share over 20 percent in the Lenawee banking market. However, this institution is a credit union and is less active in commercial lending, so its market deposits have been weighted at 50 percent.

[20] In its review of the Lenawee banking market, the Board included several thrifts and credit unions as market competitors. One thrift was given a 100 percent weighting rather than the customary 50 percent, because its ratio of commercial and industrial loans to total assets was above the national average for bank holding companies. Two credit unions were included in the calculations at the customary 50 percent weight.

The Board has considered the financial factors of the proposal. Old National and Old National Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.[21] The asset quality, earnings, and liquidity of Old National Bank and United Bank are consistent with approval, and Old National appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Old National, United, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Old National, United, and their subsidiary depository institutions are each considered to be well managed. Old National's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Old National have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Old National's plans for implementing the proposal. Old National is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Old National would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Old National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. Furthermore, Old National has demonstrated a record of successfully integrating other banking organizations into its operations and risk management systems after acquisitions.

Old National's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Old National and United in combatting money laundering activities, are consistent with approval.[22]

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.[23] The CRA requires the federal financial supervisory agencies to encourage insured depository

[21] As part of the proposed transaction, each share of United common stock would be canceled and converted into a right to receive cash and Old National common stock based on an exchange ratio.

[22] On June 4, 2012, Old National Bank entered into a stipulation and consent order with the OCC relating to its Bank Secrecy Act/anti-money-laundering compliance program. *Old National Bank*, OCC Order No. 2012-126 (June 4, 2012). On January 14, 2014, the OCC lifted its order after verifying compliance with the order.s

[23] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[24] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[25]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Old National Bank and United Bank, data reported by Old National Bank and United Bank under the Home Mortgage Disclosure Act ("HMDA"),[26] other information provided by Old National, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Old National's and United's fair lending records as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[27] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[28] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Old National Bank. Old National Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the OCC in December 2012 ("Old National Bank Evaluation"). Old National Bank received an "outstanding" rating for the Lending Test and "high satisfactory" ratings for both the Investment Test and the Service Test.[29] In addition to the overall "outstanding" rating that Old National Bank received, the bank received separate overall "outstanding" or "satisfactory" ratings in each multistate metropolitan area and state reviewed.[30]

As described in the Old National Bank Evaluation, OCC examiners found that the bank's overall lending activity was excellent. The bank originated a significant majority of loans inside its assessment areas and had an excellent overall record of lending to borrowers of different income levels. Examiners noted that the bank had an excellent record of lending to home mortgage borrowers of different income levels, while its distribution of loans to businesses and farms with different revenue sizes was good. Further, Old National Bank's overall geographic distribution of loans was adequate. Specifically, the bank's geographic distribution of small loans to businesses was good, while its geographic distribution of

[24] 12 U.S.C. § 2901(b).

[25] 12 U.S.C. § 2903.

[26] 12 U.S.C. § 2801 *et seq*.

[27] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[28] 12 U.S.C.§ 2906.

[29] The evaluation period for the Old National Bank Evaluation was July 1, 2008, through December 31, 2012.

[30] The Old National Bank Evaluation included full-scope reviews of at least one assessment area within each state where Old National Bank had an office and of multistate metropolitan areas where Old National Bank operated branches in at least two states. The states reviewed were Illinois, Indiana, Kentucky, and Ohio, and the multistate metropolitan areas reviewed were the Evansville (Indiana-Kentucky) and Louisville (Kentucky-Indiana) metropolitan areas.

mortgage loans and small loans to farms was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

In evaluating the Investment Test, OCC examiners found that Old National Bank had an overall good level of qualified community development investments that were highly responsive to community needs. Examiners highlighted numerous CRA-qualified investments that the bank had made, including donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles. For the current CRA examination cycle, which began January 1, 2013, Old National has indicated that Old National Bank increased its corporate community development investment goal from $37.5 million to $87.5 million, an increase of 133 percent.

In evaluating the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Old National Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Further, examiners highlighted that the institution provided a relatively high level of community development services.

CRA Performance of United Bank. United Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in June 2011 ("United Bank Evaluation"). United Bank received a "high satisfactory" rating for each of the Lending Test, Investment Test, and the Service Test.[31] In evaluating the Lending Test, FDIC examiners concluded that United Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that the majority of the bank's loans were originated in the overall assessment area, and the geographic distribution of its loans was adequate. Examiners also found that United Bank made a relatively high level of community development loans, used innovative and flexible lending practices to serve the credit needs of its assessment area, and that its level of community development activities represented very good responsiveness to community credit needs in its assessment area. In evaluating the Investment Test, examiners found that the bank had a significant level of qualified community development investments and donations in its assessment area, particularly in Lenawee County. In evaluating the Service Test, examiners noted that United Bank's branch and ATM network provided access to all portions of its assessment area and that the bank provided a high level of community development services.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Old National Bank and United Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Old National Bank Evaluation and the United Bank Evaluation, assessed Old National Bank's and United Bank's HMDA data, and considered the comment on the application as well as other agencies' views on Old National Bank's record of performance under fair lending laws. The Board also considered Old National Bank's fair lending policies and procedures.

Analysis of HMDA Data and Branch Closings. The Board analyzed Old National Bank's and United Bank's 2012 HMDA data, the most recent publicly available, as well as preliminary 2013 HMDA data. The Board analyzed data related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, as well as the subset of those data

[31] The United Bank Evaluation was conducted using Large Bank CRA evaluation procedures in United Bank's single assessment area of Lenawee, Washtenaw, and Monroe counties, all in Michigan. Examiners reviewed loan data reported by United Bank from January 1, 2009, to March 31, 2011.

related specifically to the loan products that composed the subject of the public comment received on the proposal, including conventional home purchase loans; Federal Housing Administration ("FHA"), Farm Service Agency/Rural Housing Service ("FSA/RHS"), and Veteran Affairs ("VA") home purchase loans; home improvement loans; and refinance loans. The Board analyzed each bank's combined assessment areas and the specific market areas addressed in the public comment (Indianapolis, Evansville, and Fort Wayne, Indiana MSAs; and the Ann Arbor, Michigan MSA). Within those data sets, the Board focused its review on data related to conventional home purchase loans, FHA, FSA/RHS, and VA home purchase loans, refinance loans, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

Old National Bank's HMDA Data and Branch Closings. The commenter expressed concerns that Old National Bank was not meeting the credit needs of minority individuals in several communities served by the bank, based on 2012 HMDA data. In particular, the commenter alleged that Old National Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans in the Indianapolis, Evansville, and Fort Wayne, Indiana MSAs. The commenter also asserted that Old National Bank disproportionately denied applications by Hispanic applicants in each of these MSAs, suggesting a pattern of denial rate disparities.[32]

The Board's analysis of HMDA data for conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans by Old National Bank in its combined assessment areas, as well as in the Indianapolis, Evansville, and Fort Wayne MSAs individually, did not show any significant differences between Old National Bank's lending and the aggregate lending for 2012 and 2013.[33] The Board's review confirmed the levels of lending by Old National Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[34] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to informa-

[32] The allegations made by the commenter regarding Old National's fair lending record are identical to those made by the same commenter in connection with Old National's application to merge with Tower Financial Corporation ("Tower"), Fort Wayne, Indiana. The Board considered those allegations and approved that proposal. *See Old National Bancorp* , FRB Order No. 2014-6 (April 7, 2014).

[33] Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

[34] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

tion contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Old National Bank's compliance with fair lending laws and regulations. In its recent Old National Bank CRA Performance Evaluation, the OCC reported that it did not find evidence of discriminatory or other illegal credit practices. In addition, in November 2012 and November 2013, the OCC conducted targeted examinations of Old National Bank's risk management program for fair lending compliance, in which it assessed Old National Bank's fair lending policies, procedures, and practices, and these targeted examinations did not result in any findings of discrimination relating to Old National Bank's fair lending policies and procedures or to underwriting decisions by the bank's management.

With respect to the specific HMDA data on home purchase and home improvement loans cited by the commenter, Old National provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). Old National also provided the Board with detailed information on Old National Bank's training, marketing, advertising, and underwriting guidelines reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis.

The commenter also alleged that Old National has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities.[35] See Old National Bancorp, FRB Order No. 2014-6 (April 7, 2014). The Board analyzed Old National Bank's current branch distribution and believes it is readily accessible to LMI geographies and individuals in the bank's assessment areas. Twenty-eight percent of Old National Bank's branches are located in LMI census tracts.[36] According to 2010 census data, the percentage of the population in LMI geographies within Old National Bank's assessment areas was 27 percent. As such, the percentage of Old National Bank branches in LMI geographies slightly exceeds the percentage of the population in LMI geographies within the Old National Bank assessment areas.

Old National has stated that Old National Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.[37] The Board has reviewed Old National Bank's branch closing policy and notes that the OCC will continue to review Old National Bank's branch closing record in the course of conducting CRA performance evaluations.

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[35] The commenter further alleged that Old National has been closing branches for the purpose of keeping its total assets slightly below $10 billion to avoid increased regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Board notes that Old National already has more than $10 billion in total assets, following the acquisition of Tower. *See Old National Bancorp*, FRB Order No. 2014-6 (April 7, 2014).

[36] Branch data are as of May 1, 2014, and include branches acquired by Old National through its acquisition of Tower in April 2014.

[37] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Old National's Fair Lending Program. Old National has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, fair lending officers serving within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Old National also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

In addition, fair lending reviews are conducted quarterly of individual business units, and comprehensive corporate reviews are performed annually to ensure compliance with the bank's underwriting and pricing procedures and with fair lending laws. The reviews utilize HMDA and non-HMDA data and analyze any fair lending complaints the institution receive. Further, the Compliance Department conducts quarterly fair lending testing and monitoring, including analysis of policies and procedures, reviews of loan and application data, monitoring of exceptions and overrides, and reviews of new products and initiatives. Old National's risk management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

Old National Bank represents that it provides annual fair lending training to all employees involved in any aspect of the bank's credit transactions. Old National also states that it conducts ongoing monitoring and analysis of loan data, policies, and consumer complaints to ensure compliance with fair lending regulations.

United Bank's HMDA Data. The commenter also expressed concerns that United Bank was not meeting the credit needs of minority individuals in the Ann Arbor, Michigan MSA, based on 2012 HMDA data. In particular, the commenter alleged that United Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans and refinance loans, in the Ann Arbor MSA. The commenter also asserted that United Bank disproportionately denied applications by Hispanic applicants in the MSA, suggesting a pattern of denial-rate disparities.

In general, the Board's review confirmed the levels of lending by United Bank to African American and Hispanic borrowers and denial-disparity ratios noted by the commenter.[38] However, the Board's analysis of HMDA data for conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans by United Bank in its combined assessment areas, as well as in the Ann Arbor MSA individually, did not show any significant differences between United Bank's lending and the aggregate lending for 2012 and 2013. In addition, in the United Bank Evaluation, the FDIC reported that it did not find evidence of discriminatory or other illegal credit practices. Old National represents that its fair lending program will be implemented across the combined organization.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

[38] The Board notes, however, that United Bank reported originating six refinance loans to African Americans in 2012, not two as stated by the commenter.

Old National represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Old National asserts that the transaction has the potential to benefit all aspects of United's operations, particularly its lending functions, asset and liability management, and data processing capabilities. Old National also states that the combined organization's larger lending limit would allow Old National to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Old National states that the proposal would provide customers with an expanded network of over 190 branches in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National notes that the combined organization would provide United Bank's customers with an expanded and more sophisticated range of products and services than United Bank currently offers, including an enhanced range of consumer services and deposit accounts. Further, insurance products will be made available to United Bank's customers through Old National Insurance, which offers a broad array of insurance products to individuals and businesses across the United States.

Conclusion on Convenience and Needs Consideration

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Old National, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage lending operations and compliance programs of Old National Bank and United Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[39]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[40] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution

[39] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[40] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[41]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Old National would have approximately $11.2 billion in consolidated assets and would be the 98th largest financial institution in the United States. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Old National's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[42] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Old National with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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[41] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

[42] The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 14, 2014.

Voting for this action: Chair Yellen, and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Section 4 of the Bank Holding Company Act

Chemical Financial Corporation
Midland, Michigan

Order Approving the Acquisition of a Savings Association, Merger of Depository Institutions, and Establishment of Branches
FRB Order No. 2014–16 (September 30, 2014)

Chemical Financial Corporation ("Chemical"), Midland, Michigan, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[1] to acquire Northwestern Bancorp, Inc. ("Northwestern"), and its wholly owned subsidiary, Northwestern Bank, a state savings bank that has elected to be treated as a savings association for purposes of section 10(l) of the Home Owners' Loan Act,[2] both of Traverse City, Michigan.

In addition, Chemical's subsidiary state member bank, Chemical Bank, also of Midland, has requested the Board's approval to merge with Northwestern Bank pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"), with Chemical Bank as the surviving entity.[3] Chemical Bank also has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate 25 branches at the locations of Northwestern Bank's main office and branches.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 23977 (Apr. 29, 2014)) and in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act, the Bank Merger Act, and the FRA.

Chemical, with total consolidated assets of approximately $6.2 billion, is the 154th largest depository organization in the United States, controlling deposits of approximately $5.1 billion, which represent less than 1 percent of the total amount of deposits of insured

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1 12 U.S.C. §§ 1843(c)(8) and (j).
2 12 U.S.C. § 1467a(l).
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in the appendix.
5 12 CFR 262.3(b).

depository institutions in the United States.[6] Chemical Bank operates branches only in Michigan and is the ninth largest insured depository institution in the state, with its deposits representing 2.9 percent of the total amount of deposits in insured depository institutions in Michigan.[7]

Northwestern, with total consolidated assets of approximately $855 million, controls deposits of approximately $758 million. Northwestern Bank operates branches only in Michigan and is the 25th largest insured depository institution in the state, with its deposits representing 0.5 percent of the total amount of deposits in insured depository institutions in Michigan.

On consummation of the proposal, Chemical would become the eighth largest depository organization in Michigan, controlling deposits of approximately $5.9 billion, representing 3.3 percent of deposits in insured depository institutions in Michigan.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[8] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.[9] Chemical has committed that all the activities of Northwestern and its nonbanking subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.[10]

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[11] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[12] In addi-

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[6] Nationwide deposit ranking data are as of December 31, 2013. Asset data are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, savings associations, and non-deposit trust companies.

[7] State market share and ranking data are as of June 30, 2013.

[8] 12 CFR 225.28(b)(4)(ii). Northwestern Bank meets the definition of "savings association" under the BHC Act. 12 U.S.C. § 1841(j)(3).

[9] 12 CFR 225.28(b)(4)(ii).

[10] The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the bank holding company and the applicant controls, or would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Dodd-Frank Act§ 623(b), codified at 12 U.S.C. § 1843(i)(8). For purposes of the BHC Act, the home state of both Chemical and Northwestern Bank is Michigan and, therefore, section 4(i)(8) of the BHC Act does not apply to this transaction. Also, as noted, consummation of the proposal would result in Chemical controlling less than 1 percent of the deposits of U.S. insured depository institutions.

[11] 12 U.S.C.§ 1828(c)(5).

[12] 12 U.S.C. § 1828(c)(5)(B). In addition to assessing the competitive effects of the proposal, in every case under the Bank Merger Act, the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institution, the convenience and needs of the community to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system. *Id* . at § 1828(c)(5).

tion, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.[13]

Chemical Bank and Northwestern Bank compete directly in the Michigan banking markets of Roscommon, Cadillac, and Gaylord.[14] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of the total deposits in insured depository institutions in the markets ("market deposits") that Chemical Bank would control,[15] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[16] and other characteristics of the markets.

The structural effects that consummation of the proposal would have in the Roscommon, Cadillac, and Gaylord banking markets warrant a detailed review because the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. Based on initial competitive screening data, the increases in the markets' HHIs would be, respectively, 232, 230, and 473 to levels of 2464, 2613, and 2407.

On review, it appears that two types of adjustments to the initial competitive screening data are warranted. First, the Board has evaluated the competitive influence of two thrift institutions (including Northwestern Bank) operating in the Roscommon, Cadillac, and Gay-

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[13] 12 U.S.C. § 1843(j)(2)(A). Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Northwestern and its nonbanking subsidiaries "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system." Id. As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. *See* 12 CFR 225.26; *see, e.g., Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) ("Capital One Order"); *Bank of America Corporation*/*Countrywid*e, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").

[14] The Roscommon banking market is defined as Crawford County, Oscoda County, and Roscommon County, all of Michigan. The Cadillac banking market is defined as Missaukee County, Wexford County, and the northern half of Osceola County, including Burdell, Sherman, Highland, Marion, Le Roy, Rose Lake, Hartwick, and Middle Branch Townships, all of Michigan. The Gaylord banking market is defined as Otsego County and Montmorency County, excluding Hillman and Rust Townships, all of Michigan.

[15] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin*386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 53 (1991).

[16] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

lord banking markets.[17] Each institution's commercial and industrial loan portfolios are similar to those of commercial banks in the market, as measured in terms of the ratios of those types of loans to total loans and assets.[18] Accordingly, the Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

Second, five community credit unions exert a competitive influence in the Roscommon, Cadillac, and Gaylord banking markets. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[19] Accordingly, the Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes account of the limited lending done by these credit unions to small businesses relative to banks' lending levels.

These two types of adjustments suggest that the resulting market concentration of the proposed transaction in all these markets is less significant than would appear from the measurements focused on commercial bank competitors. In particular, with these two adjustments to reflect competition by other insured depository institutions in the market, the market concentration levels in the Roscommon, Cadillac, and Gaylord banking markets as measured by the HHI would increase by 261, 329, and 403 to levels of 1909, 2338, and 1914, respectively, and the market shares of Chemical resulting from the transaction would increase in these markets from 20.4, 21.4, and 13.6 percent to 26.8, 29.1, and 28.4 percent, respectively.

The Board also has considered whether other factors mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Roscommon, Cadillac, and Gaylord banking markets. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.[20] In each market, the record indicates that the proposal is not likely to have a significantly adverse impact on competition.

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[17] The standard treatment of thrifts in the competitive analysis is to give their deposits 50 percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc*., 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc*., *supra*.

[18] These thrift institutions each have a ratio of commercial and industrial loans to assets of more than 5 percent, which is comparable to, or greater than, the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

[19] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp,* FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, *supra*; *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[20] *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

Roscommon Banking Market. In the Roscommon banking market, the HHI effects of the transaction would exceed the DOJ Guidelines by a modest amount.[21] Chemical would remain the second largest competitor with a 26.8 percent deposit market share. The Roscommon banking market exhibits a balanced market structure, with eight other competitively active insured depository institutions remaining, three of which would continue to each hold greater than 9 percent of deposit market share, including the market's largest participant with 28.7 percent of market deposits. The presence of viable competitors suggests that Chemical would have limited ability to unilaterally offer less attractive terms to consumers.

Cadillac Banking Market. In the Cadillac banking market, Chemical would remain the second largest competitor with a 29.1 percent deposit market share. However, eight other competitively active insured depository institutions would remain, three of which would continue to each hold greater than 9 percent of deposit market share. The Cadillac banking market has experienced a substantial decrease in market concentration in recent years, with the HHI declining by 572 points over the last five years. In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One bank entered the market de novoin 2012, and an existing competitor opened a new branch in 2011.

Gaylord Banking Market. In the Gaylord banking market, Chemical would become the largest competitor with a 28.4 percent deposit market share. However, seven other competitively active insured depository institutions would remain, four of which would continue to each hold greater than 11 percent of deposit market share. The Gaylord banking market has experienced a substantial decrease in market concentration in recent years, with the HHI declining by 284 points over the last five years. In addition, recent entry and expansionary activity suggests that the market may be attractive to potential competitors. One bank entered the market de novo in 2012, and a credit union competitor currently has a new branch under construction to be opened in 2014.

Other Factors and Conclusion Regarding Competitive Factors

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Roscommon, Cadillac, and Gaylord banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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[21] An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market (see, for example, Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser (2007), "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167; Astrid Dick (2008), "Demand Estimation and Consumer Welfare in the Banking Industry," Journal of Banking and Finance, vol. 32, no. 8, pp. 1661-1676; and Katherine Ho and Joy Ishii (2011), "Location and Competition in Retail Banking," International Journal of Industrial Organization, vol. 29, no. 5, pp. 537-546.). The change in the pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Roscommon market would be 200 points to a level of 1538, assuming a 50 percent weight for credit union branches.

Financial, Managerial, and Other Supervisory Factors

In reviewing this proposal under section 4 of the BHC Act, the Bank Merger Act, and the FRA, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Chemical and Chemical Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash purchase of shares, and the total consideration for the transaction would be approximately $120 million. Chemical expects to fund the transaction with its investments and cash-equivalents on hand. The asset quality, earnings, and liquidity of Chemical are consistent with approval, and Chemical appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Chemical Bank's and Northwestern Bank's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Chemical has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and has reviewed the examination records of Chemical and Chemical Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its and other relevant financial supervisory agencies' supervisory experiences with the organizations and the organizations' records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Chemical's plans for implementing the proposal. Chemical and Chemical Bank are considered to be well managed, and their boards of directors and senior management have significant banking experience. Chemical would operate the acquired branches of Northwestern Bank under Chemical's existing policies and procedures, which are considered to be satisfactory. In addition, Chemical's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of Chemical and Chemical Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.[22] As noted, the Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire a savings association. The CRA requires the federal financial supervisory agencies to encourage insured deposi-

[22] 12 U.S.C. § 2901 *et seq.*

tory institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[23] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[24]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank and Northwestern Bank, information provided by Chemical, and confidential supervisory information.

A. Record of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[25] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Chemical Bank. Chemical Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank") in August 2013 ("Chemical Bank Evaluation").[27] Chemical Bank received "outstanding" ratings for the Lending Test, the Investment Test, and the Service Test.[28]

In evaluating the Lending Test, Reserve Bank examiners noted that the bank originated a substantial majority of loans within its assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners noted that the bank had an excellent record of serving the credit needs of very small businesses. Further, Chemical Bank's geographic distribution of loans reflected excellent penetration throughout the assessment areas. Examiners also noted that Chemical Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices in serving assessment area needs. Examiners noted that the dollar amount of Chemical Bank's lending increased by approximately 11.0 percent from the prior evaluation.

In evaluating the Investment Test, Reserve Bank examiners found that Chemical Bank had provided an excellent level of qualified investments, donations, and grants. The examiners

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[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

[25] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

[26] 12 U.S.C.§ 2906.

[27] The Chemical Bank Evaluation reviewed home mortgage and small business lending data from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was July 1, 2011, through August 26, 2013.

[28] The Chemical Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Chemical Bank Evaluation included a full-scope review of five assessment areas: the Grand Rapids-Wyoming Metropolitan Statistical Area ("MSA"); the Niles-Benton Harbor MSA; the Bay City MSA; the Kalamazoo-Portage MSA; and the North Central-Non-MSA. A limited-scope review was performed in the Battle Creek MSA; the Flint MSA; the Holland-Grand Haven MSA; the Saginaw-Saginaw Township North MSA; the South Bend-Mishawaka (Multi-State) MSA (Cass County, Michigan,only); the East-Non-MSA; the South-Non-MSA; and the West-Non-MSA.

noted that the bank demonstrated excellent responsiveness to credit and community development needs. The bank also made extensive use of innovative and complex investments to support community development initiatives. Examiners noted that Chemical Bank's CRA-qualified investments increased by approximately 32.9 percent in number and 50.5 percent in dollars from the prior evaluation.

In evaluating the Service Test, examiners noted that Chemical Bank's branch location changes had improved the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in the assessment area. Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

CRA Performance of Northwestern Bank. Northwestern Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation in April 2014 ("Northwestern Bank Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[29]

In evaluating the Lending Test, examiners noted that the bank originated a substantial majority of loans within its assessment area.[30] Examiners also found that the bank's geographic dispersion of loans reflected reasonable dispersion throughout its assessment area, and the bank's distribution of loans to borrowers reflected reasonable penetration to businesses of different sizes and among individuals of different income levels. Further, examiners concluded that Northwestern Bank's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs.

In evaluating the Community Development Test, examiners noted that Northwestern Bank's level of community development performance demonstrated adequate responsiveness to the community development needs of its assessment area through qualified loans, investments, and services, considering its capacity and the need for such activities in its assessment area. Examiners also noted that Northwestern Bank did not receive any complaints about its performance in meeting assessment area credit needs.

B. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

As discussed more fully below, the proposed transaction would provide Northwestern Bank's customers with a larger network of branches and ATMs for customers to conveniently access, a broader array of banking products and services, and higher legal lending limits. Chemical further represents that the combined organization will offer a wider variety of products and services that are tailored to meet the needs of LMI geographies and indi-

[29] The Northwestern Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2012, to December 31, 2013. The Community Development Test was evaluated from a review of community development loans, investments, and service activities since Northwestern Bank's last CRA evaluation on April 1, 2011. The Northwestern Bank Evaluation reflected the activities of both Northwestern Bank and its affiliated mortgage company, Northwestern Mortgage Company. Northwestern Bank is not a reporter as defined under the Home Mortgage Disclosure Act because it does not have any offices within a MSA.

[30] Northwestern Bank has one designated assessment area, comprised of 14 counties within Michigan, including Emmet, Charlevoix, Otsego, Antrim, Crawford, Roscommon, Kalkaska, Missaukee, Grand Traverse, Leelanau, Benzie, Wexford, Manistee, and Mason, all of which are within nonmetropolitan areas.

viduals. Although Chemical plans to close one Northwestern Bank branch following the merger and to consolidate three others with nearby Chemical Bank branches, Northwestern Bank customers nevertheless would benefit from having a larger network of banking offices throughout Michigan.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Chemical, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Chemical Bank and Northwestern Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act, and as a factor that must be considered under section 18(c) of the Bank Merger Act.[31]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[32] In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[33]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Chemical would have approximately $7.0 billion in consolidated assets and would be the 134th largest financial institution in the United States as measured by assets. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. Chemical engages in and

[31] Dodd-Frank Act, .§ 604(e) and (f), codified at 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) of the Dodd-Frank Act.

[32] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[33] For further discussion of the financial stability standard, *see Capital One Order*.

would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Chemical's intrafinancial system assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction, and the resulting organization would control less than 0.1 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Public Benefits of the Proposal

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[34]

The Board has considered that the proposal would allow Chemical Bank to expand the range of financial products and services available to existing customers of Northwestern Bank. Chemical represents that the merger would enhance the ability of the combined entities to employ capital where it may be best utilized, to continue and expand the services presently provided to their respective customers, and to respond to changing market conditions and community needs. Chemical represents that the proposed transaction would provide Northwestern Bank's customers with a broader array of banking products and services offered by Chemical Bank, including portfolio mortgage loans, consumer loans, commercial and industrial loans, and treasury management products. Chemical also states that the combined organization would have higher legal lending limits than either Chemical Bank or Northwestern Bank. In addition, customers of both institutions would benefit from a more expansive branch and ATM network. The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order are not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.

On the basis of the entire record, including the commitments made in this case and conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of this proposal. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

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[34] 12 U.S.C..§1843(j)(2).

Establishment of Branches

As noted, Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Northwestern Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[35] Specifically, the Board has considered Chemical Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice and applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. Approval of the notice and applications is specifically conditioned on compliance by Chemical with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 30, 2014.

Voting for this action: Chair Yellen, and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Michigan Branches to Be Acquired

Acme
1. 5300 US Highway 31 North

Cadillac
2. 1573 North Mitchell Street
3. 150 Granite Street

Charlevoix
4. 1425 Bridge Street

Elk Rapids
5. 97 River Street

[35] 12 U.S.C. § 322; 12 CFR 208.6.

Gaylord

6. 711 West Main Street
7. 2091 South Ostego Avenue

Houghton Lake

8. 5213 West Houghton Lake Drive

Interlochen

9. 2112 M-137

Kalkaska

10. 112 South Cedar Street

Kingsley

11. 111 North Brownson Avenue

Leland

12. 115 North Main Street

Ludington

13. 101 East Court Street
14. 3965 West US Highway 10

Manistee

15. 325 First Street

Petoskey

16. 300 Howard Street
17. 919 Spring Street

Suttons Bay

18. 105 West Fourth Street
19. 212 North Saint Joseph Street

Traverse City

20. 625 South Garfield Traverse City
21. 107 East Front Street
22. 613 West Fourteenth St.
23. 4205 US Highway 31 South
24. 203 Union Street
25. 13936 South West Bay Shore Drive

Order Issued Under Bank Merger Act

ANB Bank

Denver, Colorado

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2014–14 (September 11, 2014)

ANB Bank ("ANB"), Denver, Colorado,[1] a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to merge with Capital West Bank ("CW Bank"), Laramie, Wyoming.[3] In addition, ANB has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate branches at the locations of CW Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

ANB, with total assets of approximately $2.1 billion, operates in Colorado, Wyoming, Kansas, and Missouri. ANB is the 17th largest insured depository institution in Colorado, controlling deposits of approximately $1.2 billion, which represent 1.1 percent of the total amount of deposits in insured depository institutions in the state ("state deposits").[6] ANB is the 11th largest insured depository institution in Wyoming, controlling deposits of approximately $359.8 million, which represent 2.7 percent of the total amount of state deposits.

CW Bank, with total assets of approximately $162 million, operates in Colorado and Wyoming. CW Bank is the 137th largest insured depository institution in Colorado, controlling deposits of approximately $18.6 million, which represent less than 1 percent of the total amount of state deposits. CW Bank is the 25th largest insured depository institution in Wyoming, controlling deposits of approximately $122.8 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, ANB would remain the 17th largest insured depository institution in Colorado, controlling deposits of approximately $1.2 billion, representing 1.1 percent of the total amount of state deposits. ANB would become the eighth largest insured depository institution in Wyoming, controlling deposits of approximately $482.6 million, representing 3.6 percent of the total amount of state deposits.

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1 ANB is a subsidiary of Sturm Financial Group, Inc. ("SFG"), a bank holding company, also of Denver, Colorado.

2 12 U.S.C. § 1828(c).

3 CW Bank is a subsidiary of First Capital West Bankshares, Inc. ("CW Bankshares"), a bank holding company, also of Laramie, Wyoming.

4 12 U.S.C. § 321. These branches are listed in the appendix.

5 12 CFR 262.3(b).

6 Asset data are as of June 30, 2014. Deposit data and state rankings are as of June 30, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

Interstate Analysis

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act") authorizes a bank to merge with a bank located in another state under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.[7] For purposes of the Riegle-Neal Act, the home state of ANB is Colorado, and the home state of CW Bank is Wyoming.[8] ANB has provided a copy of its Bank Merger Act application to the relevant state agency and has complied with state law. The proposal also complies with all other requirements of the Riegle-Neal Act.[9] Accordingly, the Riegle-Neal Act does not prohibit this interstate branch acquisition.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[10] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[11]

ANB and CW Bank compete directly in the Wyoming banking markets of Cheyenne and Laramie.[12] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that ANB would control,[13] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[14] and other characteristics of the markets.

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7 12 U.S.C. § 1831u.

8 *See* 12 U.S.C. § 1831u(a)(4) and (g)(4).

9 *See* 12 U.S.C. § 1831u. As required by the Riegle-Neal Act, ANB and CW Bank are both at least adequately capitalized (as defined in 12 U.S.C. § 1831o(b)(1)(B)), and the resulting bank would be well capitalized and well managed on consummation of the transaction. The Colorado Division of Banking has indicated that this transaction would comply with applicable Colorado law, and the Wyoming Division of Banking has indicated that this transaction would comply with applicable Wyoming law. See WYO. STAT. 13-2-804, 805. On consummation of the proposal, ANB would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Wyoming. *See* 12 U.S.C. § 1831u(b)(2)(A) and (B)(ii). All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

10 12 U.S.C§ 1828(c)(5)(A).

11 12 U.S.C. § 1828(c)(5)(B).

12 The Cheyenne banking market is defined as the Cheyenne Ranally Metropolitan Area ("RMA") and the non-RMA portion of Laramie County, both in Wyoming. The Laramie banking market is defined as Albany County, Wyoming.

13 Deposit and market share data are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's summary of deposits data as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

14 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a

In the Cheyenne banking market, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines. On consummation of the proposal, the Cheyenne banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in the banking market.[15]

In the Laramie banking market, ANB is the third largest insured depository institution, controlling deposits of approximately $45.3 million, which represent approximately 8.6 percent of market deposits. CW Bank is the second largest insured depository institution in the market, controlling deposits of approximately $73.3 million, which represent approximately 13.9 percent of market deposits. On consummation of the proposal, ANB would become the second largest depository institution in the Laramie banking market, controlling deposits of approximately $118.6 million. When the initial competitive screening data are used, the combined entity would represent 22.4 percent of market deposits and the HHI would increase by 238 points, from 3086 to 3324.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.[16] In particular, the Board considered the competitive influence of three active community credit unions in the Laramie banking market. All three credit unions offer a wide variety of products, operate at least one street-level branch, and have either open membership or broad membership criteria that include most of the residents in the Laramie banking market.[17] These credit unions control approximately $283.8 million in market deposits, which represent approximately 21 percent of market deposits on a 50 percent weighted basis. With these deposits weighted at 50 percent, after consummation ANB would control approximately 17.7 percent of market deposits, and the HHI would increase by 147 points, from 2186 to 2333. Furthermore, on consummation a total of 10 competitors would continue to operate in the market, including the three credit unions and the market's largest competitor, First Interstate Bank, with approximately 40.7 percent of market deposits.[18] The Board has concluded that these factors mitigate the potential effects of the proposal.

The DOJ conducted a review of the competitive effects of the proposal and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[15] In the Cheyenne banking market, ANB operates the second largest insured depository institution, controlling deposits of approximately $185.6 million, which represent 13.6 percent of market deposits. CW Bank operates the ninth largest insured depository institution, controlling deposits of approximately $49.5 million, which represent 3.6 percent of market deposits. After consummation, ANB would remain the second largest insured depository institution in the market, controlling deposits of approximately $235.2 million, which represent 17.2 percent of market deposits. The HHI would increase by 99 points, from 1082 to 1181. On consummation of the proposal, a total of 19 competitors would remain in the market.

[16] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market. *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

[17] The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. *See, e.g., River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *The Hancock Holding Company*, 97*Federal Reserve Bulletin* 49 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin*C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007).

[18] This percentage reflects the inclusion of the three credit unions on a 50 percent weighted basis.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Cheyenne or Laramie banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

ANB is well capitalized and would remain so on consummation of the proposal. CW Bank would be merged into ANB.[19] The asset quality, earnings, and liquidity of ANB are consistent with approval, and ANB appears to have adequate resources to absorb the costs of the proposal and to complete the integration of ANB's and CW Bank's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of ANB and has reviewed the examination records of ANB, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and ANB's record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered ANB's plans for implementing the proposal. ANB is considered to be well managed, and its board of directors and senior management have substantial banking experience. ANB would operate the acquired branches of CW Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, ANB's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of ANB, as well as the records of effectiveness of ANB and CW Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvest-

[19] Simultaneously with the bank merger, SFG and CW Bankshares would merge. The transaction is structured as a cash purchase of shares, which SFG will fund from cash on hand. With respect to the merger of the bank holding companies, SFG requested a waiver of the application requirement under section 3 of the Bank Holding Company Act of 1956, as amended, pursuant to section 225.12(d)(2) of the Board's Regulation Y. The Board has approved the waiver request.

ment Act ("CRA").[20] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank merger proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of ANB and CW Bank, information provided by ANB, and confidential supervisory information.

A. Record of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[21] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[22] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of ANB. ANB received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City ("Reserve Bank"), in January 2013 ("ANB Evaluation"). ANB received "low satisfactory" ratings on the Lending Test and the Service Test, and an "outstanding" rating on the Investment Test.[23]

In evaluating the Lending Test, examiners found that the bank's lending activities showed adequate responsiveness to the credit needs in its assessment areas, because the bank originated a high percentage of loans inside its assessment areas. Examiners noted that geographic and borrower distribution reflected a good penetration in its assessment areas and an adequate penetration among borrowers of different income levels and businesses and farms of different revenue sizes. Examiners noted that ANB's level of community development lending was adequate, with a total of seven loans originated, totaling approximately $2.4 million.

In evaluating the Investment Test, examiners believed that the amount of investments and donations made in Colorado was excellent and the amount made in Wyoming was adequate. In particular, examiners found that ANB was instrumental in providing investment funds to revitalize and stabilize moderate-income tracts located in downtown Grand Junction, Colorado.

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[20] 12 U.S.C. § 2901 *et seq*.

[21] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[22] 12 U.S.C. § 2906.

[23] The evaluation period was from July 1, 2010, through December 31, 2011. The ANB Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation included full-scope reviews of the Denver-Aurora-Broomfield, Colorado Metropolitan Statistical Area ("MSA"); the Colorado Springs, Colorado MSA; and the Cheyenne, Wyoming MSA. Limited-scope reviews were performed in the nonmetropolitan Mountain Assessment Area ("AA") (including Eagle, Garfield, and Pitkin counties, all in Colorado); the Grand Junction, Colorado MSA; the Boulder, Colorado MSA; the San Miguel County, Colorado AA; the Northern Wyoming AA; the Casper, Wyoming MSA; and the Albany County, Wyoming AA. Examiners placed greater weight on the bank's performance in Colorado because of the concentration of the bank's loans, deposits, and branch locations in that state.

In evaluating the Service Test, examiners found that ANB provided an adequate level of community development services in its assessment areas. The bank's branch locations and alternative delivery systems, such as ATMs and drive-through banking facilities, were accessible to the bank's various geographies and to individuals of different income levels in each assessment area. The bank's services and hours did not vary in a way that inconvenienced any of the needs in its assessment areas, particularly of LMI individuals and in its various geographies.

CRA Performance of CW Bank. CW Bank received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, in May 2012 ("CW Bank Evaluation").[24] Examiners found that CW Bank's loan-to-deposit ratio was reasonable given the bank's performance context and strong competition in its assessment areas and that a substantial majority of its loans were inside its assessment areas. Examiners concluded that the bank's lending within its assessment areas exceeded the standard for satisfactory performance and was reasonable.

B. Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

ANB represents that the proposed transaction would provide CW Bank's customers with a broader network of branches, enhanced products and services, and expanded financial resources and lending capacity. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of strategic planning, data processing, and marketing. ANB plans to close CW Bank's branch in Laramie, Wyoming, and consolidate CW Bank's branch in Cheyenne, Wyoming, into ANB's branch located less than 1,000 feet away.[25] CW Bank customers will continue to have access to banking services in each of the communities currently served by CW Bank.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by ANB, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of ANB and CW Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

[24] The CW Bank Evaluation was conducted using Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial business and residential real estate lending activity from July 1, 2007, through March 26, 2012. The CW Bank Evaluation reviewed the bank's Albany County, Wyoming AA; the Cheyenne, Wyoming MSA; and the Fort Collins-Loveland, Colorado MSA.

[25] ANB represents that the closing of the Laramie, Wyoming branch will be completed in accordance with the bank's branch closing policy and applicable laws and regulations.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, ANB would have approximately $2.2 billion in consolidated assets and would be outside the top 100 largest financial institutions in the United States as measured by assets. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. ANB would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, ANB's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.1 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

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[26] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C.§ 1828(c)(5).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Establishment of Branches

ANB has applied under section 9 of the FRA to establish branches at the current locations of CW Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[29] Specifically, the Board has considered ANB's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by ANB with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Acquisition of CW Bank may not be consummated before the 15th calendar day after the effective date of this order or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 11, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Established by ANB 2015 Central Avenue

Cheyenne, Wyoming 82001

2108 Milestone Drive

Fort Collins, Colorado 80525

2020 Grand Avenue

Laramie, Wyoming 82070

[29] 12 U.S.C. § 322; 12 CFR 208.6.

Order Issued Under Federal Reserve Act

Regions Bank
Birmingham, Alabama

Order Approving Establishment of a Branch
FRB Order No. 2014–15 (September 26, 2014)

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("Act")[1] and the Board's Regulation H[2] to establish a branch at the intersection of West Lake Houston Parkway and Magnolia Cove (Kings Harbor Development) in Kingwood, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[3] The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Regions Bank is the 17th largest depository institution in Texas with 81 branches, controlling approximately $3.7 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.[4] Regions Bank's main office is in Birmingham, and it operates 238 additional branches in Alabama. Regions Bank operates a total of 1,673 branches in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Under the Board's Regulation H, which implements section 9 of the Act,[5] the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[6] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[7]

The Board has considered the application in light of these factors and public comment received on the proposal. A commenter objected to the proposal and alleged that Regions Bank discriminates against African Americans and redlines African American neighbor-

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1 12 U.S.C. § 321 *et seq*.

2 12 CFR Pt. 208.

3 12 CFR 262.3(b).

4 State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

5 12 CFR 208.6(b).

6 12 U.S.C. § 2901 *et seq*.

7 Section 9 of the Act, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(e), provides that a state member bank may not establish a branch in any state other than the bank's home state or a state in which the bank already operates a branch, except under certain specified conditions. *See* 12 U.S.C. § 1831u(d)(2) and Tex. Fin. Code. Ann. § 203.006 (stating that an out-of-state bank that has established a branch in Texas may establish additional branches in the state to the same extent that a Texas state bank may establish a branch in Texas). Regions Bank currently operates branches in Texas. *See Regions Financial Corporation*, 84 *Federal Reserve Bulletin* 558 (1998).

hoods, particularly in the Houston, Texas Metropolitan Statistical Area ("Houston MSA"), with respect to its branching, marketing, and lending activities.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Regions Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Regions Bank, and the comment received. Regions Bank is well capitalized and would remain so on consummation of the proposal. After considering all the facts of record, including Regions Bank's proposed investment in the Kingwood branch, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Regions Bank are consistent with approval of the proposal.

In considering Regions Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Regions Bank and the bank's record of compliance with applicable banking law, including anti-money-laundering laws. Regions Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Regions Bank's management, as well as the records of effectiveness of Regions Bank in combatting money laundering activities, are consistent with approval of the proposal.[8]

Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received and the bank's performance under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[9] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[10]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Regions Bank, data reported by Regions Bank under the Home Mortgage Disclosure Act ("HMDA"),[11] other information provided by Regions Bank, confidential supervisory information, and the public comment received on the proposal.

A. Record of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of

[8] The Board and the Alabama State Banking Department have entered into a Consent Order with Regions Bank related to misconduct involving the process followed by the bank in the first quarter of 2009 for identifying and reporting non- accrual loans and the bank's response to a targeted examination of these processes undertaken by the Board and the Alabama State Banking Department in 2009. The Consent Order acknowledges that Regions Bank has made improvements in developing its risk-management program and its internal controls. The Consent Order requires Regions Bank to continue to improve its relevant policies, practices, controls, and procedures. In considering this proposal, the Board took account of the current and continuing progress made by Regions Bank in complying with the provisions of the Consent Order.

[9] 12 U.S.C. § 2901(b).

[10] 12 U.S.C. § 2903.

[11] 12 U.S.C. § 2801 *et seq*.

the relevant institutions.[12] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

Regions Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank") in September 2012 ("Regions Bank Evaluation"). Regions Bank received "high satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.[14] In addition to the overall "satisfactory" rating that Regions Bank received, the bank received separate overall "outstanding" or "satisfactory" ratings in the overwhelming majority of the multistate metropolitan areas and states reviewed.[15] In Texas, Regions Bank received an overall "satisfactory" rating, "low satisfactory" rating for the Lending Test, an "outstanding" rating for the Investment Test, and a "low satisfactory" rating for the Service Test.

As described in the Regions Bank Evaluation, Reserve Bank examiners found that the bank's overall lending activity in the assessment areas was good and reflected good responsiveness to the assessment areas' credit needs. Examiners noted that the bank had a good record of lending to borrowers of different income levels, and that its distribution of loans to businesses and farms of different sizes was good. Further, examiners found that Region Bank's overall geographic distribution of loans was good and that the bank's geographic distribution of home mortgage and small business lending in LMI geographies was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

Examiners noted that Regions Bank made a relatively high level of community development loans. During the evaluation period, the bank originated or renewed 680 community development loans. These loans were for a variety of purposes, including the financing of affordable housing for LMI individuals, community services targeted to LMI populations, promotion of economic development by financing small businesses, and revitalization of targeted communities located in LMI tracts or other qualified geographies.

In evaluating Regions Bank's performance under the Investment Test, examiners highlighted Regions Bank's qualified investments, investments in affordable housing, and grants and donations in the assessment areas. During the evaluation period, Regions Bank supported 662 qualified investments within its assessment areas. Examiners highlighted that Regions Bank is a leader in financing affordable multifamily housing through the Low

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[12] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[13] 12 U.S.C. § 2906.

[14] The Regions Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, through December 31, 2011, except for community development loans, which had an evaluation period from July 1, 2010, through June 30, 2012. The evaluation period for both the Investment Test and the Service Test was from July 1, 2010, through June 30, 2012.

[15] The Regions Bank Evaluation included a review of 155 of Regions Bank's assessment areas, including a full-scope review of 40 of these assessment areas. The Regions Bank Evaluation included a full-scope review of at least one assessment area within each state where Regions Bank had an office and of multistate metropolitan areas where Regions Bank operated branches in at least two states. The states reviewed were Alabama, Arkansas, Florida,Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas; and the multistate metropolitan areas reviewed were the Augusta (Georgia-South Carolina), Chattanooga (Tennessee-Georgia), Columbus (Georgia-Alabama), Kingsport (Tennessee-Virginia), Memphis (Tennessee-Mississippi-Arkansas), St.Louis (Illinois-Missouri), and Texarkana (Arizona-Texas)metropolitan areas.

Income Housing Tax Credits ("LIHTCs") program. In addition, Regions made qualified grants and donations to community development organizations. The majority of the donations provided support for organizations engaged in providing community services to LMI individuals or communities and for economic development.

In evaluating Regions Bank's performance under the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Regions Bank's opening and closing of branches had generally not adversely affected the accessibility of its banking services to LMI geographies. Further, examiners highlighted that Regions Bank provided a good level of community development services throughout its assessment areas.

Regions Bank's Efforts Since the 2012 CRA Evaluation. Regions Bank represents that since the Regions Bank Evaluation, it has continued its community development activities, including lending, investments, contributions, and services, in its combined assessment areas and in the Houston MSA assessment area. For instance, the bank represents that it has made community development loans in the Houston MSA assessment area that provided funding for affordable multifamily housing, charter school construction in underserved communities, and other small business ventures accessible to underserved communities. According to Regions Bank, it also offered a suite of financial management products and services targeted to unbanked and under- banked populations, including check cashing services, money transfer and expedited bill pay services, money orders, prepaid debit cards, savings accounts, mobile deposit services, small-dollar secured loans, and free online financial education.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the record of Regions Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Regions Bank Evaluation, assessed Regions Bank's HMDA data, and considered the comment on the application as well as other agencies' views on Regions Bank's record of performance under fair lending laws. The Board also considered Regions Bank's fair lending policies and procedures.

HMDA Data, and Fair Lending Analysis. A commenter alleged that Regions Bank discriminates against African American individuals, African American-owned businesses, and African American neighborhoods in the Houston MSA, and that the bank has engaged in redlining with respect to its provision of banking products and services in the Houston MSA.

The Board analyzed Regions Bank's HMDA data from 2012 and 2013 for its combined assessment areas and its assessment area in the Houston MSA, which includes the specific market areas addressed in the public comment, related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns. The Board also analyzed the subset of those data related specifically to the loan products that were the subject of the public comment received on the proposal, home mortgage loans, home improvement loans, and small business loans. Within those data sets, the Board focused its review on data related to home mortgage loans, home improvement loans, and small business loans made or denied to borrowers and locations identified in the public comment, i.e., African American individuals, African American-owned businesses, and African Americans neighborhoods.

The Board is concerned when HMDA data for an institution indicate lending disparities. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[16] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The data for 2012 and 2013 reveal that, in its combined assessment areas, Regions Bank's percentage of mortgage originations to African Americans and to borrowers in LMI census tracts was more favorable than that of the aggregate of all lenders. However, Regions Bank lagged in the percentage of its originations to borrowers in minority census tracts in its combined assessment areas. In the Houston MSA, Regions Bank's percentage of mortgage originations to African Americans, to borrowers in minority census tracts, and to borrowers in LMI census tracts was more favorable than that of the aggregate of all lenders during this period.

For home improvement loans in its combined assessment areas, Regions Bank exceeded the aggregate in its lending to African Americans, to borrowers in minority census tracts, and to borrowers in LMI census tracts in 2012 and 2013. For home improvement loans in its Houston MSA assessment area in 2012, Regions Bank was consistent with the aggregate in its percentage of loans to African Americans and to borrowers in LMI census tracts, but exceeded the aggregate in its percentage of such loans to borrowers in minority census tracts. In 2013, the bank exceeded the aggregate for loans to African Americans in its Houston MSA assessment area, but lagged the aggregate for loans to borrowers in minority census tracts and to borrowers in LMI census tracts.

The Board also reviewed Regions Bank's small business lending in its combined assessment areas and in the Houston MSA assessment area for 2012 and 2013. The data reveal that the bank made small business loans available in areas in which the majority of residents are African American. Regions Bank's small business loan originations in minority census tracts and LMI census tracts in the bank's combined assessment areas was approximately comparable to the aggregate in 2012 and 2013. In 2013, Regions Bank lagged the aggregate in small business lending in minority census tracts in the Houston MSA assessment area, but exceeded the aggregate in small business lending in LMI census tracts.

In addition, the Board performed a redlining analysis of Regions Bank's lending data, geographic distribution of branches, and marketing and outreach efforts. The Board analyzed Regions Bank's lending in minority census tracts and in census tracts in which African Americans represented the majority of the population. The data do not reveal that Regions Bank was redlining either minority census tracts or predominately African American census tracts in its lending activity.

The percentage of Regions Bank branches in LMI census tracts in the bank's combined assessment areas is slightly lower than the percentage of LMI census tracts in the bank's combined assessment areas. In addition, Regions Bank's percentage of branches in LMI census tracts approximates those of its peers. Because there is substantial overlap

[16] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

between minority census tracts and LMI census tracts in the Houston MSA assessment area, Regions Bank's branches located in LMI census tracts are available to serve census tracts with concentrations of minority residents. Further, the Board reviewed a sample of Regions Bank's advertising and marketing materials and found that the bank includes marketing and outreach activities targeted at a variety of minority and LMI populations. In its review of the bank's marketing activities and community outreach, the Board did not find any evidence that the bank excludes African Americans or any other minorities.

Region Bank's Fair Lending Program. Regions Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The bank has a fair lending department that includes dedicated managers for each of the bank's lending business groups and provides oversight by conducting fair lending risk assessments and monitoring and testing. In addition, Regions Bank requires mandatory annual fair lending training for applicable staff and has monthly fair lending training for new staff involved in home mortgage lending. Regions Bank also has a centralized consumer complaints program that it monitors to ensure compliance with fair lending regulations.

Conclusion on Convenience and Needs Considerations

Regions Bank represented that the Kingwood branch will benefit depositors by improving customer convenience, creating efficiency, and expanding the availability of products and services to banking customers. Based on all the facts of record, including consultations with other agencies, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[17] The Board's approval is specifically conditioned on Regions Bank Regions Bank's compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective September 26, 2014.

[17] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Voting for this action: Chair Yellen, and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Federal Reserve
BULLETIN

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