

94-9787

FEDERAL RESERVE SYSTEM

BankAmerica Corporation
San Francisco, California

Order Approving Acquisition of a Bank

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BankAmerica Corporation, San Francisco, California

5/31/94

("BankAmerica"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has applied under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire Liberty Bank, Honolulu, Hawaii ("Liberty"), through a merger of Liberty into Bank of America, FSB, Portland, Oregon ("Bank of America FSB"), a wholly owned subsidiary of BankAmerica, with Bank of America FSB surviving the merger.

Notice of the application, affording interested persons an opportunity to submit comments, has been published (58 Federal Register 67,411 (1993)). The time for filing comments has expired, and the Board has considered all comments received in light of the factors set forth in section 3(c) of the BHC Act.

BankAmerica, with total consolidated assets of approximately \$197.2 billion,^{1/} is the second largest commercial banking organization in the United States and controls banking or savings association subsidiaries in Alaska, Arizona, California, Idaho, Nevada, New Mexico, New York, Oregon, Texas, and Washington. BankAmerica is the third largest commercial banking organization in Hawaii, controlling deposits of \$1.6 billion, representing approximately 11.4 percent of total deposits in

^{1/} Asset data are as of March 31, 1994.

commercial banks in the state.^{2/} Liberty is the seventh largest commercial banking organization in Hawaii, controlling deposits of \$265.8 million, representing 1.9 percent of total deposits in commercial banks in the state. Upon consummation of this proposal, BankAmerica would remain the third largest commercial banking organization in Hawaii, controlling deposits of \$1.8 billion, representing approximately 13.3 percent of total deposits in commercial banks in the state.

Douglas Amendment Analysis

Section 3(d) of the BHC Act ("Douglas Amendment") prohibits the Board from approving an application by a bank holding company to acquire control of a bank located outside of the state in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, "unless the acquisition of . . . a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication."^{3/} For purposes of the Douglas Amendment, on the relevant date, the banking operations of BankAmerica were principally conducted in California. Thus, in reviewing whether BankAmerica may acquire a bank in a state other than California,

^{2/} All deposit data are as of June 30, 1993.

^{3/} 12 U.S.C. § 1842(d). Under the Douglas Amendment, the operations of a bank holding company are considered principally conducted in the state in which the total deposits of its banking subsidiaries were largest on the date in question. The operations of BankAmerica were principally conducted in California on April 1, 1969, the date on which it became a bank holding company.

the Board must consider whether the laws of the state in which the bank is located specifically authorize the acquisition.

BankAmerica would not operate Liberty as a bank upon consummation of this transaction. Instead, BankAmerica would acquire Liberty by merging Liberty into Bank of America FSB, its existing thrift operating in Hawaii.^{4/} Hawaiian law provides that a federal thrift whose operations are conducted principally in Hawaii may, with the approval of the Hawaii Commissioner of financial institutions (the "Commissioner"), merge with a Hawaii financial institution if the merger is permitted by federal law.^{5/} Liberty is a Hawaii financial institution,^{6/} and Bank of

^{4/} Bank of America FSB is a federal savings association organized under the provisions of the Home Owners' Loan Act (12 U.S.C. § 1461 *et seq.*), and it operates 31 full-service branch offices in Hawaii. BankAmerica acquired Bank of America FSB (successor to The Benjamin Franklin Federal Savings and Loan Association) in 1990 in an assisted emergency transaction pursuant to section 13(k) of the Federal Deposit Insurance Act (the "FDI Act"). 12 U.S.C. § 1823(k). In approving that transaction, the Office of Thrift Supervision ("OTS") granted Bank of America FSB the authority to branch into three states, one of which was Hawaii, for as long as the bank maintained total deposits of at least \$1 billion. See OTS Order No. 90-1659 (Sept. 7, 1990) (the "OTS Order"). Bank of America FSB exercised that authority in 1992 by acquiring the branch offices of HonFed Bank, a federal savings bank in Honolulu, Hawaii ("HonFed"). The Board concluded that the acquisition of HonFed by Bank of America FSB was permitted under the branching authorization for federal savings associations and was consistent with the regulatory framework of savings association acquisitions under the BHC Act. See *BankAmerica Corporation*, 78 Federal Reserve Bulletin 707 (1992). As noted above, Bank of America FSB currently meets the total deposit requirements in the OTS Order.

^{5/} Haw. Rev. Stat. § 412:3-609(c).

America FSB's operations are principally conducted in Hawaii for purposes of this statute.^{2/} Furthermore, the merger is permitted under federal law because the Home Owners' Loan Act permits Bank of America FSB, as a federal savings bank, to merge with Liberty, a depository institution insured by the Federal Deposit Insurance Corporation (the "FDIC"), upon obtaining prior approval of the OTS.^{3/}

The Commissioner has indicated that this proposal is authorized by section 412:3-609(c) of Hawaii's banking law.^{4/} In light of all the facts of record, the Board has determined that its approval of this proposal is not

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^{6/} Liberty is a Hawaii financial institution since it is chartered under Hawaiian law and authorized to accept deposits, make loans, or engage in the business of a trust company. Haw. Rev. Stat. § 412:1-109.

^{7/} The term "operations are principally conducted" is defined under Hawaiian law to mean the state where total deposits are largest. Haw. Rev. Stat. § 412:1-109. The largest amount of deposits of Bank of America FSB is located in Hawaii, and the Commissioner has determined that this "principally conducted" provision of Haw. Rev. Stat. § 412:3-609(c) has been satisfied.

^{8/} 12 U.S.C. § 1467a(s). In addition, Bank of America FSB may establish additional branches in Hawaii with the prior approval of the OTS. See the OTS Order. See also 12 C.F.R. 556.5.

^{9/} Both sections 412:3-609(c) and (d) of Hawaii's banking law permit a merger of a Hawaii financial institution with a federal savings bank with the resulting institution to be operated as a thrift. Furthermore, section 412:3-609(d) permits financial institutions chartered or licensed under the laws of another state, or whose operations are conducted principally in any state other than Hawaii, to merge with a Hawaii financial institution if the resulting institution conducts its operations principally in Hawaii.

prohibited by the Douglas Amendment.^{10/} Approval of this proposal is specifically conditioned upon BankAmerica and Bank of America FSB receiving all required state regulatory approvals and the approval of the OTS under section 18(c) of the FDI Act (12 U.S.C. § 1828(c)).

Competitive Considerations

The BHC Act provides that the Board may not approve a proposal submitted under section 3 of the BHC Act if the proposal would result in a monopoly or the effect of the proposal would be substantially to lessen competition in any relevant market. The Board has received comments opposing the proposal from organizations in Hawaii (the "Hawaii Protestants") maintaining that approval of the transaction would have a substantially adverse effect on the competitive environment for mortgage lending services in Hawaii,^{11/} and that post-merger increases in the

^{10/} If the institution resulting from the merger were to be a bank rather than a thrift, it does not appear that this proposal would be permitted under the Douglas Amendment.

^{11/} The Board has long held that the product market for evaluating bank mergers and acquisitions is the cluster of products and services offered by banking organizations, and the Supreme Court has emphasized that it is this cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966 (1993) ("First Hawaiian Order") and authorities cited therein; see also United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963). The Board also has found that the ability of thrifts and banks to offer their products and services in combination distinguishes them from other institutions. First Hawaiian Order, p. 967. After considering all the facts of record in light of relevant Board and judicial precedents, the Board believes that the appropriate product market in this case is the cluster of banking products and services.

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Herfindahl-Hirschman Index ("HHI") and the lack of mitigating factors indicate that the proposed merger would be anticompetitive.

BankAmerica and Liberty compete directly in the Honolulu banking market.^{12/} BankAmerica is the third largest depository institution^{13/} in this market, with deposits of \$1.5 billion, representing 11.6 percent of total deposits in depository institutions in the market ("market deposits"). Liberty is the seventh largest depository institution in the Honolulu banking market, with deposits of \$265.8 million, representing 2.1 percent of market deposits. Upon consummation of this proposal, BankAmerica would remain the third largest depository institution in the Honolulu banking market,

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Even assuming that mortgage lending constitutes a separate product market as maintained by the Hawaii Protestants, the record does not demonstrate that this proposal would result in significantly adverse competitive effects in that product market. The Board notes that a number of other institutions, including finance companies, offer mortgage products in Hawaiian banking markets. See First Hawaiian Order, p. 967.

^{12/} The Honolulu banking market is approximated by Honolulu County, Hawaii, which is coextensive with the Island of Oahu.

^{13/} In this context, depository institutions include commercial banks, savings banks and savings associations. Market share data 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, major competitors of commercial banks. See WM Bancorp, 76 Federal Reserve Bulletin 708 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board has regularly included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991). Because Bank of America FSB is controlled by a commercial banking organization, its deposits are included at 100 percent in the calculation of market share.

controlling deposits of \$1.7 billion, representing 13.7 percent of market deposits. BankAmerica's market share would increase from 11.6 percent to 13.7 percent, and the HHI for the market would increase by 49 points to 2293.^{14/} There are a number of depository institution competitors in the Honolulu banking market, and ten depository institutions will remain in this market following consummation of this proposal.

The Board also has considered the views of the Justice Department on the likely competitive effects of this proposal. The Justice Department has advised the Board that BankAmerica's acquisition of Liberty is not likely to have a significantly adverse effect on competition.

Based on all the facts of record, including the comments submitted by the Hawaii Protestants and BankAmerica's response to those comments, the Board's previous consideration of the Honolulu banking market, and the relatively small increase in market share and market concentration in this market as measured by the HHI, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition in the Honolulu banking market.

^{14/} Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is above 1800 is considered highly concentrated. In such markets, the Justice Department is likely to challenge a merger that increases the HHI by more than 50 points. The Justice Department has informed the Board that a bank merger or acquisition generally will 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. The Justice Department has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial institutions.

Convenience and Needs Considerations

In acting on an application to acquire a depository institution as proposed in these applications, 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 Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) ("CRA"). 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 the safe and sound operation of such institutions. To accomplish this end, the CRA requires the appropriate federal supervisory authority to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution," and to take that record into account in its evaluation of this application.^{15/}

The Board has received comments from the Hawaii Protestants and an individual in California ("California Protestant") (the California Protestant and the Hawaii Protestants to be referred to collectively as "Protestants") critical of the efforts of BankAmerica, its subsidiary banks, and Liberty to meet the credit and banking needs of their communities. The Hawaii Protestants allege that Bank of America FSB has not generally met the convenience and needs of minority and low- and moderate-income individuals, and in particular, illegally discriminates in its efforts to meet the credit needs of native Hawaiians and Filipinos residing in its banking

^{15/} 12 U.S.C. § 2903.

communities.^{16/} The California Protestant alleges generally that Bank of America National Trust and Savings Association ("Bank of America - California"), BankAmerica's subsidiary bank operating in California, has not met the banking and credit needs of minorities, and in particular, Hispanics, and low- and moderate-income individuals in five counties in California.

In its consideration of the convenience and needs factor, the Board has carefully reviewed the entire record of CRA performance of BankAmerica, its subsidiary banks, and Liberty; all comments received on this application, and BankAmerica's response to those comments; and all the other relevant facts of record, in light of the CRA, the Board's regulations, and the Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act ("Agency CRA Statement").^{17/}

The Board also has evaluated the CRA performance record of Bank of America FSB, taking into consideration the fact that BankAmerica did not commence its activities in Hawaii until August 1992, and that the bank's overall volume of lending decreased in 1993 due, in part, to BankAmerica's reorganization of HonFed's operations and loan programs.

^{16/} The Hawaii Protestants maintain that data required to be filed by Bank of America FSB under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) ("HMDA") indicate that the bank's lending policies result in discriminatory treatment of individuals of Hawaiian and Filipino ancestry, and that the outreach efforts of both Bank of America FSB and Liberty are targeted primarily to nonminorities.

^{17/} 54 Federal Register 13,742 (1989).

Record of CRA Performance

A. CRA Performance Examinations

The Agency CRA Statement provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record, and that these reports will be given great weight in the applications process.^{18/} In this case, the Board notes that all of BankAmerica's subsidiary banks evaluated for CRA performance received "outstanding" or "satisfactory" ratings from their primary regulators during their most recent examinations. Bank of America FSB received a "satisfactory" rating from its primary federal regulator, the OTS, at its most recent examination for CRA performance as of September 7, 1993, and Bank of America - California received an "outstanding" rating from its primary federal regulator, the Office of the Comptroller of the Currency (the "OCC"), at its most recent examination for CRA performance as of January 28, 1994. Liberty received a "satisfactory" rating from its primary federal regulator, the FDIC, at its most recent examination for CRA performance as of May 27, 1992.

B. CRA Record of Performance of Bank of America FSB

HMDA Data. The Hawaii Protestants allege that 1992 HMDA data filed by Bank of America FSB indicate that the bank's lending policies resulted in discriminatory treatment of individuals of Hawaiian and Filipino ancestry.^{19/} The Board has carefully reviewed these comments and

^{18/} Id. at 13,745.

^{19/} The Hawaii Protestants also allege that Bank of America FSB has "redlined" the islands of Molokai and Lanai, which have large populations of
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the 1992 data in light of the preliminary 1993 HMDA data for the bank which represents the first full year of data accumulated under BankAmerica's ownership of the former HonFed. These data indicate that the volume of loan applications received from individuals within the Asian/Pacific Islander group^{20/} was proportional to that group's representation in the community, and that denial rates for that group were lower than denial rates for white applicants.^{21/}

The Board also notes, however, that the 1993 preliminary data and the OTS's most recent CRA performance examination indicate that Bank of America FSB had a low level of lending to African-Americans and Hispanic applicants, and to individuals in low- and moderate-income areas.^{22/} The Board is concerned when an institution's record indicates

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Filipinos and native Hawaiians, by excluding them from the bank's delineated lending area. The OTS reviewed these exclusions in its most recent examination and determined that they were reasonable, noting that the primary owner of land on Lanai is converting the land to an affluent resort area, and that Molokai has a limited population to sustain a market presence.

^{20/} Under the HMDA, separate reporting of loans made to native Hawaiians or Filipinos is not required, because these ethnic groups are included in the category of Asian/Pacific Islander for reporting purposes.

^{21/} In 1993, the bank received 62 percent of HMDA-related loan applications from Asian/Pacific Islanders (60 percent of the population), with 65 percent of the banks' HMDA-related loans originated to this group. The denial rate for this group was 17 percent, and the denial rate for white applicants was 19 percent.

^{22/} As previously noted, the bank's overall loan volume decreased
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disparities in lending to minority or low- and moderate-income applicants, and believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community. The Board also recognizes that HMDA data have limitations that make the data an inadequate basis, absent other information, for conclusively determining that an institution has engaged in illegal discrimination in making lending decisions.

The Board notes that the most recent examination of Bank of America FSB found no evidence of illegal discrimination or policies that discourage applicants from pursuing credit applications. Examiners did find numerous technical violations to the recordkeeping and notice requirements of fair lending regulations, many of which, according to the OTS, resulted from staffing and control issues that were in the process of being addressed through a new compliance program at the bank.^{27/} This program includes staff training and periodic reviews of fair lending issues. In addition, BankAmerica intends to perform an on-site review of the bank's CRA

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significantly in 1993 while BankAmerica was revising HonFed's operations and loan programs. OTS examiners found that this decrease cut across all census tracts and involved all types of loans, and concluded that this was an acceptable short-term strategy to strengthen the bank's long-term ability to assist in addressing unmet credit needs.

^{27/} Examiners did not find that these violations had a disproportionate effect on members of protected groups.

program within 60 days of the merger, and to monitor responses by the bank to any concerns raised in OTS's recent examination.^{24/}

Bank of America FSB also has initiated steps to improve its lending record to minority and low- and moderate-income borrowers. For example, the bank has implemented a program whereby all residential mortgage applications that are recommended for denial receive a second review to insure that the recommendation is appropriate.^{25/} Furthermore, the bank has established employee incentive programs to encourage the origination of loans in low- and moderate-income areas and to low- and moderate-income individuals.

Loan Programs. Bank of America FSB intends to expand its presence in all markets in Hawaii, and has introduced two new loan products to assist in meeting the credit needs of the bank's community, including low- and moderate-income individuals. In May 1993, the bank introduced its "Neighborhood Advantage" program, which offers mortgage loans with low down payments and flexible underwriting criteria.^{26/} The

^{24/} In this regard, the OTS examiners have questioned whether a credit program offered by the bank's California consumer lending division could have a disparate impact on certain groups. Bank management represented that issues relating to this program, which existed prior to the bank's acquisition of the program, would be addressed.

^{25/} All consumer loan applications recommended for denial for reasons other than credit history or debt-to-income ratios also receive a second review.

^{26/} Loans can be made for a maximum loan-to-value ratio of 95 percent, and underwriting criteria allow for higher than normal debt-to-income ratios. In acknowledgement of the high cost of housing in Hawaii, the bank
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bank indicates that as of December 31, 1993, it had approved 39 loans totalling approximately \$5.4 million under this program.

The bank also introduced its "BASIC" consumer loan program in the last half of 1993. Loans under this program offer favorable financing terms and flexible underwriting criteria.^{27/} The bank indicates that as of December 31, 1993, it had approved 69 loans totalling \$542,255 under this program.)

The OTS's recent CRA performance examination of Bank of America FSB found that the bank had established a productive relationship with the Office of Hawaiian Affairs in an effort to become involved in its programs for native Hawaiians. During 1992 and 1993, the bank originated or booked as agent 44 mortgages totalling approximately \$2.9 million under the Department of Hawaiian Home Lands "Panaewa" project for native Hawaiians. The bank also has made 14 low-interest construction loans totalling approximately \$1.3 million to low- and moderate-income families assisting in the construction of their own homes. In addition, the bank has

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offers this program to individuals with up to 150 percent of median income, and individuals acquiring properties located in low- and moderate-income census tracts. BankAmerica represents that the utilization of 150 percent of median income is consistent with the affordability programs of the Federal National Mortgage Association.

^{27/} The savings bank has been offering a discounted interest rate under this program, and personal loans for as low as \$1,000 are available. Unsecured loans under the program are available to individuals with incomes equal to 80 percent or less of median income, and secured loans are available to individuals residing in low- and moderate-income census tracts or with incomes equal to 150 percent or less of median income.

a 10 percent investment in a \$55 million loan fund established by the Hawaii Community Reinvestment Corporation, a non-profit consortium providing financing for affordable housing projects.^{28/}

Bank of America FSB recently announced a comprehensive program to enhance service to the native Hawaiian and Filipino communities. The program includes a four-year commitment to provide \$150 million in residential mortgage loans for native Hawaiians seeking housing on Department of Hawaiian Home Lands. The bank also has appointed two community lending specialists to develop and implement outreach programs for the Hawaiian and Filipino communities, and has committed \$100,000 over three years for use by nonprofit organizations that provide affordable housing for Filipinos. In a separate program, the bank, through its community development division, has committed \$30 million over the next two years to Kauai County's efforts to build affordable housing in Kauai in the aftermath of Hurricane Iniki.^{29/}

In September 1993, Bank of America FSB launched its new business banking initiative, which focuses on lending to small businesses. In connection with this initiative, the bank established its Advantage Business Credit program which provides loans to small businesses in the amount of \$2,500 to \$100,000. In addition, the bank has committed \$650,000 to a new

^{28/} The bank also has committed to take part in the development of the Hawaii Housing Development Corporation, a non-profit organization that will focus on producing rental housing for low-income individuals.

^{29/} Loans under this program will be offered at below market rates to projects serving low- and very-low-income families.

Hawaii Small Business Loan Program, which will provide loans guaranteed by the Small Business Administration (the "SBA").

In 1992, BankAmerica established corporate-wide CRA-related goals, committing to provide \$12 billion over a ten-year period for housing loans in low- and moderate-income census tracts and for lower-income and minority borrowers, funding for the development and long-term financing of low-income housing, consumer loans for lower-income households, and government-guaranteed and conventional small business loans.^{30/} Bank of America FSB booked loans totalling approximately \$11 million as of September 30, 1993, representing 92 percent of its \$12 million 1993 goal under this corporate-wide initiative. The bank plans to double that goal in 1994.

Other Aspects of CRA Performance. The OTS found that Bank of America FSB's efforts to ascertain community credit needs generally have been successful considering the limited time that the bank has been in the Hawaiian market. The bank's CRA officer communicates with a variety of community-based and non-profit organizations, business organizations, and state governmental entities. Bank of America FSB has a formal call program in place, and its employees serve on the boards of organizations involved in the development of affordable housing in Hawaii. The bank has established an advisory board to inform its board of directors about local credit needs. This advisory board is composed of residents who are involved in local business, government and/or community activities.

^{30/} BankAmerica has allocated \$8 billion of this commitment to California, and \$4 billion to all other states.

Bank of America FSB has sponsored credit-education fairs with the International Credit Association, and "Better Home Shows" that include information on new affordable housing projects sponsored by the State of Hawaii. The bank also co-sponsored two events in 1993 relating to community-based and small business lending. These events were targeted to the native Hawaiian community.^{31/}

C. Record of Performance of Bank of America - California

The Board has carefully reviewed the 1992 and preliminary 1993 data filed by Bank of America - California under HMDA in light of the California Protestant's allegations that the bank does not lend to minorities, particularly Hispanics, and low- and moderate-income individuals in five counties in California.^{32/} These data show that Bank of America - California does make loans to minorities and to residents of low- and

^{31/} The Hawaii Protestants have alleged that the outreach efforts of Liberty are targeted primarily to nonminorities. The FDIC's most recent CRA performance evaluation of Liberty found that diverse ethnic groups were targeted by advertisements in local media in various languages, including Chinese, Japanese, Korean, Tagalog and Vietnamese. The FDIC also found that the bank demonstrated a strong record of helping to meet the credit needs of its entire community, and that mapping of loan activity indicated a reasonable penetration of all segments of the bank's community, including low- and moderate-income neighborhoods.

^{32/} The California Protestant specifically alleges that Bank of America - California (1) has "redlined" Hispanic individuals and businesses in Stanislaus, Merced, Madera, Tuolumne and San Joaquin counties (the "Target Counties"); (2) has closed branches in downtown areas of the Target Counties that were accessible to minorities, particularly Hispanics; (3) has not provided sufficient marketing to the Hispanic community; and (4) has not provided sufficient assistance or other support to individuals and organizations working with the Hispanic community.

moderate-income areas of San Joaquin, Stanislaus and Merced Counties.^{33/} In addition, the bank's originations to African-Americans and Hispanics and low- and moderate-income census tracts, as a percentage of total originations, met or exceeded the performance of its peers in 1992. Furthermore, Bank of America Community Development Bank generated a total of 376 units of low- and very-low-income housing for residents of San Joaquin, Merced and Stanislaus counties during the three year period ending in 1993.

As noted above, Bank of America - California received an "outstanding" rating from the OCC at its 1994 examination for CRA performance, which included a fair lending examination of residential loan files. The OCC found no evidence of illegal discrimination or other practices designed to discourage credit.^{34/}

^{33/} For example, the bank made 35 mortgage loans to African-Americans and 227 mortgage loans to Hispanics in these three counties in 1992, and made 45 and 236 mortgage loans to African-Americans and Hispanics, respectively in these counties in 1993. Furthermore, in 1992 and 1993, the bank made 275 and 288 HMDA-related loans to low- and moderate-income census tracts in San Joaquin, Stanislaus and Merced Counties.

Madera and Tuolumne counties are located outside metropolitan statistical areas and, therefore, loans made to individuals in these counties are not separately reported under HMDA.

^{34/} The California Protestant alleged that the bank's appraisal practices discriminate against minorities and low income individuals. Bank of America - California has in place a second-review process when appraised values for homes in low- and moderate-income census tracts are less than the amount of financing requested, and in 1993, the bank hired an "appraisal ombudsperson" for Northern California to independently

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Bank of America - California also offers a variety of credit products and services designed to meet the credit needs of low- and moderate-income and minority neighborhoods within its delineated communities, including the "Neighborhood Advantage" and "Basic" loan programs. The bank also offers a low-cost checking account to lower-income customers. The bank participates in a number of government sponsored credit programs by offering Farmers Home Administration loans, SBA loans, and federally insured student loans.^{35/} Furthermore, in November 1993, the bank introduced a loan program offering flexible underwriting criteria and a simplified application process for minority and women business owners.

In its most recent CRA examination of Bank of America - California, the OCC found that the bank had a program of ongoing, productive communications with a wide range of community-based and

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investigate complaints about appraisals.

The Board has also considered a housing discrimination complaint filed with the Department of Housing and Urban Development ("HUD") by an individual alleging discrimination on the basis of his Hispanic origin. The complainant contends that he received a low appraisal on his house when he applied for a refinancing through Bank of America - California. The Board has carefully reviewed this complaint in light of all facts of record, including relevant examination information. The Board notes that HUD's investigation of this complaint is in its early stages, and will provide the individual with an opportunity to fully assert his claims and obtain a remedy if his allegations are proved and a remedy is appropriate. Based on all the facts of record, the Board believes that this matter does not warrant denial of this application.

^{35/} During 1993, the bank made 334 small business loans totalling \$27.5 million in the Target Counties.

social service organizations and small business associations. In addition, the OCC indicated that the bank's marketing programs are designed to reach wide segments of the delineated community and include multilingual advertisements appearing in general circulation newspapers and magazines, as well as community and ethnic newspapers. In 1991, the bank introduced a Spanish language promotional kit including posters, print advertisements, brochures and video for use in branches. The bank also has targeted advertising campaigns to the African-American community.

The bank supports the Stanislaus County Hispanic Chamber of Commerce's Banking Community Outreach project, and Desarrollo Latino Americano (formerly the Hispanic Task Force of Stanislaus County), a community-based non-profit organization created to provide low-income housing in Stanislaus County. The bank also has contributed to Spanish-language radio broadcasts that educate individuals in the Target Counties about banking services.^{36/}

^{36/} The California Protestant alleges that Bank of America - California recently has closed branches in downtown areas of the Target Counties that are accessible to minorities, particularly Hispanics. In the 1994 CRA examination of Bank of America - California, the OCC found that the bank's branch closure process included actions taken to minimize the impact on the local community. Another California-based organization has raised concerns that BankAmerica is not in compliance with commitments made to the Board regarding the transfer by Bank of America - California of a branch to a community-based, non-profit organization in lieu of closure. Bank of America - California responds that no decision on the disposition of the branch in question has been made and that it fully intends to comply with commitments regarding the disposition of branches.

Conclusion Regarding Convenience and Needs Factors

In considering the overall CRA performance records of BankAmerica, its subsidiary banks, and Liberty, the Board has carefully considered the entire record, including the public comments in this case.^{37/} Based on a review of the entire record of performance, including Protestant's comments, BankAmerica's response to those comments, and relevant reports of examination, the Board concludes that convenience and needs considerations, including the CRA performance records of BankAmerica, its subsidiary banks, and Liberty are consistent with approval of this application.^{38/} As discussed in this order, BankAmerica plans to

^{37/} The Hawaii Protestants have alleged that the terms of this proposal were not negotiated on an arm's length basis and the legal rights and interests of account holders and borrowers were not given proper recognition and protection. BankAmerica disputes this assertion and maintains that the proposed merger was negotiated at all times on an arm's length basis, and that it has fully recognized and addressed safety and soundness issues relative to the customers of Bank of America FSB and Liberty.

The Hawaii Protestants also have alleged that shareholders of Liberty were not given full disclosure of all the ramifications of the proposal. The Board notes that BankAmerica filed a Registration Statement with the Securities and Exchange Commission (the "SEC") relating to its shares of common stock to be distributed in connection with the proposed merger, and Liberty issued a Proxy Statement/Prospectus to its shareholders describing the terms of the merger. Both documents are subject to SEC regulations requiring complete and accurate disclosure of all material terms of the merger transaction, and both Bank of America FSB and Liberty would be subject to action by the SEC if they failed to comply with these regulations.

^{38/} Several commenters from Texas have expressed concern over the reduction of staff in the SBA department at BankAmerica's Texas

(continued...)

increase its CRA-related lending in Hawaii. The Board believes that these plans, when viewed in the context of the outstanding or satisfactory performance ratings for BankAmerica's subsidiary banks, support approval of this application.

The Board expects Bank of America FSB to implement fully its CRA initiatives and to continue to improve its CRA performance, including its housing-related lending, in all of its delineated communities, and to address the issues raised by the OTS in its most recent CRA performance examination. The Board will continue to monitor implementation by Bank of America FSB of an effective CRA program in Hawaii, and will take this review into account in future applications by BankAmerica to establish a depository facility. In this regard, the Board requires as a condition of its action in this case, that BankAmerica submit to the Federal Reserve Bank of San Francisco copies of any reports submitted to the OTS in connection with Bank of America FSB's CRA performance, including the results of its lending programs and initiatives and its progress in increasing the levels of

^{38/}(...continued)

subsidiary, and the impact this will have on the availability of loans to minority businesses in Houston. BankAmerica responds that, while the bank has made some personnel and organizational changes to streamline its SBA lending activities, it is committed to providing the Houston community with SBA loans, as well as conventional lines of credit. In support of this assertion, BankAmerica notes that since entering the Texas market in 1991, its Texas subsidiary has introduced several new business products to help meet the credit needs of small businesses, including the Advantage Business Credit and the Minority-Owned Business Enterprise/Women-Owned Business Enterprise Credit, to enhance its ability to provide financing for small businesses that traditionally have not had access to credit.

its lending to low- and moderate-income and minority individuals and communities.

Other Considerations

The financial and managerial resources and future prospects of BankAmerica, Bank of America FSB, and Liberty, and other supervisory factors the Board must consider under section 3 of the BHC Act, are consistent with approval of this proposal.


Based on the foregoing and other facts of record, the Board has determined that the application should be, and hereby is, approved.^{39/} The Board's approval is specifically conditioned upon compliance with all of the commitments made by BankAmerica in connection with this application and with the conditions referred to in this order. This approval is further subject to BankAmerica obtaining the approval of the OTS under the FDI Act, and the approval of the Commissioner under applicable state law. For purposes of this action, the commitments and conditions relied on in

^{39/} Protestants have criticized the employment practices of Bank of America - California, Bank of America FSB and Liberty. Specifically, the California Protestant believes that Bank of America - California should hire more Spanish speaking personnel and should be using more Hispanic businesses to perform contract services. The Hawaii Protestants have commented on the absence of minorities in decision making positions at both Bank of America FSB and Liberty. In this regard, the Board notes that because these three institutions each employ more than 50 people and act as agents to sell or redeem U.S. savings bonds and notes, they are required by Treasury Department regulations to: (1) file annual reports with the Equal Employment Opportunity Commission; and (2) have in place a written affirmative action compliance program which states their efforts and plans to achieve equal opportunity in the employment, hiring, promotion and separation of personnel.

reaching this decision shall be deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The acquisition of Liberty shall not be consummated before the thirtieth calendar day following 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 Federal Reserve Bank of San Francisco acting pursuant to delegated authority.

By order of the Board of Governors,^{40/} effective May 31, 1994.


Jennifer J. Johnson
Associate Secretary of the Board

^{40/} Voting for this action: Chairman Greenspan and Governors Kelley, LaWare and Phillips. Absent and not voting: Governor Lindsey.