

FEDERAL RESERVE SYSTEM

NationsBank Corporation
Charlotte, North Carolina

BankAmerica Corporation
San Francisco, California

Order Approving the Merger of Bank Holding Companies

NationsBank Corporation, a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), and its wholly owned subsidiary, NationsBank (DE) Corporation (collectively, "NationsBank"), have requested the Board's approval under section 3 of the BHC Act (12 U.S.C. § 1842) to merge with BankAmerica Corporation ("BankAmerica"), and thereby acquire BankAmerica's subsidiary banks, including its lead bank subsidiary, Bank of America National Trust and Savings Association ("BA-Lead Bank"), both of San Francisco, California.^{1/} NationsBank also has requested the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire the domestic nonbank subsidiaries of BankAmerica, including Bank of America, FSB, Portland, Oregon.^{2/} In addition, NationsBank has filed applications and notices under section 4(c)(13) of the BHC Act (12 U.S.C. § 1843(c)(13)), sections 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 601 et seq.,

^{1/} NationsBank also seeks approval to acquire BankAmerica's other subsidiary banks, which are Bank of America Texas, N.A., Dallas, Texas; Bank of America Community Development Bank, Walnut Creek, California; and Bank of America N.A., Phoenix, Arizona.

^{2/} The nonbanking activities engaged in by BankAmerica for which NationsBank has sought Board approval under section 4 of the BHC Act and the subsidiaries engaged in such activities are listed in Appendix A.

611 et seq.), and the Board's Regulation K (12 C.F.R. 211) to acquire the Edge Act and agreement corporations and foreign operations of BankAmerica.

NationsBank, with total consolidated assets of approximately \$315 billion, is the third largest commercial banking organization in the United States.^{3/} NationsBank's lead bank subsidiary, NationsBank, N.A., Charlotte, North Carolina ("NB-Lead Bank"), and NationsBank's other subsidiary banks operate in North Carolina, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Missouri, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia. NationsBank also engages in a number of permissible nonbanking activities nationwide.

BankAmerica, with total consolidated assets of approximately \$265 billion, is the fifth largest commercial banking organization in the United States. BankAmerica's subsidiary depository institutions operate in California, Alaska, Arizona, Florida, Idaho, Illinois, Nevada, New Mexico, New York, Oregon, Texas, and Washington. Bank of America also operates branches in 38 foreign countries and engages through numerous nonbanking subsidiaries in a variety of permissible nonbanking activities nationwide.

The proposed transaction would create the largest commercial banking organization in the United States, with total assets of approximately \$580 billion, and the third largest commercial banking organization in the world. The subsidiary insured depository institutions of the combined organization would operate approximately 4,800 full-service branches in

^{3/} Asset data for NationsBank and BankAmerica are as of March 31, 1998, unless otherwise noted.

27 states and more than 14,000 automated teller machines ("ATMs") nationwide. NationsBank has indicated that after the proposed merger the combined organization would operate under the name BankAmerica Corporation ("New BankAmerica").^{4/}

Factors Governing Board Review of Transaction

Under the BHC Act, the Board must consider a number of specific factors when reviewing the merger of bank holding companies or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the transaction; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act.^{5/} In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits in the nation and certain individual states, as well as compliance with other provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act").^{6/}

^{4/} NationsBank and BankAmerica also have requested the Board's approval to hold and exercise an option to acquire up to 19.9 percent of each other's voting shares. The options would expire on consummation of the proposal.

^{5/} In cases involving a foreign bank, the Board also must consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the foreign bank's home country.

^{6/} Pub. L. No. 103-328, 108 Stat. 2338 (1994).

Public Comment on the Proposal

In order to permit interested members of the public an opportunity to submit comments to the Board on these factors, the Board published notice of the proposal and provided a period for public comment.^{7/} The Board extended the public comment period to accommodate the broad public interest in the proposal. The extended public comment period provided interested persons more than 65 days to submit written comments on the proposal.

Because of the extensive public interest in the proposal, the Board also held a public meeting on July 9 and 10, 1998, in San Francisco, California, to permit interested persons an opportunity to present oral testimony regarding the various factors that the Board is charged with reviewing under the BHC Act. More than 170 commenters appeared and testified at the public meeting, and many of the commenters who testified also submitted written comments.

In total, more than 1,600 organizations and individuals submitted comments on the proposal, either through oral testimony or written comments. Commenters included federal, state, and local government officials, community and non-profit organizations, small business owners, customers of NationsBank and BankAmerica, and other interested organizations and individuals from California, North Carolina, Texas, New Mexico, and other regions of the country.

Commenters in support of the proposal commended NationsBank and BankAmerica for their commitment to local communities and leadership in community development activities. These commenters praised NationsBank's

^{7/} Notice of the proposal was published in the Federal Register (63 Federal Register 28,385 and 35,231) (1998)) and in local newspapers in accordance with the Board's Rules of Procedure. See 12 C.F.R. 262.3(b).

and BankAmerica's records of providing affordable mortgage loans, investments, grants and loans in support of economic and community revitalization projects, and charitable contributions in local communities. These commenters also favorably noted the organizations' small business lending activities and the organizations' provision of educational seminars or technical assistance to small businesses. Many of these commenters also praised NationsBank's \$350 billion, 10-year community reinvestment plan and contended that the plan would increase the availability of loans and investments to support community development and affordable housing activities.

A significant number of other commenters expressed concern regarding the performance records of NationsBank and BankAmerica under the CRA, particularly with respect to their records of lending to small businesses and minorities and in low- and moderate-income ("LMI") and rural areas. Many commenters from California and other states currently served by BankAmerica also expressed concern that NationsBank would not serve the diverse needs of their local communities as well as BankAmerica, or would terminate organizations and programs that BankAmerica has developed to meet the needs of its communities, such as the BankAmerica Community Development Bank and Rural 2000 Initiative. Other commenters believed the merger would reduce competition for banking services, particularly in Texas and New Mexico, or result in the loss of local control of lending and investment decisions. Many commenters also criticized NationsBank's \$350 billion, 10-year community reinvestment plan, stating that the initiative is not enforceable and does not provide specific lending or investment commitments for individual states or regions, or for particular loan products or programs. Commenters also discussed other potential adverse effects of the proposal,

including branch closings, the loss of a major financial institution headquartered in San Francisco, and job losses.

In evaluating the statutory factors under the BHC Act, the Board has carefully considered the information and views presented by all commenters, including the information and testimony provided at the public meeting and the views and information submitted in writing. The Board also considered all the information presented in the applications and notices and in supplemental filings by NationsBank as well as various reports filed by the relevant companies and publicly available information and other reports. In addition, the Board reviewed confidential supervisory information, including examination reports regarding the companies and depository institutions involved, and information provided by the other federal banking agencies and the Department of Justice. For the reasons discussed in this order, and after a careful review of all the facts of record, the Board has concluded that the statutory factors it is required to consider under the BHC Act and other relevant banking statutes are consistent with approval of the proposal, subject to the conditions noted in this order.

Interstate Analysis

Section 3(d) of the BHC Act, as amended by section 101 of the Riegle-Neal Act, allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of NationsBank is North Carolina,^{8/} and

^{8/} A bank holding company's home state is that state in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

BankAmerica's subsidiary banks are located in California and eleven other states.^{9/}

Section 3(d) of the BHC Act provides that the Board may not approve a proposal if, after consummation, the applicant would control more than 10 percent of the total deposits of insured depository institutions in the United States.^{10/} In addition, the Board may not approve a proposal if, on consummation of the proposal, the applicant would control 30 percent or more of the total deposits of insured depository institutions in any state in which both the applicant and the organization to be acquired operate an insured depository institution, or such higher or lower percentage established by state law.^{11/}

On consummation of the proposal, New BankAmerica would control approximately 8.1 percent of the total amount of deposits of insured depository institutions in the United States. New BankAmerica would control less than 30 percent or the appropriate percentage established by applicable state law of total deposits held by insured depository institutions in Texas, New Mexico, Illinois, and Florida, the states in which NationsBank and BankAmerica both operate an insured depository institution.^{12/}

^{9/} For purposes of the Riegle-Neal Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

^{10/} 12 U.S.C. § 1842(d)(2)(A). For this purpose, insured depository institutions include all insured banks, savings banks, and savings associations.

^{11/} 12 U.S.C. § 1842(d)(2)(B)-(D).

^{12/} On consummation, New BankAmerica would control less than 30 percent of total deposits in insured depository institutions in Florida and Illinois. See Fla. Stat. Ann. § 658.295 (West 1997). The appropriate deposit
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All other requirements of section 3(d) of the BHC Act also would be met after consummation of the proposal.^{13/} In view of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Factor

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly, or that would substantially lessen competition in any relevant banking market if the anticompetitive effects of the proposal are not 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/} The Board has carefully considered the competitive effects of the

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cap in New Mexico is set by New Mexico state law at 40 percent, and New BankAmerica would not, on consummation of the proposal, exceed that state limit. See N.M. Stat. Ann. § 58-1B-6(B) (Michie 1998). New BankAmerica also would control less than 20 percent of total deposits in insured depository institutions in Texas on consummation of the proposal and the Texas Banking Commissioner has advised the Board in writing that the proposal is consistent with the provisions of Texas law concerning interstate bank acquisitions. See Letter from Catherine A. Ghiglieri, Texas Banking Commissioner, to Scott G. Alvarez, Associate General Counsel of the Board, dated July 17, 1998; Tex. Fin. Code Ann. § 38.002 (West 1998).

^{13/} NationsBank is adequately capitalized and adequately managed as defined in the Riegle-Neal Act. 12 U.S.C. § 1842(d)(1)(A). BankAmerica's subsidiary banks have been in existence and operated for the minimum periods of time necessary to satisfy the minimum age requirements established by applicable state law. See 12 U.S.C. § 1842(d)(1)(B). The Board also contacted the relevant state banking commissioners regarding, and considered NationsBank's record of compliance with, applicable state community reinvestment laws.

^{14/} 12 U.S.C. § 1842(c)(1).

proposal in light of all the facts of record, including public comments on the proposal.

A number of commenters expressed concern that the proposed merger would have adverse competitive effects. Many of these commenters expressed concern that large bank mergers in general, or the proposed merger of NationsBank and BankAmerica in particular, would reduce competition for banking services and result in higher fees or reduced customer convenience. In addition, a number of commenters claimed that the proposed merger of NationsBank and BankAmerica would have significantly adverse effects on competition in Texas and New Mexico, where the subsidiary banks of both NationsBank and BankAmerica compete, and particularly in Dallas, Texas. Some commenters also contended that the proposed merger would result in higher interest rates for small business loans, and reduced levels of small business and mortgage lending, particularly in California, Texas, and New Mexico.

In order to determine the effect of a particular transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant "line of commerce" or product market and a geographic market. The Board and the courts have consistently recognized that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.^{15/} The Board

^{15/} See Chemical Banking Corporation, 82 Federal Reserve Bulletin 230 (1996) ("Chemical") and the cases and studies cited therein. The Supreme
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and the courts also consistently have found that the geographic market for analyzing the competitive effects of a proposal on the supply and demand of the cluster of banking products and services is local in nature.^{16/} The geographic scope of the local banking market is defined by the area in which competition between depository institutions can reasonably be expected to have a direct effect on the price and supply of the cluster of banking products and services.^{17/}

The Board concludes, based on all the facts of record, that the appropriate product market for considering the competitive effects of this case is

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Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963) ("Philadelphia National"); accord, United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1969) ("Phillipsburg National").

^{16/} See Philadelphia National, 374 U.S. at 357; Phillipsburg National; First Union Corporation, 84 Federal Reserve Bulletin 489 (1998) ("First Union"); Chemical; St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982) ("St. Joseph").

^{17/} Philadelphia National, 374 U.S. at 359, quoting Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, 327 (1961). In determining the geographic scope of local banking markets, the Board considers a number of factors, including population density, worker commuting patterns (as indicated by census data), shopping patterns, the availability and geographic reach of various modes of advertising, the presence of shopping, employment, health care and other necessities, the availability of transportation systems and routes, branch banking patterns, deposit and loan activity, and other indicia of economic integration and the transmission of competitive forces among depository institutions that affect the pricing and availability of banking products and services. See Crestar Bank, 81 Federal Reserve Bulletin 200, 201 n.5 (1995); Pennbancorp, 69 Federal Reserve Bulletin 548 (1983); St. Joseph.

the cluster of banking products and services, and that the appropriate geographic markets for considering the competitive effects of this proposal are the 17 local banking markets in which the subsidiary banks of NationsBank and BankAmerica operate and compete.^{18/} These local banking markets are Austin, Dallas, Fort Worth, Houston, San Antonio, Temple, and Waco, in Texas; Albuquerque, Clovis, Farmington, Las Cruces, Lea, McKinley County, Santa Fe, and Roswell-Artesia, in New Mexico; and Miami-Ft. Lauderdale and West Palm Beach, in Florida.^{19/}

^{18/} One commenter expressed concern that financial institutions that operate very large numbers of ATMs may decide to handle their own ATM transaction processing functions, rather than relying on an ATM network or third parties for such processing, and that financial institutions that engage in significant levels of credit card lending may seek to establish a separate brand identity for the credit cards that they issue. Commenter has presented no evidence to demonstrate that, if such actions were to occur, they would result in a violation of the antitrust laws, and the Board notes that the events discussed by the commenter could, in fact, increase competition for ATM transaction processing or credit card lending by creating a new competitor for such services.

Commenter also expressed concern that combinations of large banking organizations that are significant members of separate regional ATM networks may lead to the merger of the ATM networks and, thereby, result in a reduction in competition for ATM network services. Under section 4 of the BHC Act, a bank holding company is required to obtain the Board's approval before acquiring more than 5 percent of the voting shares of any company engaged in activities that are closely related to banking, including a company formed by the merger of two or more ATM networks. In the event that a merger of regional ATM networks controlled by bank holding companies is proposed at some time in the future, the Board would have the opportunity to address the issues raised by the commenter in the context of the specific facts presented at that time.

^{19/} The geographic scope of these local banking markets is set forth in Appendix B. A few commenters contended, without providing any supporting
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A. Banking Markets Without Divestitures

Consummation of the proposal, without divestitures, would be within the thresholds contained in the Department of Justice Merger Guidelines ("DOJ Guidelines")^{20/} in 11 banking markets: Austin, Fort Worth, Houston,

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evidence, that the Dallas, Texas, banking market is defined too broadly. As an initial matter, the Board notes that the Dallas banking market does not include the City of Fort Worth and certain surrounding communities, which are included in the separate Fort Worth banking market. The record indicates that Dallas is a hub for financial, commercial, medical, transportation, and distribution services for the areas within the Dallas banking market. Commuting and workforce data demonstrate that there is substantial and continuous economic integration between Dallas and the communities and county areas within the banking market. For example, 1990 Census Bureau data indicate that more than 30 percent of workers residing in the portions of Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant counties that are included in the Dallas banking market commute to Dallas County to work. Television, newspaper, and radio media serve all areas of the designated banking market. A recent survey conducted by the Federal Reserve Bank of Dallas indicates that commercial banks in Dallas consider the offerings of other banks located throughout the market in setting prices for loan and deposit products. Small business lending data filed under the CRA also indicate that depository institutions originate small business loans throughout the banking market. Based on these and other facts of record, the Board believes that the relevant banking market for considering the competitive effects of the proposal in the Dallas area is the Dallas banking market as defined in Appendix B.

^{20/} Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger Herfindahl-Hirschman Index ("HHI") is less than 1000 is considered to be unconcentrated, and a market in which the post-merger HHI is between 1000 and 1800 is considered to be moderately concentrated. The DOJ 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 or acquisition increases the HHI by at least 200 points. The
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San Antonio, Temple, and Waco, in Texas; Farmington, Las Cruces, and Roswell-Artesia, in New Mexico; and Miami-Ft. Lauderdale and West Palm Beach, in Florida.^{21/} In each of these markets, a large number of competitors relative to the size of the market would remain after consummation of the proposal. As discussed in Appendix C, each of these markets also would remain unconcentrated or moderately concentrated, as measured by the HHI, after consummation of the proposal, with the exception of the Farmington market. In ten of these eleven markets, including the Farmington market, consummation of the proposal would increase market concentration, as measured by the HHI, by less than 140 points, which is significantly less than the 200 point threshold contained in the DOJ Guidelines.^{22/}

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DOJ has stated that the higher than normal HHI thresholds for screening bank mergers or acquisitions for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial institutions.

^{21/} Market data for these markets, including respective market shares and relevant HHI figures, are set forth in Appendix C. Market concentration calculations include deposits of thrift institutions 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 Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); 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).

^{22/} The HHI for the San Antonio market would increase 207 points on consummation of the proposal, but the market would remain only moderately concentrated, with a post-merger HHI of 1303.

B. Banking Markets with Proposed Divestitures

Consummation of the proposal would exceed the DOJ Guidelines as measured by the HHI in the remaining six banking markets. In order to mitigate the potential anticompetitive effects of the proposal in the Albuquerque, Clovis, and McKinley County banking markets in New Mexico, NationsBank has committed to divest a total of 17 branches, which in the aggregate control deposits of approximately \$492 million.^{23/} After accounting for the proposed divestitures, consummation of the proposal would be within the thresholds in the DOJ Guidelines in these three banking markets.^{24/} In light of these divestitures, the transaction would result in no increase in the HHI in the Clovis and McKinley County banking markets and an increase of only 60 points in the HHI

^{23/} Calculations of existing and pro forma levels of market concentration in local banking markets and divestiture amounts are based on June 30, 1997, summary of deposit data, adjusted to reflect acquisitions since that date. With respect to each market in which NationsBank has committed to divest branches to mitigate the anticompetitive effects of the proposal, NationsBank has committed to execute a sales agreement, prior to consummation of the merger with BankAmerica, with a purchaser determined by the Board to be competitively suitable and to complete the divestiture within 180 days of consummation of the merger.

^{24/} Market data for these three banking markets reflecting the proposed divestitures are provided in Appendix C. NationsBank has entered into an agreement to sell all the branches to an out-of-market commercial banking organization that is competitively suitable to the Board, and the pro forma market data contained in Appendix C reflect this proposed divestiture. NationsBank has committed that, in the event it is unsuccessful in completing any divestiture within 180 days of consummation of the merger, NationsBank will transfer the unsold branches to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the branches promptly. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

for the Albuquerque banking market. In addition, a significant number of competitors would remain in each of these markets in relation to the size of the market after consummation of the proposal.

C. Remaining Banking Markets

In the Dallas, Texas, banking market and the Santa Fe and Lea, New Mexico, banking markets, consummation of the proposal would increase the level of market concentration, as measured by the HHI, to levels that exceed the DOJ Guidelines. No divestitures have been proposed in these markets.

In conducting its review of the competitive effects of the proposal in these markets, the Board has carefully considered whether other factors either mitigate the competitive effects of the proposal in the market or indicate that the proposal would have a significantly adverse effect on competition in any of these markets.^{25/}

Dallas Banking Market. NationsBank is the largest of 109 depository institutions in the Dallas banking market, and controls deposits of \$14.1 billion, representing approximately 35.1 percent of market deposits. BankAmerica is the fifth largest depository institution in the market, and controls deposits of \$1.8 billion, representing approximately 4.4 percent of market deposits. On consummation of the proposal, New BankAmerica would

^{25/} The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the level of concentration and size of the increase in market concentration. See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998) ("NationsBank/Barnett").

remain the largest depository institution in the market and control approximately 39 percent of market deposits. The HHI would increase 311 points to 1977.^{26/}

The Board has considered that two savings associations operating in the Dallas banking market are significant commercial lenders and provide a range of consumer, mortgage, and other banking products and services. Competition from these savings associations more closely approximates competition from commercial banks, and the Board concludes that deposits controlled by these organizations should be weighted at 100 percent in calculating market concentration under the DOJ Guidelines.^{27/} Accounting for

^{26/} NationsBank contends that the Board, for purpose of determining the HHI in the Dallas market, should exclude approximately \$5.8 billion in deposits held on June 30, 1997, by the Dallas branches of NationsBank of Texas, N.A., because the deposits were made by corporate customers that may have no special connection to the Dallas banking market, or because the deposits were transferred to another NationsBank branch outside of Texas after June 30, 1997. Certain commenters contended, on the other hand, that the Board, in determining the pro forma HHI for the Dallas market, should not reduce the market share of NationsBank as a consequence of the transfer in 1998 of approximately \$14 billion in deposits from NationsBank's Dallas branches to its branches in North Carolina. As noted above, consistent with the Board's practice in previous cases, and based on the facts of this case, the Board has calculated existing and pro forma HHI levels in local banking markets based on the most recently available (June 30, 1997) summary of deposits, adjusted only for acquisitions consummated since that date, and has not adjusted these figures to take account of deposit transfers.

^{27/} Certain commenters contended that the Board should not fully weight the deposits of any savings association in considering the competitive effects of the proposal. The Board previously has indicated that it may consider the competitiveness of savings associations at a level greater than 50 percent of the savings association's deposits, if appropriate. See Banknorth Group, Inc.,

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the deposits of these thrifts at 100 percent, the HHI for the Dallas banking market would increase by 302 points to 1924, and New BankAmerica would have a post-merger market share of approximately 39 percent.

After consummation of the proposal, more than 100 banks and savings associations would remain in the market, including 8 competing bank holding companies and 4 savings associations or savings association holding companies that each have more than \$10 billion in total assets. The second and third largest depository institutions in the market are among the largest commercial banking organizations in the United States and in Texas. For example, Banc One Corporation, the second largest competitor in the Dallas banking market, is currently the 8th largest commercial banking organization in the nation by total assets,^{28/} and would continue to control approximately 16 percent of market deposits and operate 64 branches in the market. Chase Manhattan Corporation, the third largest competitor in the market, currently is the largest commercial banking organization in the nation by total assets,^{29/} and

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75 Federal Reserve Bulletin 703 (1989). In the Dallas banking market, First Savings Bank, FSB, maintains 9 percent and Guaranty Federal Bank, FSB, maintains 5.7 percent of their respective assets in nonmortgage commercial loans, which is significantly greater than the 1.7 percent national average for thrifts. The record also indicates that these thrifts either have a separate commercial lending department or have loan officers devoted to originating nonmortgage commercial loans, and that the thrifts plan to continue to increase their commercial lending in the Dallas banking market.

^{28/} As of March 31, 1998, Banc One Corporation had total assets of approximately \$117 billion.

^{29/} Chase Manhattan Corporation had total assets of approximately \$366 billion, as of March 31, 1998.

would continue to control approximately 9.5 percent of market deposits and operate 28 branches in the market.

The Dallas banking market also is attractive for entry by out-of-market competitors, as shown by market characteristics and the significant number of competitors that have entered the market recently, either de novo or by acquisition. Between 1990 and 1997, total deposits in the Dallas Metropolitan Statistical Area ("MSA"), which approximates the Dallas banking market, increased by more than 40 percent, compared to an average increase of 22 percent for other MSAs in Texas. Per capita income and deposits per banking office in the Dallas MSA also are significantly greater than the average for all Texas MSAs. In addition, the Dallas MSA has experienced a greater percentage increase in population from 1990 to 1996 than MSAs on the average both nationally and in Texas.

Since January 1, 1995, eight out-of-market banks and thrifts have entered the market by establishing de novo branches. An additional ten commercial banks have been established de novo in the market since the beginning of 1996. Nine other depository institutions have entered the market since 1995 by acquiring other depository institutions. During that period, more than 120 new branches have been opened, or been approved to be opened, in the Dallas banking market by competitors of NationsBank and BankAmerica.

The Board believes that these considerations and other factors mitigate the potentially adverse competitive effects of the proposal in the Dallas banking market.

New Mexico Banking Markets. NationsBank and BankAmerica also compete in the Santa Fe and Lea, New Mexico, banking markets. In the Santa Fe banking market, NationsBank is the largest of 11 depository

institutions, controlling \$241.2 million of deposits, representing approximately 26 percent of market deposits. BankAmerica is the sixth largest depository institution, controlling \$67.2 million of deposits, representing approximately 7.2 percent of market deposits. On consummation of the proposal, NationsBank would remain the largest depository institution in the market, controlling \$308.4 million of deposits, representing approximately 33.2 percent of market deposits. The concentration of market deposits, as measured by the HHI, would increase 375 points to 1965.

The Board has considered that one thrift operating in the Santa Fe banking market has been an active commercial lender, with more than 10 percent of its assets in nonmortgage commercial loans.^{30/} Based on all the facts of record, the Board concludes that deposits controlled by this thrift should be weighted at 100 percent in calculating market concentration under the DOJ Guidelines. Giving full weight to these deposits, the HHI in the Santa Fe banking market would increase 332 points to 1845.

Several other mitigating factors also suggest that the increase in market concentration in the Santa Fe banking market, as measured by the HHI, is not likely to reflect a significantly adverse effect on competition in the market. Ten competitors, including New BankAmerica, would remain in the banking market. The second largest depository institution in the market would control more than 20 percent of market deposits, and three other commercial banks would each control more than 10 percent of market deposits. In addition,

^{30/} The record indicates that the thrift, Century Federal Savings and Loan Association, also operates a separate commercial loan department and intends to continue making commercial loans in the future.

the fifth and tenth largest competitors in the banking market are large out-of-state bank holding companies with substantial resources.

The Santa Fe banking market has become slightly less concentrated since 1991, and appears to be attractive for new entry. The Santa Fe MSA, which approximates the banking market, has greater deposits per banking office and greater per capita income than any other MSA in New Mexico. Total deposits in the Santa Fe MSA also increased approximately 49 percent from 1990 to 1997, which is significantly greater than the average deposit increase for MSAs in New Mexico during the same time period.

In the Lea banking market, NationsBank is the third largest of seven depository institutions, controlling deposits of \$68.3 million, representing approximately 17 percent of market deposits. BankAmerica is the fifth largest depository institution, controlling deposits of \$24.3 million, representing approximately 6 percent of market deposits. On consummation of the proposal, NationsBank would remain the third largest depository institution in the market, controlling deposits of \$92.6 million, representing approximately 23 percent of market deposits, and the HHI in the market would increase 205 points to 2351.

Six competitors, including New BankAmerica, would remain in the market. Three depository institutions would each control more than 20 percent of market deposits, and one depository institution would control approximately 16.8 percent of market deposits. One of the competitors that would control more than 20 percent of market deposits is a large bank holding company with significant resources. The Lea banking market also appears to be attractive for entry. Lea County, which approximates the Lea banking market, is the fourth largest of 27 non-MSA counties in New Mexico in terms of population, and deposits per banking office and the population per banking office in Lea

County are significantly greater than the average for all non-MSA counties in the state.

D. Conclusion Regarding Competitive Factor

The Board has sought the views of the Department of Justice regarding the competitive effects of the proposal. The Department of Justice has reviewed the proposal, and advised the Board that, in light of the proposed divestitures in New Mexico, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market.^{31/} The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") have been consulted and have not objected to consummation of the proposal.^{32/}

^{31/} Some commenters contended that studies have shown that larger banks offer more expensive products and charge higher fees. As a general matter, pricing decisions are directly affected by supply and demand conditions that may exist in markets where banks compete. In this case, data show that competition in the relevant banking markets would not be significantly reduced and that the markets would remain competitively structured.

^{32/} One commenter contended, without providing any supporting evidence, that consummation of the proposal would have anticompetitive effects and harm consumers by expanding the number of ATMs that are subject to a surcharge on ATM transactions by non-customers. As the Board previously has noted, the practice of imposing a surcharge on the use of ATMs by non-customers is relatively recent and limited data are available on the effect of ATM surcharging. See NationsBank Corporation, 83 Federal Reserve Bulletin 148 (1997) ("NationsBank/Boatmen's"). Commenter, moreover, has provided no data to show that NationsBank's acquisition of BankAmerica's ATMs would give NationsBank sufficient market power to compete unfairly with other depository institutions in the market for providing the cluster of banking products and services. The Board also has taken commenter's comments regarding NationsBank's ATM surcharge policy into account in considering the convenience and needs factor in this case.

Based on all the facts of record, and for the reasons discussed above, the Board has determined that consummation of the proposal would not be likely to result in a significantly adverse effect on competition or on the concentration of banking resources in any of the 17 banking markets in which NationsBank and BankAmerica compete, or in any other relevant banking market. Accordingly, subject to completion of the proposed divestitures, the Board has determined that competitive factors are consistent with approval of the proposal.^{33/}

Financial, Managerial, and Supervisory Factors

The proposed combination of NationsBank and BankAmerica would create the largest banking organization in the United States and the third largest banking organization in the world, in terms of total assets. New BankAmerica would operate depository institutions in 27 states, with approximately 4,800 full-service branches. The companies have indicated that the size and geographic scope of the combined organization would provide their customers added convenience and a broader range of services, allow the combined organization to better diversify its exposure to particular geographic regions, and allow the organization to better absorb the financial costs associated with developing new and alternative methods of delivering banking resources to their customers.

The Board has carefully considered the financial and managerial resources and future prospects of the companies and banks involved in the

^{33/} One commenter reiterated his contention, considered by the Board in previous cases, that the Board establish absolute limits on relative market share in bank mergers and acquisitions. See First Union; NationsBank/Barnett. For the reasons discussed in those orders, the Board has concluded that its current approach to competitive analysis provides a more complete economic analysis of the competitive effects of a proposal in a local banking market.

proposal, the effect the proposed transaction would have on such resources, and other supervisory factors in light of all the facts of record, including public comments. A number of commenters expressed concerns regarding the financial and managerial resources of NationsBank, BankAmerica, and the combined organization.^{34/} In addition, commenters questioned whether the Board and the other federal banking agencies would have the ability to supervise the combined organization adequately, or whether the combined organization would present special risks to the federal deposit insurance funds or the financial system in general.^{35/}

^{34/} The comments included contentions that: (i) the proposed transaction would stretch the financial resources of NationsBank; (ii) the combined organization would have inadequate reserves for loan losses; (iii) NationsBank currently holds risky real estate investments; (iv) the executive officers of the organizations receive excessive compensation or would receive unreasonably large payments as a result of the proposed merger; (v) NationsBank has experienced difficulty in integrating the credit card, lending, and other systems acquired through previous acquisitions; (vi) subsidiaries of NationsBank and BankAmerica that are engaged in selling securities and insurance products may not adequately inform their customers of the uninsured nature of such products; and (vii) the systems of the combined organization may not be prepared for the Year 2000. The Board also received comments criticizing the adequacy of the management of NationsBank based on the manner in which NationsBank's subsidiaries handled individual loan, business or shareholder transactions, or prepared credit documents and made credit decisions in individual cases. The Board also has considered these comments in reviewing the convenience and needs factor in this case.

^{35/} Some commenters referred to lawsuits or administrative actions involving NationsBank or its subsidiaries that have been resolved or settled. A number of these commenters noted that NB-Lead Bank and its registered broker-dealer subsidiary, NationsSecurities, recently paid approximately \$6.75 million to settle administrative complaints arising from securities sales

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In considering financial and managerial factors, the Board also has considered the terms of the merger and confidential examination and other supervisory information assessing the financial and managerial strength of both organizations on a consolidated basis as well as the financial and managerial resources of the subsidiary depository institutions of NationsBank and BankAmerica, and in particular NB-Lead Bank and BA-Lead Bank. The Board also has reviewed information submitted by NationsBank regarding the programs that NationsBank and BankAmerica have implemented to prepare their systems for the Year 2000, and confidential examination and supervisory information assessing the organizations' efforts to ensure Year 2000 readiness, both before and after the proposed transaction.

In evaluating financial factors in expansion proposals by bank holding companies, the Board has consistently considered capital adequacy to be an especially important factor.^{36/} The Board expects banking organizations

^{35/}(...continued)

activities conducted by NationsSecurities. The securities sales activities at issue in these administrative actions occurred in 1993 and 1994, and the OCC, the primary federal supervisor of NB-Lead Bank, has stated that the bank and NationsSecurities have instituted policies and procedures and taken other actions to correct the deficiencies alleged in the administrative complaints.

Several commenters noted that NationsBank is a defendant in pending administrative or judicial proceedings, including lawsuits alleging that NationsBank subsidiaries have engaged in improper lending practices and an administrative action brought by the Department of Labor alleging that NationsBank engaged in discriminatory hiring practices in Charlotte, North Carolina, in 1993. There has been no adjudication of wrongdoing by NationsBank in any of these matters, and each matter currently is pending before a forum that can provide the plaintiffs adequate redress if their allegations can be sustained.

^{36/} See Chemical.

contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified in the Board's Capital Adequacy Guidelines. NationsBank, BankAmerica, and their subsidiary depository institutions currently are well capitalized under applicable federal guidelines. New BankAmerica and its subsidiary depository institutions also would be well capitalized on a pro forma basis on consummation of the transaction, and New BankAmerica would have capital ratios on a pro forma consolidated basis that are more than 300 basis points above the capital levels required for bank holding companies under the Board's Capital Adequacy Guidelines. The proposed transaction is structured as a stock-for-stock combination, and would not increase the debt service requirements of the combined company. In addition, both companies have reported strong earnings in recent periods.

NationsBank, BankAmerica, and their subsidiary depository institutions also are well managed, and the Board has extensive supervisory experience with the senior management of both organizations. The Board notes that the senior management of New BankAmerica would be drawn from the senior executives of NationsBank and BankAmerica, which would provide the combined organization with experience and knowledge concerning the markets and operations of both companies.^{37/}

^{37/} Several commenters alleged that the current management of NationsBank or BankAmerica, and the proposed management of New BankAmerica, would not include a sufficient number of minorities or women. Other commenters requested that the Board require that New BankAmerica maintain internal policies that would prohibit discrimination in employment on the basis of sexual orientation. The racial and gender composition of management and the breadth of an organization's internal policies on employment discrimination are not factors the Board is entitled to consider under the BHC Act. The Board notes

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The Board and the other financial supervisory agencies, moreover, have extensive experience supervising NationsBank, BankAmerica, and their subsidiary depository institutions, as well as other banking organizations that operate across multiple states or multiple regions. Building on this experience, the Board has developed a supervisory system that, in the Board's view, will permit the Board to monitor and supervise the combined organization effectively on a consolidated basis. This system involves, among other things, the continuous supervision, including both on- and off-site reviews, of the combined organization's material risks on a consolidated basis and across business lines, access to and analyses of the combined organization's internal systems and reports for monitoring and controlling risks on a consolidated basis, and frequent contact with the combined organization's senior management and risk management personnel. The Board expects that management of New BankAmerica will cooperate fully with this supervisory system to ensure that the Board has complete access to information regarding the combined organization's operations, risks, risk management, and efforts to ensure Year 2000 compliance. The Board's supervisory processes are, and would continue to be, coordinated with those of the financial supervisory agencies with primary supervisory

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that the Equal Employment Opportunity Commission has jurisdiction to determine whether banking organizations like NationsBank are in compliance with federal equal employment opportunity statutes under the regulations of the Department of Labor. See 41 C.F.R. 60-1.7(a) and 60-1.40. Several states and municipalities also have adopted laws that prohibit discrimination on the basis of sexual orientation. There has been no finding by an appropriate authority or court that either NationsBank or BankAmerica is in violation of applicable employment laws, and the Board expects all banking organizations to comply with applicable federal, state, and local laws.

responsibility for the combined organization's subsidiary depository institutions. The Board has contacted these financial supervisory agencies regarding the proposed merger and the supervision of the combined organization's subsidiary depository institutions and none of these agencies has objected to the proposal or indicated that consummation of the proposal would present special supervisory difficulties.

For these reasons, and based on all the facts of record, including review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of New BankAmerica, NationsBank, BankAmerica, and their respective subsidiaries, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act, are consistent with approval of the proposal.

Convenience and Needs Factor

In acting on the proposal, the Board also 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. The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal supervisory authority to take into account an institution's record of meeting the credit needs of its entire community, including LMI neighborhoods, in evaluating bank expansion proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of NationsBank and BankAmerica in light of all the facts of record, including public comments on the proposal.

A. Summary of Public Comments Regarding Convenience and Needs Factor

The Board provided an extended period for public comment on the proposal and convened a two-day public meeting on the proposal in San Francisco to aid the Board in collecting information regarding the statutory factors the Board is required to consider and, in particular, the effect of the proposal on the convenience and needs of the affected communities and the CRA performance records of the depository institutions involved. As noted above, more than 1,600 interested persons either submitted written comments or testified at the public meeting.

More than 850 commenters supported the proposal or commented favorably on NationsBank's or BankAmerica's CRA-related activities. Many of these commenters commended NationsBank for providing credit or other services to small businesses, sponsoring community development activities, participating in programs that provided affordable housing and mortgage financing for LMI individuals, and providing support to nonprofit organizations. Other commenters related their favorable experiences with specific programs or services offered by NationsBank.^{38/}

^{38/} These commenters included: (1) a member of the U.S. House of Representatives; (2) local government officials, including the mayors of Charlotte, Baltimore, Memphis, Richmond (Virginia), Houston, and Atlanta, and state senators and representatives in Arkansas, Texas, Florida, and North Carolina; (3) the National Association for the Advancement of Colored People; (4) National Urban League; (5) Local Initiatives Support Corporation; (6) ACORN Housing; (7) Charlotte-Mecklenburg Housing Partnership; (8) Neighborhood Assistance Corporation of America; (9) local branches of Neighborhood Housing Services, Inc.; (10) Greater Miami Neighborhoods; (11) San Francisco Chamber of Commerce; (12) Southern Dallas Development
(continued...)

A number of state and local government agencies involved in community development and affordable housing commented favorably on their experiences with NationsBank and BankAmerica. The Florida Division of Banking, for example, commended NationsBank's record of lending to small businesses and LMI and minority individuals in that state. In addition, a number of private developers commended NationsBank for supporting the development of affordable housing for low-income individuals, elderly individuals, or individuals with disabilities, through loans, grants, and technical assistance. Other private organizations supported the proposal based on NationsBank's record of financing development projects in neighborhoods with predominately LMI and minority residents, and of financing businesses owned by women and minorities ("women-owned" and "minority-owned") directly and through financial intermediaries. Some community-based organizations observed that useful needed products and services were developed through partnerships with NationsBank and BankAmerica. A number of comments from owners of small businesses stated that NationsBank had been a leader in fostering economic revitalization and community development.^{39/}

^{38/}(...continued)

Corporation; and (13) community development organizations, nonprofit organizations, and small businesses in North Carolina, Texas, Florida, and New Mexico.

^{39/} Several commenters argued that the Board should give less weight to comments in support of the proposal if the commenter received financial assistance from NationsBank or BankAmerica to travel to the San Francisco public meeting or otherwise received encouragement or assistance from NationsBank or BankAmerica to submit comments supporting the proposal. One commenter also alleged that a NationsBank representative sought to coerce
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More than 800 commenters either opposed the proposal, requested that the Board approve the merger subject to conditions suggested by the commenter, or expressed concerns about large bank mergers in general or the CRA performance record of NationsBank or BankAmerica.^{40/} A number of these commenters contended that NationsBank had an inadequate record of performance under the CRA, particularly in lending to LMI individuals and minorities and to women- and minority-owned small businesses. Some commenters questioned NationsBank's compliance with fair lending laws and

^{39/}(...continued)

community groups to submit comments in favor of the merger and implied that failure to do so could result in a loss of funding from NationsBank. The description of the number of comments in this order is provided only to indicate the public interest in the proposal, and does not represent a numerical weighting by the Board of the comments submitted in favor of or in opposition to the proposal. The Board has carefully considered the substance of oral and written submissions in light of the entire record in this case and the factors the Board is required to consider under the BHC Act.

^{40/} These commenters included: (1) several members of the U.S. House of Representatives and the U.S. Senate; (2) several state and local government officials, including the Mayor of San Francisco, a member of the board of supervisors for the City and County of San Francisco, the Los Angeles City Council, the mayors of Richmond and Walnut Creek, both in California, and a California State Assemblyman; (3) The Greenlining Institute and a number of its member organizations; (4) Community Reinvestment Association of North Carolina; (5) California Reinvestment Committee; (6) the Stockton, California, chapter of the National Association for the Advancement of Colored People; (7) Inner City Press/Community on the Move; (8) City and County of San Diego Community Reinvestment Task Force; (9) National Training and Information Center; (10) Texas Community Reinvestment Coalition; (11) Consumers Union; (12) the U.S. Hispanic Chamber of Commerce and National Black Chamber of Commerce; and (13) community groups and nonprofit organizations in California, North Carolina, Florida, Texas, New Mexico, Arizona, and Nevada.

criticized the lending practices of NationsBank's subprime lending subsidiaries. Other commenters maintained that BankAmerica's CRA performance record was inadequate, particularly in New Mexico and Texas. A number of commenters criticized the lending records of NationsBank and BankAmerica by citing data submitted by the banking organizations under the Home Mortgage Disclosure Act (12 U.S.C. § 2810 *et seq.*) ("HMDA").

Some commenters who commended BankAmerica's CRA performance in California expressed concern that the proposal might diminish CRA-related activities in that state, particularly in communities and rural areas with specialized housing and community development needs. These commenters identified the activities of the Bank of America Community Development Bank and BankAmerica's Rural 2000 Initiative as programs that assisted in meeting the credit needs of diverse California communities and urged NationsBank to retain these programs. NationsBank's community development and lending programs, on the other hand, were characterized by some of these commenters as standardized and inflexible. Some commenters expressed concern that the expansion of the NationsBank Community Development Corporation ("CDC") might harm nonprofit affordable housing developers.

A number of commenters expressed concerns about NationsBank's \$350 billion, 10-year community reinvestment plan. Most of these commenters asserted that the plan was inadequate because it failed to establish specific lending and investment commitments for particular states, communities, or products. Some commenters contended that the Board should monitor and enforce NationsBank's future compliance with the plan. Other commenters argued that the plan should not be considered by the Board if the plan is not enforceable by community groups or federal supervisory agencies. Some

commenters also contended that NationsBank has not cooperated with community groups in general or provided community groups with access to its senior level executives.

Some commenters also were concerned that the merger would result in the loss of local control over lending decisions and the relocation of a major financial institution currently headquartered in San Francisco. In addition, commenters contended that the proposal would adversely affect local communities through job losses, reduced levels of charitable contributions, and branch closings.^{41/}

B. CRA Performance Records

In its consideration of the convenience and needs of the communities to be served by New BankAmerica, the Board has reviewed in detail the CRA performance records of NationsBank and BankAmerica, including their mortgage and small business lending records, community development and investment programs, and their initiatives to increase lending in LMI areas, in states served by their subsidiary depository institutions.^{42/} The

^{41/} Several commenters opposed the proposal based on unfavorable experiences with NationsBank or BankAmerica in particular loan transactions or business dealings with the organizations. The Board has reviewed these comments in light of all the facts of record, including information provided by NationsBank. The Board has provided copies of these comments to the appropriate federal supervisor of the subsidiary involved for its consideration.

^{42/} Some commenters claimed that evidence suggests that large banks engage in less small business lending, relative to their size and total lending activities, than small banks. The Board has considered these comments in light of the record of lending performance of NationsBank and BankAmerica, including their record of assisting in meeting the credit needs of small businesses.

Board also has considered the record and ability of these organizations to adapt programs to special local needs. In addition, the Board has considered the record of NationsBank and BankAmerica in implementing CRA programs and policies effectively after an expansion proposal, as well as the current plans of New BankAmerica for implementing CRA policies and programs following consummation of the proposal.

NationsBank and BankAmerica have indicated that the CRA policies and programs of New BankAmerica would draw on the CRA policies and programs currently in effect at both institutions. NationsBank has stated, for example, that New BankAmerica would continue to operate the Bank of America Community Development Bank, and would maintain BankAmerica's Rural 2000 Initiative and expand that initiative to areas currently served by NationsBank.^{43/} NationsBank also has stated that New BankAmerica would continue to operate the NationsBank CDC, which provides equity financing and technical assistance to encourage residential and commercial development in distressed urban neighborhoods.

NationsBank and BankAmerica have extensive and well-established CRA policies and programs that serve communities in several states and that have been rated "outstanding" by the federal supervisors of their subsidiary depository institutions. The Board expects that New BankAmerica will continue the policies of NationsBank and BankAmerica that devote priority to addressing

^{43/} BankAmerica's Rural 2000 Initiative, established in 1997, seeks to increase the level of community development in LMI rural areas. Under the initiative, BankAmerica established a \$500 million lending goal to support community development lending in rural communities. The initiative also includes programs to support community reinvestment activities in areas with large Native American populations.

the banking needs of local communities, including LMI neighborhoods, through programs and policies that recognize the needs of different communities.

C. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant 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 financial supervisory agency.^{44/}

A substantial majority of NationsBank's and BankAmerica's total assets are controlled by insured depository institutions that received an "outstanding" rating at their most recent CRA performance examination. NB-Lead Bank received an "outstanding" rating from the OCC, its appropriate federal supervisor, at its most recent examination for CRA performance, as of July 1995. Since that examination, NB-Lead Bank has acquired by merger NationsBank's subsidiary banks located in Florida, Georgia, Texas, and Virginia, each of which also received an "outstanding" rating from the OCC at their most recent examinations for CRA performance conducted before the

^{44/} The Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record and that reports of these examinations will be given great weight in the applications process. 54 Federal Register 13,742 and 13,745 (1989); see also 62 Federal Register 52,105 (1997).

mergers.^{45/} After these internal mergers, NB-Lead Bank controls more than 80 percent of NationsBank's total assets. All of NationsBank's other subsidiary banks received either an "outstanding" or a "satisfactory" rating at the most recent examinations of their CRA performance.^{46/}

All of BankAmerica's subsidiary depository institutions received an "outstanding" rating at their most recent examinations for CRA performance. In particular, BA-Lead Bank received an "outstanding" rating from the OCC at its most recent examination for CRA performance, as of September 1997.^{47/} Bank

^{45/} NB-Lead Bank acquired by merger the following NationsBank subsidiary banks after July 1995: NationsBank of Florida, N.A., Tampa, Florida ("NationsBank-Florida"); NationsBank of Georgia, N.A., Atlanta, Georgia ("NationsBank-Georgia"); NationsBank of Texas, N.A., Dallas, Texas ("NationsBank-Texas"); and NationsBank, N.A., Richmond, Virginia ("NationsBank-Virginia").

^{46/} NationsBank of Tennessee, N.A., Nashville, Tennessee ("NationsBank-Tennessee"), received an "outstanding" rating from the OCC as of July 1995; and NationsBank of Delaware, N.A., Wilmington, Delaware ("NationsBank-Delaware"), a limited-purpose credit card bank, and NationsBank of Kentucky, N.A., Hopkinsville, Kentucky ("NationsBank-Kentucky"), each received "satisfactory" ratings from the OCC as of July 1995. Barnett Bank, N.A., Jacksonville, Florida; Boatmen's Bank of Austin, Austin, Texas; Sunwest Bank of El Paso, El Paso, Texas; NationsBank, N.A. (Glynn County), Brunswick, Georgia; and Community Bank of the Islands, Sanibel, Florida, also received either an "outstanding" or "satisfactory" rating at their most recent CRA examinations, which occurred prior to NationsBank's acquisition of these institutions.

^{47/} Because BA-Lead Bank operates branches in more than one state, OCC examiners also separately rated the bank's CRA performance in each state and multi-state MSA in which the bank operated branches. BA-Lead Bank received an "outstanding" rating for its CRA performance in California, Washington, and in the multi-state MSA of Portland, Oregon-Vancouver, Washington. These

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of America Texas, N.A., Dallas, Texas ("BankAmerica-Texas"), also received an "outstanding" CRA rating from the OCC at its most recent examination, as of October 1996.^{48/}

D. NationsBank's CRA Performance Record

Overview. NationsBank's Community Investment Group coordinates and facilitates the delivery of products and services by NationsBank's subsidiaries to LMI individuals and communities and to small businesses. The Community Investment Group works with regional and local managers to market the organization's products in local communities and to develop strategies to meet the special credit needs of local communities throughout the NationsBank franchise.

In 1997, NationsBank made more than 35,000 home mortgage and home improvement loans, totaling approximately \$2 billion, in LMI neighborhoods. In 1997, NationsBank also originated or purchased more than 35,000 loans, totaling more than \$3 billion, under programs sponsored by the

^{47/}(...continued)

states and multi-state MSA account for approximately 80 percent of BA-Lead Bank's domestic deposits from its assessment areas. BA-Lead Bank received a "satisfactory" rating for its CRA performance record in the other eight states and one multi-state MSA where it operated deposit-taking branches.

^{48/} Bank of America, F.S.B., Portland, Oregon ("BankAmerica-FSB"), received an "outstanding" CRA rating from the Office of Thrift Supervision ("OTS") at its most recent examination, as of June 1997; Bank of America Community Development Bank, Walnut Grove, California ("Community Development Bank"), received an "outstanding" rating from the FDIC at its most recent CRA examination, as of August 1997; and Bank of America, N.A., Phoenix, Arizona ("BankAmerica-Arizona"), a limited-purpose credit card bank, received an "outstanding" rating from the OCC at its most recent examination, as of October 1996.

Federal Housing Administration ("FHA"), Veterans Administration ("VA"), and Farmers Home Administration. NationsBank also made approximately \$11 billion in small business loans in 1997, of which more than \$2 billion in loans were made to small businesses located in LMI areas. NationsBank was one of the largest bank originators of Small Business Administration ("SBA") loans by number of loans in 1997, originating 1,184 SBA loans, totaling approximately \$112 million. NationsBank also operates a Small Business Investment Company ("SBIC"), which provides investments of up to \$500,000 in small and minority-owned businesses that have an annual net income of less than \$2 million and a net worth of less than \$6 million.

NationsBank engages in community development through a variety of programs and initiatives, including the NationsBank CDC which functions as a lender and developer of affordable housing projects in LMI communities. The NationsBank CDC has developed or redeveloped approximately 14,000 units of affordable housing with investments totaling more than \$300 million since it was formed in 1991,^{49/} and it opened new offices in 1997 in four cities, including St. Louis, Missouri, and Tampa-St. Petersburg, Florida. NationsBank also has established a Community Development Financial Institution Initiative, a \$25 million fund to provide investments and loans to financial institutions that focus their efforts on serving LMI individuals and communities, such as community development banks and multi-bank community development

^{49/} The NationsBank CDC has provided debt and equity financing to a number of community development corporations through national or local partnerships or programs. These partnerships include neighborhood development organizations, for-profit developers, local and federal government agencies, and financial intermediaries.

corporations, and a separate Community Investment Financial Institutions Initiative to assist in meeting the credit needs of rural areas.^{50/}

NationsBank also maintains partnerships with a number of national and local community organizations to provide affordable mortgages, counseling to first-time homebuyers, and loans and technical assistance to small businesses. These partnerships include the Neighborhood Assistance Corporation of America ("NACA"), which offers a no-downpayment mortgage product and credit and homeownership counseling to eligible borrowers. The partnership's products and services currently are offered in Atlanta, Baltimore, Charlotte, Washington, D.C., and Jacksonville, and NationsBank intends to expand the program in 1998 to seven additional cities, including Albuquerque, San Antonio, and Tampa-St. Petersburg, Florida.^{51/} In 1998, NationsBank increased its funding for the NACA partnership by \$250 million to \$750 million.

NationsBank, together with the Enterprise Social Investment Corporation, also established the Nations Housing Fund, which provides equity financing for the acquisition, construction, or rehabilitation of affordable housing. The Nations Housing Fund has helped create more than 5,000 units of affordable rental housing, and, in 1996, NationsBank doubled its initial \$100 million commitment to the Fund. NationsBank also has established a partnership with Rural Local Initiatives Support Corporation ("LISC") to

^{50/} The initiative fund was developed to enhance NationsBank's existing partnerships with 10 minority-owned banks, many of which serve rural areas. The Community Investment Group also includes NationsBank's Rural Forum which focuses on lending to LMI borrowers in rural communities.

^{51/} NationsBank's partnerships with other organizations include ACORN Housing, National Council of La Raza, the National Urban League, and the National Association for the Advancement of Colored People.

promote affordable housing and community development activities in rural areas, and has provided Rural LISC a \$350,000 grant to support eighteen CDCs in eleven states.

Lending Record in General. As noted, the OCC conducted coordinated CRA performance examinations in 1995 of NB-Lead Bank, NationsBank-Florida, NationsBank-Georgia, NationsBank-Texas, NationsBank-Virginia, NationsBank-Kentucky, and NationsBank-Tennessee (the "NationsBank Examinations"). The NationsBank Examinations found that each bank, either directly or in conjunction with its affiliates, offered a variety of housing-related loan products with flexible credit terms and underwriting guidelines, including mortgages with low downpayment requirements and mortgages insured or guaranteed by the FHA and VA.^{52/} The NationsBank Examinations also found that NationsBank's subsidiary banks affirmatively solicited loan applications from all segments of their communities, especially LMI neighborhoods, and that the banks' lending activities had effectively reached LMI communities and individuals. In addition, examiners determined that the loan originations and denials of NationsBank's subsidiary banks were reasonably distributed throughout the banks' communities.

The NationsBank Examinations also concluded that NationsBank's subsidiary banks had effectively identified potentially underserved areas within their communities and designated the areas for priority attention. Examiners noted that NationsBank had established the NationsBank Neighborhoods

^{52/} These affordable mortgage programs included two loan products that required a downpayment of 5 percent, with only 3 percent or \$500 of the necessary downpayment required to be provided from the borrower's own funds.

program to focus the banks' resources on the revitalization of inner-city neighborhoods in communities served by a NationsBank's subsidiary bank.^{53/} NationsBank's subsidiary banks also maintained an ongoing dialogue with local government officials and community groups representing neighborhoods, small businesses and minorities to ascertain the credit needs of the local community, and participated in loan pools and programs with local government and community development organizations to promote affordable housing opportunities in local communities.^{54/}

Examiners also concluded that NationsBank's subsidiary banks continued to help meet the credit needs of small businesses in their communities, including LMI communities. They noted, for example, that NB-Lead Bank increased its volume of business loans in LMI areas in North Carolina and South Carolina from 1993 to 1994, and that NationsBank had increased its offering of business lines of credit to respond to an identified need of small business owners. The NationsBank Examinations also found that the banks actively participated in community development activities in their

^{53/} The program included neighborhoods in the following cities: Charlotte, Durham, and Greensboro, North Carolina; Charleston and Greenville, South Carolina; Austin, Houston, and San Antonio, Texas; Tampa, Miami, and Orlando, Florida; Atlanta, Macon, and Savannah, Georgia; and Chattanooga and Memphis, Tennessee.

^{54/} Among the projects with local government and community groups noted by examiners were the Charlotte/Mecklenburg Housing Partnership in North Carolina; the South Carolina Down Payment Assistance Program; the Tampa Challenge Fund II and Homes for South Florida in Florida; the Tarrant County Housing Partnership and City of Austin "Double Down" Program in Texas; and the Athens/Clarke County H.E.L.P. Program in Georgia.

communities, and noted that the banks frequently had taken a leadership role in corporate or local initiatives designed to promote community development.

Examiners also concluded that NationsBank's subsidiary banks reasonably served the credit needs of all segments of their communities, including LMI communities, through their branch structure, ATM network, and alternative delivery systems. The NationsBank Examinations reviewed the branch closing policies and record of branch closings of NationsBank's subsidiary banks and concluded that each of the banks had a good record of opening, closing, and relocating branch offices while providing all segments of its communities, including LMI areas, with reasonable access to bank services.

Importantly, examiners found no evidence of prohibited discriminatory or other illegal credit practices by NationsBank's subsidiary banks.^{55/} In reaching this conclusion, examiners conducted a comparative analysis of loan applications submitted by minority and non-minority applicants.

NB-Lead Bank in North Carolina and South Carolina. Examiners concluded that the lending record of NB-Lead Bank reflected a responsiveness to the most important credit needs of its communities. For example, in 1994, the bank made 303 loans under NationsBank's affordable mortgage loan programs totaling \$19 million in North Carolina, and 451 loans totaling \$27 million under these programs in South Carolina. Examiners also noted that the bank continued to assist in meeting the credit needs of agricultural communities in

^{55/} Examiners also found no evidence of prohibited discriminatory or illegal credit practices at Barnett Bank, Boatmen's Bank of Austin, Sunwest Bank of El Paso, Community Bank of the Islands, and NationsBank, N.A. (Glynn County) at the banks' most recent CRA performance examinations, which were conducted before the banks were acquired by NationsBank.

North Carolina and South Carolina, making more than 900 agriculture-related loans, which totaled \$77 million, in these states in 1993 and 1994, and which included more than 480 loans totaling approximately \$37.5 million in LMI areas.

NB-Lead Bank significantly increased its origination of SBA-guaranteed loans from 1993 to 1994.^{56/} Examiners also noted that NB-Lead Bank provided funding for the NAACP Community Development Resource Centers in Charlotte, North Carolina, and Columbia, South Carolina, which provide educational assistance to potential homebuyers and small businesses, and that customer referrals from these Resource Centers resulted in the origination of approximately \$10 million in consumer and small business loans by NB-Lead Bank.

NB-Lead Bank participated with state and local governments in a number of loan programs designed to promote affordable housing and economic and community development during the period covered by the examination. For example, in 1994, NB-Lead Bank made 69 loans totaling \$4.4 million under the North Carolina Housing Finance Agency Home Ownership Program, which assists banks in making mortgages in rural areas of the state. NB-Lead Bank also participated in loan programs operated in conjunction with the cities of Charlotte, Hendersonville, and Wilmington in North Carolina, and the cities of Liberty, Columbia, and Rock Hill in South Carolina.^{57/}

^{56/} In 1994, NB-Lead Bank originated 82 SBA loans totaling approximately \$21.7 million, compared with 51 loans totaling \$14.6 million in 1993.

^{57/} In 1994, NB-Lead Bank originated 91 loans totaling approximately \$5.5 million under the city and county-sponsored loan programs noted by examiners.

NationsBank invested approximately \$8.5 million in eight projects in North Carolina and South Carolina for the construction or rehabilitation of approximately 350 housing units for LMI families and individuals in 1994. NationsBank's SBIC also made \$1.4 million in investments in nine businesses in North Carolina and South Carolina, including five minority- or women-owned businesses.

In 1997, NationsBank made more than 100 community development loans totaling \$15 million in North Carolina. In 1997, NationsBank also originated more than \$6 million of SBA loans in North Carolina and \$3 million of SBA loans in South Carolina, making NationsBank the top SBA lender in both states.

Florida. Examiners concluded that NationsBank-Florida showed a commitment to lending to small businesses throughout its service communities that was reflected by the bank's origination of business loans totaling \$45 million in LMI areas of Florida in 1994. Furthermore, despite an overall decline in business lending, the bank increased its SBA lending in Florida from 1993 to 1994, making 42 loans totaling \$8.5 million under SBA programs in 1994.^{58/} NationsBank-Florida also made 21 agricultural loans totaling \$5.4 million in 1994.^{59/}

^{58/} In 1993, the bank originated 21 SBA loans totaling approximately \$3.3 million.

^{59/} Although NationsBank-Florida's agricultural lending decreased from 1993 to 1994, examiners noted that this decline was generally attributable to a single large loan made in 1993 and external factors affecting agricultural businesses in Florida.

In addition, NationsBank-Florida made 18 low-cost mortgage loans, totaling \$1.3 million, to LMI individuals under the Keystone Challenge Fund in 1994, and provided \$2.1 million in financing to the First Housing Development Corporation for the construction or rehabilitation of multi-family rental housing. In 1993 and 1994, the bank provided approximately \$4 million in equity financing for the development of 286 affordable housing units for low-income families in conjunction with the Nations Housing Fund.

Since the NationsBank Examinations, NationsBank has provided a total of \$1.4 million in grants to seven Black Business Investment Corporations in Florida, and in 1998 expanded its SBIC to Jacksonville. The NationsBank CDC also recently committed approximately \$30 million to projects that will create 772 units of affordable, multi-family housing units in three localities.^{60/} In 1997, NationsBank originated or purchased more than 21,000 housing-related loans totaling approximately \$954 million in LMI areas in Florida.

Georgia. Examiners noted that NationsBank-Georgia increased its origination of consumer and HMDA-reportable loans in LMI areas from 1993 to 1994. Small business lending in LMI areas of Georgia by the bank also

^{60/} Several commenters alleged that NationsBank should acquire more goods and services from businesses owned by women and minorities. NationsBank responded that it conducted \$106 million in business with more than 1,200 minority- and women-owned businesses in 1997, and that it was named "Corporation of the Year" by the National Minority Supplier Development Council in 1997. Although the Board fully supports programs designed to stimulate and create economic opportunities for all members of society, the Board concludes that consideration of the third-party contracting activities of NationsBank is beyond the scope of the CRA and other relevant federal banking statutes.

increased from \$131 million in 1993 to approximately \$200 million in 1994. NationsBank-Georgia made 115 agricultural loans totaling \$5.4 million in 1994.

The number and dollar volume of the bank's SBA loans more than doubled from 1993 to 1994. In 1994, the bank originated 50 SBA loans totaling \$16.6 million, compared with 23 loans totaling \$8.2 million in 1993.

Examiners also noted that the bank invested \$200,000 in the Savannah CDC, which seeks to support small businesses in downtown Savannah, and committed \$4.5 million to the Atlanta Economic Development Corporation for the construction of a community center in Atlanta.

Virginia, Maryland, and the District of Columbia. NationsBank-Virginia significantly increased its origination of mortgages through its partnership with ACORN Housing from 1993 to 1994, originating approximately 500 loans totaling approximately \$52 million in 1994 throughout Virginia, Maryland, and the District of Columbia.^{61/} Examiners also noted that NationsBank-Virginia was the most active lender under the Virginia Housing Development Authority ("VHDA") loan program, making 324 loans totaling \$23 million under the program in 1994. This represented an increase from 1993, when the bank originated 285 loans totaling \$19 million under the VHDA loan program.

In addition, the bank's Community Development Lending Group provided a total of \$48.5 million in financing in 1993 and 1994 for neighborhood revitalization projects. These projects included \$1.6 million in

^{61/} In 1993, NationsBank-Virginia made 15 loans totaling \$1.2 million through the ACORN Partnership in the District of Columbia. The partnership's programs were not available in Maryland or Virginia in 1993.

financing to develop a shopping center in the 14th Street Urban Renewal Area in the District of Columbia.

Texas. Examiners favorably noted that NationsBank-Texas made 805 low-rate mortgages, totaling \$44 million, in 1993 and 1994 through its partnerships with ACORN Housing and the United Housing Program, and that the bank participated in a variety of other city-sponsored programs, including the Dallas Affordable Housing Partnership, that provided mortgage products to LMI borrowers.^{62/} Although the bank's overall number of HMDA-reportable loan originations declined from 1993 to 1994, examiners found that the number of the bank's HMDA-reportable loans in LMI areas increased by 44 percent from 1993 to 1994.

Small business lending through programs sponsored by the SBA also increased from 1993 to 1994.^{63/} Overall, NationsBank-Texas made a total of \$375 million in loans to small businesses located in LMI neighborhoods in 1994. The bank also provided \$1 million in equity and loaned \$5.7 million to the Carlton Court Limited Partnership for the development of approximately 260 apartment units for low-income residents of Dallas, and invested \$2.4 million in MESBIC Ventures, a minority-owned small business investment company that provides financing to small and minority-owned businesses during the period covered by the performance examination.

NationsBank recently committed \$500 million for loans and investments in south Dallas in the next four years. In 1997, NationsBank

^{62/} NationsBank made a total of 1,649 affordable mortgages, totaling \$81 million, in Texas in 1994.

^{63/} The bank made 123 SBA loans totaling approximately \$20 million in 1994, compared with 51 loans totaling \$16.5 million in 1993.

originated or purchased more than 6,000 housing-related loans totaling approximately \$240 million in LMI areas in Texas. The Texas Banking Commissioner also has advised the Board that NationsBank has agreed to take a number of actions in Texas after consummation of the proposal, including increasing its small business lending activities and purchases from minority- and women-owned businesses in Texas, and freezing its monthly service charge on certain deposit products for LMI markets for 12 months after consummation.

New Mexico. NationsBank entered New Mexico in 1997 through its acquisition of Boatmen's Bancshares, Inc., St. Louis, Missouri, which operated twelve subsidiary banks in the state.^{64/} Each of the twelve bank subsidiaries of Boatmen's received either an "outstanding" or a "satisfactory" rating at its most recent examination for CRA performance, which occurred before NationsBank acquired the banks. NationsBank has merged eleven of these banks into NB-Lead Bank, which, as noted, received an "outstanding" rating at its most recent CRA performance examination.^{65/}

The Board also has considered actions that NationsBank has taken since entering New Mexico to meet the credit needs of the communities it serves

^{64/} These banks were Sunwest Bank of Albuquerque, N.A., Albuquerque; Sunwest Bank of Clovis, N.A., Clovis; Sunwest Bank of Rio Arriba, N.A., Espanola; Sunwest Bank of Farmington, Farmington; Sunwest Bank of Gallup, Gallup; Sunwest Bank of Hobbs, N.A., Hobbs; Sunwest Bank of Las Cruces, N.A., Las Cruces; Sunwest Bank of Raton, N.A., Raton; Sunwest Bank of Roswell, N.A., Roswell; Sunwest Bank of Santa Fe, Santa Fe; Sunwest Bank, Silver City; and Boatmen's Credit Card Bank, Albuquerque, all in New Mexico.

^{65/} Boatmen's Credit Card Bank, a limited-purpose credit card bank, was merged into NationsBank's limited-purpose credit card bank, NationsBank-Delaware, which, as noted, received a "satisfactory" rating at its most recent examination for CRA performance.

in the state. In 1997, NationsBank originated or purchased more than 850 housing-related loans totaling approximately \$44.6 million in LMI areas in New Mexico. NationsBank also made a \$500,000 loan to the New Mexico Community Development Fund, which provides low-interest financing and technical assistance to urban and rural communities in the state, and a \$400,000 loan to the Santa Fe Business Incubator, which provides assistance to small start-up businesses.

E. BankAmerica's CRA Performance Record

Overview. BankAmerica's subsidiary depository institutions are integrated into the company's corporate CRA strategy and work in a coordinated manner to deliver the company's CRA-related programs and services to their local communities. Retail banking services are provided primarily by BA-Lead Bank and BankAmerica-Texas. Local CRA activities of BA-Lead Bank and BankAmerica-Texas are supported by the Community Development Bank and BankAmerica-FSB, which make community development investments and originate affordable housing loans throughout the communities served by BankAmerica.^{66/}

BankAmerica offers a wide range of credit products through its subsidiary banks, including a number of products with flexible underwriting criteria that are designed to assist in meeting the credit needs of small businesses and LMI individuals and communities. For example, BankAmerica's

^{66/} In January 1998, BankAmerica sold BankAmerica-FSB's deposit-taking branches in Hawaii, Illinois, and Indiana to other institutions, and BankAmerica-FSB currently operates a single deposit-taking branch in Walnut Creek, California, which primarily accepts deposits related to the bank's community development activities.

Neighborhood Advantage mortgage product uses special underwriting criteria and requires a downpayment of 5 percent, with 3 percent of the downpayment from the borrower's own funds.^{67/} BankAmerica also offers an affordable consumer loan product, the BankAmerica Special Income Credit (B*A*S*I*C), that uses special underwriting criteria. The Neighborhood Advantage product and home equity and home improvement loans under the B*A*S*I*C program are available for loans relating to properties in LMI areas and to borrowers whose income is less than 100 percent of the relevant county's median income.^{68/} BankAmerica automatically analyzes loan applications to determine whether the loan would qualify for the Neighborhood Advantage or B*A*S*I*C program. In 1997, BankAmerica made \$3.5 billion in home loans under the Neighborhood Advantage program, and \$1.3 billion in consumer loans under the B*A*S*I*C program to low-income borrowers.

BankAmerica also offers an Advantage Business Credit program, which provides loans or lines of credit of up to \$100,000 to small businesses under an expedited review process. In addition, BankAmerica offers SBA loans and is designated as an SBA Preferred Lender in each SBA district in which it operates.

Lending Record In General. As noted above, the appropriate federal supervisory agencies conducted CRA performance examinations of

^{67/} BA-Lead Bank also participates in the Home Works program in conjunction with the City of Los Angeles, which provides eligible applicants with financial assistance to meet the downpayment requirement and an interest-free loan for rehabilitation of the acquired property.

^{68/} Non-housing related consumer loans are available under the B*A*S*I*C program for borrowers with incomes that are equal to or less than 80 percent of the area's median income.

BA-Lead Bank, Community Development Bank, and BankAmerica-FSB in 1997, and BankAmerica-Texas in 1996 (the "BankAmerica Examinations"). Examiners concluded that loan originations by the institutions were reasonably distributed throughout their communities, including LMI communities. Examiners also found that the lending activities of the institutions reflected responsiveness to the credit needs of their communities.

Examiners at BA-Lead Bank, which represents approximately 90 percent of BankAmerica's total consolidated assets, noted that the bank had demonstrated leadership in its CRA performance and was exemplary in extending credit to LMI borrowers. Examiners found that BA-Lead Bank's percentage of total loan originations to LMI borrowers in many areas matched or exceeded the bank's overall market share in the area or the representation of LMI borrowers in the area's population in 1996. BA-Lead Bank originated approximately 30,500 residential housing-related loans to LMI individuals, totaling \$1.5 billion.^{69/} BA-Lead Bank originated 22,986 small business loans, totaling \$1.4 billion in LMI census tracts and representing approximately 26 percent of the bank's total small business loan originations.

The BankAmerica Examinations also noted that the institutions were active in community development activities. Examiners found that BA-Lead Bank's community development activities represented a substantial commitment to its communities. BA-Lead Bank made 266 community development loans,

^{69/} All lending data from the BankAmerica Examinations are for the assessment period covered by the examination unless otherwise indicated. Those periods for the banks are as follows: BA-Lead Bank (January 1996 through June 1997), BankAmerica-Texas (September 1994 through October 1996), Community Development Bank (January 1996 through August 1997), and BankAmerica-FSB (March 1995 through March 1997).

totaling approximately \$467 million, and 1,202 qualified community development investments, totaling approximately \$406 million.^{70/} Community Development Bank also originated \$37 million in community development loans and partially financed 10 housing projects that created 763 units of affordable housing for LMI individuals.

The BankAmerica Examinations also found that the branch networks of the institutions were reasonably distributed throughout their respective communities, including LMI areas.^{71/} Examiners reviewed the institutions' branch closing policies and records of opening and closing branch offices and concluded that branches closed by the institutions during the review period generally had not adversely affected the ability of the institutions to serve their entire communities, including LMI areas.

The BankAmerica Examinations included reviews of the fair lending policies and programs of BA-Lead Bank, BankAmerica-Texas, Community Development Bank, and BankAmerica-FSB as part of the depository institutions' fair lending law compliance examinations. Examiners found that the fair lending policies and programs maintained by the institutions were

^{70/} The BankAmerica Examinations found that BankAmerica-FSB's loan originations were reasonably distributed throughout its communities, and that the institution had increased its lending for affordable housing projects from \$173 million in 1995 to \$254 million in 1996. The savings association also actively participated in government-sponsored loan programs, originating approximately \$338 million in FHA and VA loans in 1996.

^{71/} Examiners also noted that BA-Lead Bank operated a sizable network of alternative delivery systems that was generally accessible to customers in LMI areas, including an extensive network of ATMs, a 24-hour help line, and Loan-by-Phone services.

comprehensive and sufficient to monitor compliance with the fair lending laws.^{72/} OCC examiners reviewed a sample of housing-related loan files at BA-Lead Bank during the 1997 examination and concluded that the bank did not process housing-related loan applications from minorities in a disparate manner. Examiners at the BankAmerica Examinations also found no evidence of prohibited discriminatory or other illegal credit practices at any other subsidiary depository institution of BankAmerica.

California. BA-Lead Bank is the largest commercial bank in California and approximately 60 percent of the bank's total domestic deposits are held in the state. As noted above, New BankAmerica will continue to operate the Community Development Bank after consummation of the merger. BA-Lead Bank originated 120 community development loans, totaling \$261 million, that financed approximately 5,500 units of housing for LMI residents of California. Community Development Bank also provided funding for a variety of affordable housing projects in the Sacramento and Oakland areas, including \$7.6 million in financing for the construction of 125 units of affordable housing in the Vintage Court development in Alameda County and

^{72/} OTS examiners, for example, noted that BankAmerica-FSB, which continues to control BankAmerica's principal mortgage subsidiary, the BankAmerica Mortgage Group, used a variety of methods to monitor compliance with the fair lending laws, including second review programs for denied applications, a "matched pair" testing program designed to assure the equal treatment of similarly situated minority and non-minority applicants, and statistical analyses of loan decisions.

\$4.5 million in financing for the construction of 124 units of affordable housing in the Southland Park project in Sacramento.^{73/}

Examiners concluded that BA-Lead Bank's lending performance in California demonstrated a substantial level of housing-related and consumer loans to LMI borrowers, and that the bank's residential, small business, and consumer lending were reasonably distributed throughout the state, including LMI areas. In 1996, BA-Lead Bank originated approximately 13 percent of its housing-related loans and 26 percent of its consumer loans in California in LMI areas. Examiners found that Community Development Bank's lending levels also reflected responsiveness to the credit needs of its California assessment area.

Examiners also found that BA-Lead Bank was effective in helping to meet the credit needs of small businesses of all sizes in California, and noted that approximately 92 percent of the bank's small business loans were in amounts of less than \$100,000. In addition, approximately 26 percent of BA-Lead Bank's and Community Development Bank's small business loans in California were originated in LMI areas, which is a level that approximates the percentage of small businesses in California located in LMI areas. The Community Development Bank originated 88 SBA loans in its assessment area from October 1995 to September 1997, with a substantial portion of these loans

^{73/} The Community Development Bank also initiated several programs utilizing loans, guarantees, and subsidies to meet the special credit needs of California communities, including special financing packages developed with the Los Angeles Housing Department to repair damage caused by the Northridge earthquake and with the State Water Resource Board to eliminate pollution in the Santa Cruz and Lake Tahoe areas.

originated under the SBA's 504 Loan Program and new FA\$TRAK Program, each of which provides flexible repayment terms.^{74/}

BA-Lead Bank also made a total of \$181 million and the Community Development Bank made more than \$5.5 million in community development investments and grants in California. The BankAmerica Foundation also provided support to a wide variety of nonprofit community development organizations throughout the state, including the Rural California Housing Corporation, Housing California, and the California Community Economic Development Corporation.

Texas. The 1996 examination of BankAmerica-Texas found that the bank engaged in substantial lending activities that addressed important credit needs of its communities, including LMI neighborhoods. Examiners also noted that BankAmerica-Texas offered innovative and specialized credit products designed to help serve LMI borrowers. BankAmerica-Texas originated the largest volume of conventional home purchase mortgages in Texas in 1995, and made more than \$198 million in loans to LMI individuals and to small businesses in LMI areas. Examiners also considered the bank's HMDA-reportable lending in LMI areas to be particularly strong.^{75/} BankAmerica-Texas originated 140 SBA loans, totaling approximately \$32 million, and examiners commented favorably that the bank's small business

^{74/} The SBA 504 Loan Program allowed repayment terms of between 10 and 20 years. The FA\$TRACK Program permitted small businesses to develop a stable cash flow before repayment begins.

^{75/} Forty percent of the residential housing loans and 33 percent of the consumer loans originated by BankAmerica-Texas in 1995 were to LMI borrowers. These percentages exceeded the representation of LMI residents in the general population of many areas within the bank's delineated community.

loans were distributed throughout its communities, with more than 20 percent of the loans originated in LMI areas in 1995.

The BankAmerica Examinations also found that BankAmerica-Texas actively participated in community development activities in its communities. Examiners noted that BankAmerica-Texas held a portfolio of approximately \$6 million in municipal securities to finance housing projects in Texas, and provided \$4 million in financing for the Corona del Valle project in El Paso, which will provide 100 units of housing for low-income persons. The bank also committed a total of \$3.4 million in investments to community development organizations throughout the state, including the San Antonio Business Development Fund and the Greater Brownsville CDC; invested more than \$5 million in low-income housing tax credits through the Texas Housing Opportunities Fund; and provided more than \$7 million in loans for the Sterling Green Village development in Houston, which will provide 150 units of affordable housing.

New Mexico. Examiners at the 1997 examination of BA-Lead Bank noted that the bank's 41 branches in New Mexico accounted for less than 1 percent of the bank's total domestic deposits.^{76/} Although examiners noted areas for improvement in the bank's residential and community development lending activities, examiners noted that the bank began participating in the HUD 184 Native American Home Loan Program in 1997. The program provided loan guarantees to tribal members and designated tribal housing authorities. Examiners also noted that BA-Lead Bank had developed a special initiative that

^{76/} Loans originated by BA-Lead Bank in New Mexico accounted for 1.4 percent of the bank's total loans by number, and 1.3 percent of the bank's total loans by dollar volume.

is designed to address the specific needs of lesser populated states like New Mexico.

In reviewing other aspects of the bank's lending activities, examiners found that 43 percent of the bank's consumer loans in the state were made to LMI borrowers, which exceeded the representation of LMI individuals in the general population. Examiners also noted that the bank's small business loans were reasonably distributed throughout all areas of the community, including LMI areas. BA-Lead Bank also made a total of 33 grants and contributions totaling \$230,000 to nonprofit organizations throughout the state. This represented approximately 3 percent of the bank's total grants and contributions by amount. Examiners also found that the bank's branches were adequately distributed throughout the community, including LMI areas.

F. HMDA Data

The Board also has carefully considered the lending records of NationsBank and BankAmerica in light of comments regarding the HMDA data reported by the organizations' subsidiaries. The data generally show that NationsBank and BankAmerica have assisted in meeting the housing-related credit needs of minority and LMI borrowers and borrowers in LMI areas. For example, data for 1997 indicate that NationsBank originated a higher percentage of its housing-related loans in LMI areas in Florida, Georgia, Texas, New Mexico, and Maryland than lenders in the aggregate in those states. In many areas, including the states of North Carolina, Florida, Georgia, Maryland, and New Mexico, the percentage of NationsBank's housing-related loan originations to African Americans in 1997, compared with its total housing-related originations for that year, equaled or approximated the performance of lenders in the aggregate in the relevant area.

Data for 1997 also indicate that BankAmerica originated a higher percentage of its housing-related loans to Hispanics in Texas and New Mexico than lenders in the aggregate. In addition, these data indicate that BankAmerica originated a higher percentage of its HMDA-reportable loans to LMI borrowers in California, Texas, and New Mexico than lenders in the aggregate in those states.

The data also reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels, both generally and in certain states and local areas. The Board is concerned when an institution's record indicates such disparities in lending, and believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound banking, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because the data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.⁷⁷¹ HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has

⁷⁷¹ 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

not adequately assisted in meeting its communities' credit needs or has engaged in illegal discrimination in making lending decisions.

Because of the limitations of HMDA data, the Board has carefully considered the data in light of other information, including examination reports that provide an on-site evaluation of the compliance by the subsidiary banks of NationsBank and BankAmerica with the fair lending laws and the overall lending and community development activities of the banks.^{78/} As discussed above, examiners found no evidence of prohibited discrimination or other illegal credit practices at the subsidiary depository institutions of NationsBank and BankAmerica at their most recent examinations. Examiners reviewed the fair lending policies and procedures maintained by the depository institutions and found the policies and procedures to be comprehensive and appropriate for

^{78/} Certain commenters contended that they had difficulty in obtaining HMDA data from NB-Lead Bank or BA-Lead Bank, or that the data were not maintained at the banks' local offices as required by federal law. The Board's regulations require that each insured depository institution make its HMDA disclosure statement and modified loan application register available to the public from its home office and the relevant portion of such documents available from at least one branch office in each additional MSA where the institution has branches. See 12 C.F.R. 203.5. These regulations also require that all of the institution's branch offices in MSAs post notices informing the public where requests for the institution's HMDA data should be sent, and require that the institution respond to written requests for data within specified time frames. The Board has forwarded these comments to the OCC, the primary federal supervisor of NB-Lead Bank and BA-Lead Bank. The OCC has supervisory authority to investigate commenters' complaints and to take any action deemed appropriate to ensure compliance by the institution involved with the public disclosure provisions of HMDA.

monitoring compliance with fair lending laws.^{79/} Examiners also conducted comparative file reviews at NB-Lead Bank and BA-Lead Bank for racial discrimination and found no violations of the fair lending laws. The Board also has considered the HMDA data in light of the overall lending records of NationsBank and BankAmerica, which show that their subsidiary depository institutions are assisting in meeting the credit needs of their entire communities, including LMI neighborhoods, and confidential supervisory information received from the OCC.

G. Branch Closings

Several commenters contended that NationsBank or BankAmerica have closed branches in their respective service areas, particularly in LMI neighborhoods, that have adversely affected the local communities. These and other commenters expressed concern that this merger would result in additional branch closings in LMI and other neighborhoods, particularly in Texas and New Mexico.

NationsBank has indicated that there may be some branch closings as a result of the proposed merger. NationsBank expects that branch closings will be limited to a small number of locations in Texas and New Mexico where both NationsBank and BankAmerica currently operate branches, and has submitted preliminary and confidential information concerning branches that are under consideration for closure in Texas and New Mexico. NationsBank has

^{79/} Several commenters also expressed concerns that NationsBank's toll-free Advocacy Call Center, which collects and handles fair lending complaints, may mislead callers into thinking that they have filed a complaint with NationsBank's federal supervisor or another governmental agency. Other commenters were dissatisfied with the center's advice. Commenters presented no facts to support their allegations.

indicated, however, that NationsBank and BankAmerica continue to obtain, prepare, and review relevant data concerning branches in these areas.

The Board has carefully considered the public comments regarding past and potential branch closings in light of all the facts of record, including the preliminary branch closing information provided by NationsBank and the limited geographic overlap of the organizations' branch networks. The Board also has carefully considered the branch closing policies of NationsBank and BankAmerica and the record of the institutions in opening and closing branches.

NationsBank's corporate branch closing policy and BA-Lead Bank's branch closing policy require that a senior officer from the organization's community investment department approve all branch closings. Both branch closing policies also require that an appropriate senior officer from the community investment department, prior to any final decision to close a branch, consider whether the closing would have an adverse impact on the community served and the actions that NationsBank or BankAmerica would take to mitigate any adverse effects of the closing on the community.^{80/}

Examiners reviewed the branch closing policies and record of opening and closing branches of NationsBank's subsidiary banks during the NationsBank Examinations and of BankAmerica's subsidiary depository institutions during the BankAmerica Examinations. Examiners for NationsBank concluded that its subsidiary banks generally had good records of opening,

^{80/} The branch closing policy of BankAmerica-Texas provides that the bank will not close a branch in a lower-income community if the branch is the only provider of financial services in the community and requires the bank to explore alternative methods of ensuring continued access to banking services in lower income areas affected by branch closings.

closing, and relocating their offices while providing all segments of their communities with reasonable access to banking services.^{81/} Examiners also found that the branch locations of BankAmerica's subsidiary depository institutions, even after various branch closings, provided reasonable access to banking services to all segments of BankAmerica's communities, including LMI areas.^{82/}

The Board also has taken account of NationsBank's record of closing branches after its recent acquisitions of Barnett Banks, Inc., and Boatmen's Bancshares. Many of the branches that NationsBank has closed or has proposed to close in connection with these acquisitions were or would be consolidated into other NationsBank branches that are located near the affected branch. In addition, NationsBank would continue to operate a significant number of branches in LMI areas, both overall and in Florida, after accounting for the closings that have or are scheduled to take place after these acquisitions. NationsBank's announced branch closings in Florida also would not decrease the percentage of NationsBank's branches in Florida that are located in LMI areas.

^{81/} One commenter contended that BankAmerica, in connection with the 1997 merger of Bank of America Illinois into BA-Lead Bank, represented to the OCC that the branches of BankAmerica-FSB operating in certain grocery stores in the Chicago area would continue to be used by BankAmerica to help meet the convenience and needs of those communities. As noted, BankAmerica-FSB's branches in Illinois were sold in 1998 to another financial institution. NationsBank has stated, and the OCC has confirmed, that BankAmerica made no commitment to continue to operate the branches in question.

^{82/} For example, BA-Lead Bank closed 63 branches in California, including 15 in LMI areas, during the assessment period covered by its CRA performance examination. Examiners noted that all the branches closed in LMI areas were reasonably close to another branch of the bank.

The Board also 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 regulatory agency at least 30 days prior to closing a branch. The law does not authorize federal regulators to prevent the closing of any branch.^{83/} Any branch closings resulting from the proposed transaction will be considered by the appropriate federal supervisor at the next CRA examination of the relevant subsidiary bank.

To permit the Board to assess the effectiveness of the branch closing policies of New BankAmerica, the Board conditions its action on this proposal on the requirement that New BankAmerica report to the Federal Reserve System on a semi-annual basis during the two-year period after consummation all branch closings, including consolidations, that occur as a result of this proposal. For branches closed in LMI census tracts, New BankAmerica should indicate the proximity of the closed branch to the closest branch of New BankAmerica and the steps New BankAmerica took to mitigate the impact of the branch closure.^{84/}

^{83/} Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (58 Federal Register 49,083 (1993)), 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 the 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.

^{84/} Several commenters contended that the merger of NationsBank and BankAmerica would result in the loss of jobs, particularly in California, Texas, and New Mexico. NationsBank has stated that staff reductions resulting from
(continued...)

H. CRA Plan

In connection with this proposal, NationsBank has announced a \$350 billion, 10-year community reinvestment and lending plan.^{85/} NationsBank also has stated that New BankAmerica would honor all of the outstanding CRA commitments that NationsBank and BankAmerica have with states and community groups, including BankAmerica's commitment to provide \$40 million in annual charitable contributions and to provide \$150 million in loans in Hawaii. In addition, New BankAmerica proposes to establish a separate annual charitable contribution goal of \$100 million.

NationsBank intends to report publicly on its activities under the plan each year beginning in 1999. The reports would provide information on national, state, and local levels, by product line, and would describe the geographic and demographic distribution of products and services offered under the plan. New BankAmerica's senior management would hold an annual

^{84/}(...continued)

the merger are expected to be relatively small in relation to the overall workforce of the combined company. The effect of a proposed transaction on employment in a community, moreover, is not among the factors included in the BHC Act and the convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

^{85/} The plan includes the following goals: (1) \$115 billion for affordable housing lending and investments; (2) \$180 billion for small business lending and investments; (3) \$25 billion for economic development; and (4) \$30 billion in consumer loans (other than credit card loans). The goals include \$10 billion for loans and investments to foster community and economic development in rural areas.

meeting with community organizations to discuss results of the plan.^{86/} NationsBank also has indicated that local and regional managers of New BankAmerica would have substantial input into the organization's community investment and philanthropic activities at the regional and local level, including California, and that New BankAmerica would continue to seek the input of local and regional community groups in establishing the company's goals for community development lending and investment in local areas.

The CRA requires that, in considering NationsBank's application to acquire BankAmerica's subsidiary insured depository institutions, the Board carefully review the actual record of past performance of NationsBank and BankAmerica in helping to meet the credit needs of their entire communities.^{87/} Consistent with this mandate, the Board previously has held that, to gain approval of a proposal to acquire an insured depository institution, an applicant

^{86/} A number of commenters criticized NationsBank for not entering into agreements with community-based organizations that would establish separate monetary goals under the CRA plan for particular geographic areas or demographic groups, or that would provide support for particular products or programs. The Board previously has noted that, while communications by depository institutions with community groups provide a valuable method of assessing and determining how an institution may best address the credit needs of the community, neither the CRA nor the CRA regulations of the federal financial supervisory agencies require depository institutions to enter into agreements with any organization. See Fifth Third Bancorp, 80 Federal Reserve Bulletin 838 (1994).

^{87/} As noted above, a number of commenters contended the Board should not consider the plan as part of its review of the proposal.

must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.^{88/}

The Board has considered the CRA plan in this light as an indication of the intent of New BankAmerica to maintain the commitment to *servicing the banking convenience and needs of its communities that has been demonstrated consistently by NationsBank and BankAmerica*. The Board believes that the CRA plan--whether made as a plan or as an enforceable commitment--has no relevance in this case without the demonstrated record of performance of the companies involved. The Board notes, moreover, that the future activities of New BankAmerica's subsidiary depository institutions, including any lending and community development activities that New BankAmerica may engage in under the announced CRA plan, will be reviewed by the appropriate federal supervisors of those institutions in future performance examinations as the plan is implemented, and that CRA performance record will be considered by the Board in future applications by New BankAmerica to acquire a depository institution.

I. NationsBank's Nonbank Lending Subsidiaries

Several commenters maintained that nonbank lending subsidiaries of NationsBank, including NationsCredit Consumer Corporation ("NationsCredit") and EquiCredit Corporation ("EquiCredit"), have engaged in discriminatory lending practices. Commenters contended that these subprime lending subsidiaries focus their marketing and lending activities on LMI and minority borrowers, and primarily offer these borrowers credit products with interest

^{88/} See Totalbank Corporation of Florida, 81 Federal Reserve Bulletin 876 (1995); First Interstate BancSystems of Montana, Inc., 77 Federal Reserve Bulletin 1007 (1991).

rates and fees that are higher than comparable products that are available from NationsBank's subsidiary banks. Commenters also alleged that loan applicants are illegally "steered" from NationsBank's subsidiary banks and NationsBank Mortgage Corporation ("NBMC") to NationsBank's subprime lending subsidiaries on a prohibited basis like race.^{89/}

The Board reviewed similar allegations in the NationsBank/Boatmen's and NationsBank/Barnett orders. As noted above, the OCC's fair lending examinations found no evidence of illegal discrimination or credit practices at the subsidiary banks of NationsBank or NBMC at the most recent CRA examination of NationsBank's subsidiary banks.^{90/} OCC examiners also favorably commented on NationsBank's fair lending policies and procedures to prevent illegal practices like "pre-screening" at the most recent CRA examinations of NationsBank's subsidiary banks. NationsCredit and EquiCredit have consumer compliance programs in place and the staffs of NationsCredit's and EquiCredit's compliance groups work closely with the compliance group responsible for overseeing the compliance program for NationsBank's subsidiary

^{89/} One commenter also alleged, without providing any supporting facts, that NationsBank's subsidiary banks and NBMC violate the Equal Credit Opportunity Act by not sending adverse action notices to potential borrowers who are referred from those institutions to NationsCredit or EquiCredit.

^{90/} Some commenters stated that NationsBank's nonbank subsidiaries refuse to report HMDA data. NationsCredit and EquiCredit report HMDA data annually.

banks.^{91/} NationsBank's internal audit department also performs consumer compliance reviews of NationsCredit and EquiCredit.^{92/}

J. Conclusion on Convenience and Needs Factor

The Board recognizes that this proposal represents a significant expansion in terms of the size of the resulting institution and of the geographic areas of the country the resulting institution would serve. Accordingly, an important component of the Board's review of the proposal is the consideration of the effects of the proposal on the convenience and needs of all communities served by NationsBank and BankAmerica.

^{91/} Some commenters requested that the Board conduct an on-site examination of NationsBank's nonbanking subsidiaries for fair lending law compliance before acting on the proposal. Primary authority for enforcement of fair lending law compliance by nonbanking companies such as NationsCredit and EquiCredit is conferred by statute on the Federal Trade Commission and the Department of Housing and Urban Development. As discussed above and in the NationsBank/Barnett and NationsBank/Boatmen's orders, NationsBank's subsidiary banks--which account for a substantial majority of NationsBank's total assets and total revenues--have satisfactory records of compliance with fair lending laws and the compliance program for NationsCredit has been implemented by the group responsible for overseeing the compliance programs of the subsidiary banks.

^{92/} Some commenters criticized the fact that NationsCredit and EquiCredit do not refer customers with appropriate credit ratings to NBMC or a NationsBank subsidiary bank. NationsBank has indicated that management is evaluating potential nationwide programs for referrals between its subsidiaries, and that any such programs would be reviewed for compliance with fair lending and consumer protection laws before implementation. Comments regarding NationsBank's referral programs also have been provided to the OCC for consideration as the primary federal supervisor of NationsBank's subsidiary banks.

Commenters have expressed concern about specific aspects of NationsBank's record of performance under the CRA in its current service areas and concern about whether New BankAmerica would be responsive to the credit needs of communities located throughout its franchise, particularly in California, Texas, and New Mexico. The Board has weighed these concerns in light of all the facts of record, including the overall CRA records of NationsBank and BankAmerica, reports of examinations of CRA performance, information provided by NationsBank and BankAmerica, and information from other commenters regarding the records of NationsBank and BankAmerica in meeting the credit needs of their communities.^{93/}

As discussed in this order, the record in this case demonstrates that NationsBank and BankAmerica have established records of helping to meet the convenience and needs of the communities that each serves. This record has been demonstrated over time in CRA performance evaluations and reflects a commitment by NationsBank to address the credit needs of new communities into which it expands. Moreover, while each organization operates in a number of states, both NationsBank and BankAmerica have implemented their CRA

^{93/} A number of commenters expressed concerns that the proposal would result in increased fees for banking services or in the loss of low-cost banking products, and requested that the Board require New BankAmerica to provide low-cost banking products as a condition of the merger. NationsBank and BankAmerica offer a full range of banking products and services, including low-fee checking accounts that permit a certain number of withdrawals per month without an additional service charge. Moreover, although the Board has recognized that banks help serve the banking needs of their communities by making basic services available at nominal or no charge, neither the CRA nor the primary federal supervisors of the banks involved in this case require an institution to limit the fees charged for its services or to provide any specific types of banking products.

programs through a combination of national programs and local initiatives tailored to the needs of local communities.

NationsBank has indicated that New BankAmerica will draw on the CRA policies and programs of both organizations. The Board expects that New BankAmerica will demonstrate the same commitment to helping to serve the banking needs of its communities, including LMI neighborhoods, after the merger that NationsBank and BankAmerica have demonstrated to date. Based on a review of the entire record, the Board concludes that convenience and needs considerations, including the CRA records of performance of both organizations' subsidiary depository institutions, are consistent with approval of the proposal.

Nonbanking Activities

NationsBank also has filed notice under section 4(c)(8) of the BHC Act to acquire the nonbank subsidiaries of BankAmerica, including BankAmerica-FSB, and thereby engage in a number of nonbanking activities, including operating a savings association, engaging in mortgage banking and other lending activities, providing financial and investment advisory services, underwriting and dealing to a limited extent in equity and debt securities, and providing administrative services to open-end investment companies ("mutual funds").^{94/} The Board has determined by regulation or order that the activities for which notice has been provided are closely related to banking for purposes

^{94/} A list of the nonbanking activities for which NationsBank has requested the Board's approval under section 4 of the BHC Act is provided in Appendix A. As discussed above, the Board has considered the CRA performance record of BankAmerica-FSB in evaluating the convenience and needs factor in this case.

of section 4(c)(8) of the BHC Act.^{95/} NationsBank has committed that it will conduct these activities in accordance with the Board's regulations and orders approving these activities for bank holding companies.

A. Bank-Ineligible Securities Activities

NationsBank currently is engaged in underwriting and dealing in bank-ineligible securities, to a limited extent, through NationsBank Montgomery Securities LLC ("NB-Montgomery").^{96/} BankAmerica also currently is engaged in underwriting and dealing in bank-ineligible securities, to a limited extent, through BancAmerica Robertson Stephens ("BA-Robertson").^{97/} NB-Montgomery and BA-Robertson are, and would continue to be, broker-dealers registered with the Securities and Exchange Commission

^{95/} See 12 C.F.R. 225.28(b)(1), (3), (4)(ii), (6), (7), (8)(i), (11)(i), (12), and (14); J.P. Morgan & Co. Inc., et al., 75 Federal Reserve Bulletin 192 (1989), aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System, 900 F.2d 360 (D.C. Cir. 1990) ("J.P. Morgan"); Citicorp, 73 Federal Reserve Bulletin 473 (1987), aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988) ("Citicorp") (underwriting and dealing, to a limited extent, in all types of securities); Mellon Bank Corporation, 79 Federal Reserve Bulletin 626 (1993) and Commerzbank AG, 83 Federal Reserve Bulletin 678 (1997) (providing administrative services to mutual funds); Meridian Bancorp, Inc., 80 Federal Reserve Bulletin 736 (1994) and Dresdner Bank AG, 84 Federal Reserve Bulletin 361 (1998) (private investment limited partnership activities).

^{96/} See NationsBank Corporation, 83 Federal Reserve Bulletin 924 (1997); NationsBank Corporation, 79 Federal Reserve Bulletin 892 (1993).

^{97/} BankAmerica Corporation, 83 Federal Reserve Bulletin 913 (1997) ("BA/Robertson Stephens"); BankAmerica Corporation, 80 Federal Reserve Bulletin 1104 (1994). BankAmerica recently entered into an agreement to sell the equity underwriting and dealing operations of BA-Robertson to a third party.

("SEC"), and members of the National Association of Securities Dealers, Inc. ("NASD"). Accordingly, both entities would remain subject to the recordkeeping and reporting obligations, fiduciary standards, and other requirements of the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), the SEC, and the NASD.

The Board has determined that, subject to the framework of prudential limitations established in previous decisions to address the potential for conflicts of interests, unsound banking practices, or other adverse effects, underwriting and dealing in bank-ineligible securities is so closely related to banking as to be a proper incident thereto within the meaning of section 4(c)(8) of the BHC Act.^{98/} The Board also has determined that underwriting and dealing in bank-ineligible securities is consistent with section 20 of the Glass-Steagall Act (12 U.S.C. § 377), provided that the company engaged in the activities derives no more than 25 percent of its gross revenues from underwriting and dealing in bank-ineligible securities over a two-year period.^{99/} NationsBank has committed that, after consummation of the

^{98/} See J.P. Morgan; Citicorp. as modified by Review of Restrictions on Director, Officer and Employee Interlocks, Cross-Marketing Activities, and the Purchase and Sale of Financial Assets Between a Section 20 Subsidiary and an Affiliated Bank or Thrift, 61 Federal Register 57,679 (1996), Amendments to Restrictions in the Board's Section 20 Orders, 62 Federal Register 45,295 (1997); and Clarification to the Board's Section 20 Orders, 63 Federal Register 14,803 (1998) (collectively, "Section 20 Orders").

^{99/} See Section 20 Orders. Compliance with the revenue limitation shall be calculated in accordance with the method stated in the Section 20 Orders, as modified by the Order Approving Modifications to the Section 20 Orders, 75 Federal Reserve Bulletin 751 (1989), and 10 Percent Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged
(continued...)

transaction, NB-Montgomery and BA-Robertson will conduct their bank-ineligible securities underwriting and dealing activities subject to the 25-percent revenue limitation and the prudential limitations previously established by the Board, and this order is conditioned on compliance by NationsBank with the revenue restriction and Operating Standards established for section 20 subsidiaries.^{100/}

The Board also has reviewed the capitalization of New BankAmerica, NB-Montgomery, and BA-Robertson in light of the standards set forth in the Section 20 Orders. The Board finds the capitalization of each to be consistent with approval of the proposal and the Section 20 Orders. The Board's determination is based on all the facts of record, including the projections of the volume of bank-ineligible securities underwriting and dealing activities to be conducted by NB-Montgomery and BA-Robertson. The Board also has considered that NationsBank and BankAmerica have established policies and procedures to ensure compliance with this order and the Section 20 Orders,

^{99/}(...continued)

in Underwriting and Dealing in Securities, 61 Federal Register 48,953 (1996); and Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities, 61 Federal Register 68,750 (1996) (collectively, "Modification Orders").

^{100/} 12 C.F.R 225.200. As long as NB-Montgomery and BA-Robertson operate as separate corporate entities, both companies will be independently subject to the 25-percent revenue limitation on underwriting and dealing in bank-ineligible securities. See Citicorp at 486 n. 45.

including computer, audit, and accounting systems, internal risk management controls, and the necessary operational and managerial infrastructure.^{101/}

B. Proper Incident Considerations

In order to approve the notice, the Board also must determine that the acquisition of the nonbanking subsidiaries of BankAmerica and the performance of the proposed activities by New BankAmerica can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

NationsBank has indicated that the expanded geographic scope of New BankAmerica's nonbanking operations would provide added convenience to current and future customers of NationsBank and BankAmerica. The combined organization, for example, would offer customers of NationsBank and BankAmerica additional locations to obtain a variety of nonbanking products or services, such as mortgage loans and securities brokerage services. In addition, NationsBank has stated that the proposed merger would allow the combined organization to achieve greater efficiency through the elimination of redundant operations and greater economies of scale.^{102/} NationsBank also has indicated

^{101/} In connection with its 1997 acquisition of Robertson Stephens, BankAmerica committed to conform the investments and relationships that BA-Robertson had with various entities to the requirements of section 4 of the BHC Act and Regulation Y within two years of consummation of the proposal. See BA/Robertson Stephens. NationsBank has committed to conform these relationships to the requirements of the BHC Act and Regulation Y within the time periods previously committed to by BankAmerica.

^{102/} Some commenters questioned whether the merger of large banking organizations allow the organizations to achieve additional economies of scale or
(continued...)

that the proposal would enhance the financial ability of the organizations to develop new products and services and new technologies that would facilitate the delivery of the combined organization's products and services, including technologies that would allow consumers to gain access to the organization's products and services through personal computers, telephones, or other forms of electronic media.

In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

Certain nonbank subsidiaries of NationsBank and BankAmerica compete in direct residential mortgage lending, indirect residential mortgage lending, residential mortgage servicing, consumer and corporate lending and leasing, underwriting and selling insurance to the extent permissible for bank holding companies, trust, securities brokerage, investment advisory, data processing and data transmission, venture capital, and securities underwriting and dealing activities. The markets for each of these nonbanking activities, with the exception of direct residential mortgage lending, are regional or national in scope. The record in this case indicates that there are numerous providers of

^{102/}(...continued)

efficiencies. NationsBank has estimated the merger would produce approximately \$1.3 billion in annual after-tax cost savings within two years of consummation.

these services and that the markets for these nonbanking services are unconcentrated.

The Board previously has determined that the market for direct residential mortgage lending is local in scope.^{103/} In considering the effects of the proposal on competition for residential mortgage lending, the Board has reviewed HMDA data showing mortgage originations by NationsBank, BankAmerica, and other lenders in all 328 MSAs in the United States. These data show that consummation of the proposal would not exceed the DOJ Merger Guidelines in any MSA in the United States. In addition, numerous mortgage originators would remain in each MSA after consummation. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition.

The Board also believes that the conduct of the proposed nonbanking activities within the framework established by this order, prior orders, and Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would not be outweighed by the public benefits of the proposal, such as increased customer convenience and gains in efficiency.

Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act is favorable and consistent with approval.

^{103/} See Norwest Corporation, 82 Federal Reserve Bulletin 683 (1996).

NationsBank also has requested the Board's consent under section 4(c)(13) of the BHC Act and section 211.5(c) of the Board's Regulation K (12 C.F.R. 211.5(c)) to acquire BankAmerica's foreign banking and nonbanking operations. In addition, NationsBank has provided notice under sections 25 and 25A of the Federal Reserve Act and sections 211.4 and 211.5 of Regulation K (12 C.F.R. 211.4 and 211.5) to acquire BA FSC Holdings, Inc., an agreement corporation operating under section 25 the Federal Reserve Act, and BankAmerica International Corporation and BankAmerica International Financial Corporation, all in San Francisco, California, and BankAmerica International Investment Corporation, Chicago, Illinois, each of which are companies organized under section 25A of the Federal Reserve Act. The Board concludes that all the factors required to be considered under the Federal Reserve Act, the BHC Act, and the Board's Regulation K are consistent with approval of the proposal.^{104/}

Requests for Additional Public Meetings

A number of commenters have requested that the Board hold additional public meetings or hearings on the proposal in all areas that may be affected by the merger, including in Los Angeles and other regions of California, North Carolina, Texas, New Mexico, and Florida. The Board has

^{104/} NationsBank also has applied for permission to engage, through its foreign subsidiaries, in equity underwriting and dealing pursuant to sections 211.5(d)(14)(ii)(A) and 211.5(d)(14)(iii) of Regulation K. See 12 C.F.R. 211.5(d)(14)(ii)(A) and (iii). Based on all the facts of record, the Board concludes that NationsBank has established appropriate internal policies and procedures to govern such underwriting and dealing operations and has adequate capital resources consistent with approval of the proposed equity underwriting and dealing activities.

carefully considered these requests in light of the BHC Act, its Rules of Procedure, and the substantial record developed in this case.^{105/}

As explained above, the Board held a two-day public meeting on the proposal in San Francisco to clarify issues related to the application and notice and to provide an opportunity for members of the public to testify.^{106/} More than 170 interested persons appeared and provided oral testimony at the public meeting, including individuals and representatives from cities and towns throughout California and from a number of other states, including Texas, New Mexico, North Carolina, Arizona, the District of Columbia, Florida, Illinois, Iowa, Kansas, Nevada, and Pennsylvania. In addition, the Board has received and considered written comments from more than 1,400 interested persons who did not attend the public meeting.

In the Board's view, all interested persons have had ample opportunity to submit their views either in writing or orally at the two-day public meeting in San Francisco. Numerous commenters have, in fact, submitted substantial materials that have been carefully considered by the Board in acting on the proposal. Commenters requesting additional public meetings have failed to show why their written comments do not adequately present their

^{105/} Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b). In this case, the Board has not received such a recommendation from any state or federal supervisory authority. Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire a savings association, such as BankAmerica-FSB, if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C. § 1843(c)(8); 12 C.F.R. 225.25(a)(2).

^{106/} See 12 C.F.R. 262.3(e) and 262.25(d).

views, evidence, and allegations and why the public meeting in San Francisco did not provide an adequate opportunity to present oral testimony. Moreover, the Board has carefully considered the lending records of NationsBank and BankAmerica separately in many of the states where commenters requested public meetings, particularly New Mexico, Texas, North Carolina, and Florida. For these reasons, and based on all the facts of record, the Board has determined that additional public meetings or hearings are not required and are not necessary or warranted to clarify the factual record on the proposal. Accordingly, the requests for additional public meetings or hearings on the proposal are hereby denied.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the transaction should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the issues raised in public comments filed in connection with the proposal in light of the factors that the Board is required to consider under the BHC Act and other applicable statutes and concludes that the comments do not warrant a delay or denial of the proposal.^{107/}

^{107/} A number of commenters requested that the Board delay action or extend the public comment period on the proposal until (i) new CRA or other examinations of NationsBank or BankAmerica or their various subsidiaries are completed, (ii) reports on the impact of bank mergers are published by governmental or private sources; (iii) pending lawsuits or administrative actions against NationsBank are resolved; (iv) NationsBank enters into CRA agreements with community groups; or (v) NationsBank submits additional information on branch closings and fee increases resulting from the merger.

The requests for delay do not warrant postponement of the Board's consideration of the proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public
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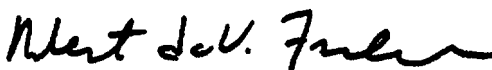
The Board's approval is specifically conditioned on compliance by NationsBank with all the commitments made in connection with this application and notice, including the commitments discussed in this order, and the conditions set forth in this order and the above-noted Board regulations and orders. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 CFR. 225.7 and 225.25(c)), 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. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision, and, as such, may be enforced in proceedings under applicable law. Underwriting and dealing in any manner other than as approved in this order and the Section 20 Orders (as modified by the Modification Orders) is not within the scope of the Board's approval and is not authorized for NationsBank.

¹⁰⁷(...continued)

reports and information, and considerable public comment. In the Board's view, for the reasons discussed above, commenters have had ample opportunity to submit their views, and, in fact, have provided substantial written submissions and oral testimony that have been considered carefully by the Board in acting on the proposal. Based on a review of all the facts of record, the Board concludes that the record in this case is sufficient to warrant Board consideration and action on the proposal at this time, and that further delay of consideration of the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

The acquisition of BankAmerica's subsidiary banks may not be consummated before the fifteenth calendar day after the effective date of this order, and 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,^{108/} effective August 17, 1998.



Robert deV. Frierson
Associate Secretary of the Board

^{108/} Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Meyer, Ferguson, and Gramlich.