Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-34
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF FIRST OF AMERICA - FLORIDA, F.S.B., TAMPA , FLORIDA, FIRST OF AMERICA BANK - INDIANA, INDIANAPOLIS, INDIANA, AND FIRST OF AMERICA BANK - MICHIGAN, N.A., GRAND RAPIDS, MICHIGAN

June 1, 1997

I. INTRODUCTION

On March 28, 1997, First of America - Florida, Federal Savings Bank, Tampa, Florida ("FOA-FSB") applied to the Office of the Comptroller of the Currency ("OCC") for approval to convert into a national bank under the title "First of America Bank - Florida, National Association" ("FOA-Florida") (the "Conversion Application"). In the Conversion Application, OCC approval is also requested for the resulting bank to continue to operate FOA-FSB's existing branches in Florida, to retain an existing subsidiary, and to continue to exercise fiduciary powers following its conversion. FOA-FSB is a member of the Savings Association Insurance Fund ("SAIF"), and after the conversion FOA-Florida will continue to be a SAIF member. FOA-FSB is converting to a bank so that it may participate in the subsequent interstate merger transaction under 12 U.S.C. § 1831u.

Also on March, 28, 1997, an Application was filed with the OCC for approval, after the conversion, to merge FOA-Florida with and into First of America Bank - Michigan, National Association, Grand Rapids, Michigan ("FOA-Michigan") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the FOA-Michigan/FOA-Florida Merger") and to merge First of America Bank - Indiana, Indianapolis, Indiana ("FOA-Indiana") with and into FOA-Michigan under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1815(d)(3), 1828(c) & 1831u(a) ("the FOA-Michigan/FOA-Indiana Merger"). FOA-Indiana is a member of the Bank Insurance Fund ("BIF"), and FOA-Michigan is a member of SAIF. FOA-Indiana has its main office and all of its branches in Indiana. FOA-FSB (FOA-Florida after the conversion) has its main office and all of its branches in Florida. FOA-Michigan has its main office and all of its branches in Michigan. In the two mergers, OCC approval is also requested for the resulting bank to retain an existing office in Kalamazoo, Michigan, as the main office of the resulting bank

under 12 U.S.C. § 1831u(d)(1) and to retain the three merging banks' other main offices and branches as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

These applications will combine three of First of America Bank Corporation's depository institution subsidiaries into one bank under applicable law. As of January 31, 1997, FOA-Michigan had approximately $12.8 billion in assets and $10.2 billion in deposits. As of the same date, FOA-FSB had approximately $1.1 billion in assets and $915 million in deposits, and FOA-Indiana had approximately $1.3 billion in assets and $1.0 billion in deposits.

II. LEGAL AUTHORITY

A. The Conversion Application is Authorized.

FOA-FSB may convert into a national bank. Regulations of both the OCC and the Office of Thrift Supervision ("OTS") permit the direct conversion of a Federal savings association to a national bank.[1] In approving a conversion application, the OCC regulations provide that conversions will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. A review of the Conversion Application demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation, or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. Review of the record discloses nothing that indicates these factors provide a basis for denial of the Conversion Application.[2]

After the conversion, FOA-Florida may continue to operate FOA-FSB's branches in Florida. Although 12 U.S.C. § 36, governing branching by national banks, does not expressly address the retention of branches by a national bank resulting from the conversion of a Federal savings bank,[3] the continued operation of the branches may be permitted under section 36(c). Section 36(c) would permit a national bank resulting from the conversion of a Federal savings bank to continue to operate the branches of the Federal savings bank if a state bank resulting from the conversion of a Federal savings bank could continue to operate the branches. This could

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[1] See 61 Fed. Reg. 60342, 60368 (November 27, 1996) (effective December 31, 1996) to be codified at 12 C.F.R. § 5.24 (OCC regulations providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing that application); 12 C.F.R. § 552.2-7 (providing that a Federal stock association may convert to a national charter after filing a notification or application with the OTS). See also 12 C.F.R. § 563.22(b)(1)(ii) and (h)(1) and 12 C.F.R. § 516.3(a) (OTS standards and procedures for conversion to bank charters). FOA-FSB has complied with the OTS procedures.

[2] In addition, a conversion application must be reviewed in light of the Community Reinvestment Act ("CRA"), 12 U.S.C. § 2901 *et seq.*, which is discussed in Part III-B below.

[3] Section 36(b)(1), relating to branch retention following conversion, specifically addresses conversions only of state banks.

occur if state law permitted state banks to establish a branch at the site de novo, or if state law permitted a state bank, following its conversion from a Federal savings association to operate a branch at the site. See Decision on the Applications of TCF Financial Corp. (OCC Corporate Decision No. 97-13, February 24, 1997) (pages 6-7) (further discussion of this issue).

Under Florida law, state banks are permitted to establish branches without numerical or geographic limitations. See Fla. Stat. Ann. § 658.26(2)(West 1993). A Florida state bank with its principal office in Florida could establish branches at all of the locations of FOA-FSB that FOA-Florida proposes to continue after the conversion. Accordingly, FOA-Florida may operate branches at those locations under section 36(c).

FOA-FSB owns First of America Loan Management Company. This subsidiary is used periodically to hold and service loans originated or purchased by FOA-FSB. These activities are clearly permissible for a national bank, and FOA-Florida is authorized to hold this subsidiary after the conversion. Similarly, FOA-FSB exercises fiduciary powers, and FOA-Florida seeks to continue to exercise fiduciary powers as a national bank. Under section 92a, the OCC is authorized to permit national banks to exercise fiduciary powers that state banks, trust companies and other corporations are permitted to exercise under the laws of the state in which the national bank is located. 12 U.S.C. § 92a(a) & (b). Florida permits state banks and trust companies to exercise fiduciary powers. See Fla. Stat. Ann. §§ 658.16 & 660.26. Therefore, FOA-Florida is authorized to exercise fiduciary powers.

Accordingly, the Conversion Application is legally authorized.

B. The Interstate Merger Transactions are Authorized, and the Resulting Bank may Retain the Offices of the Banks.

1. The interstate merger transactions are authorized under 12 U.S.C. §§ 215a-1 & 1831u.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

> (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).[4] The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In these mergers, the home states of the banks are Michigan, Florida, and Indiana; none of those states has opted out. Accordingly, the mergers may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

The mergers of FOA-Florida and FOA-Indiana into FOA-Michigan satisfy all these conditions to the extent applicable. First, the applicable state-imposed age requirements permitted by section 1831u(a)(5) are met. Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In these mergers, FOA-Michigan is acquiring by merger banks in the host states of Indiana and Florida. The laws of Indiana do not contain an age requirement for interstate merger transactions. Florida, however, requires that in an interstate merger transaction with an out-of-state bank in which the out-of-state bank is the surviving bank, the Florida bank must have been in existence for at least three years. See Fla. Stat. Ann. § 658.2953(7)(c) (West 1997 Supp.). FOA-Florida (and its predecessor, FOA-FSB) has been in existence since April 1994. Thus, these mergers satisfy the requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the

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[4] For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).[5] The Florida interstate bank merger statute requires an out-of-state bank that results from an interstate merger with a Florida bank to notify the state banking department within 15 days after it has filed its merger application with the appropriate federal regulatory agency and to submit a copy of the application to the department. See Fla. Stat. Ann. § 658.2953(8).[6] FOA-Michigan notified the state banking department and provided a copy of its OCC Merger Application. FOA-Michigan also confirmed with the department that no other filings are required by the department. Thus, the FOA-Michigan/FOA-Florida Merger satisfies the requirement of compliance with state filing requirements.

The Indiana interstate bank merger statute provides that an out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving an Indiana state bank shall notify the Indiana Department of Financial Institutions ("DFI") of the proposed merger, submit to the DFI a copy of the merger application filed with the appropriate federal regulatory agency, and provide satisfactory evidence to the DFI of compliance with the applicable requirements of chapter 22 of the Indiana Financial Institutions Act ("Chapter 22"). See Ind. Code § 28-2-17-22. Chapter 22 provides that any out-of-state financial institution shall obtain a certificate of admission before doing business in Indiana. See Ind. Code §§ 22-1-22 et seq.[7] As implemented to date, these filing requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. FOA-Michigan provided a copy of its OCC Merger Application to the DFI and is obtaining a certificate of admission under Chapter 22. Thus, the FOA-Michigan/FOA-Indiana Merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

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[5] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

[6] The Florida statute currently also requires the out-of-state bank to comply with the general foreign corporation filing requirements of Fla. Stat. Ann. §§ 607.1501 - 607.1532. However, recent legislation in Florida amended the statute to delete that requirement. While the amendment is not effective until October, FOA-Michigan was advised by the Florida authorities that no filing was required.

[7] While Chapter 22 applies only to out-of-state financial institutions, its requirements and procedures are similar to those of Indiana law applicable to foreign nonbanking corporations doing business in Indiana, Chapter 49 of the Indiana Business Corporation Law. See Ind. Code §§ 23-1-49-1 et seq.

Third, the proposed interstate merger transactions do not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). The three banks are affiliates; thus section 1831u(b)(2) is not applicable to these mergers.

Fourth, the proposed mergers also do not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In these merger applications, FOA-Michigan (the bank submitting the application as the acquiring bank) has bank affiliates in Florida and Indiana before the transaction (i.e., FOA-Florida and FOA-Indiana), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to these mergers. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). When the applications were filed, FOA-Michigan, FOA-Indiana, and FOA-FSB (and FOA-Florida on a pro forma basis) satisfied all regulatory and supervisory requirements relating to adequate capitalization. And each institution is at least satisfactorily managed. The OCC has also determined that, following the mergers, FOA-Michigan will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the proposed interstate merger transactions between FOA-Michigan and FOA-Florida and FOA-Michigan and FOA-Indiana are legally permissible under section 1831u.[8]

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[8] FOA-Indiana is currently an Indiana state-chartered bank. FOA-Indiana has no non-conforming assets, nor does it engage in any activities impermissible for national banks. Also, Indiana law expressly permits Indiana state banks to enter mergers with an out-of-state resulting bank. The interstate merger between FOA-Michigan and FOA-Indiana is not in contravention of Indiana state law. See Ind. Code § 28-2-17-21.

2. Following the mergers, the resulting bank may retain the main offices and branches of all three merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Applicants have requested that, upon the completion of the mergers, FOA-Michigan (as the resulting bank in each merger) be permitted to operate its existing branch office in Kalamazoo, Michigan, as the main office of the resulting bank, and to retain and operate as branches (1) its former main office in Grand Rapids, Michigan, and its other existing branches and (2) the main offices and branches of FOA-Florida and FOA-Indiana. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

> (1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, FOA-Michigan, the resulting bank in each of these interstate merger transactions, may retain and operate FOA-Michigan's branch in Kalamazoo as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate all of the other existing banking offices of FOA-Michigan, FOA-Florida, and FOA-Indiana as branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[9]

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[9] By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those

Moreover, at its branches in Florida and Indiana, as well as those in Michigan, FOA-Michigan is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

In conclusion, the FOA-Michigan/FOA-Indiana Merger and the FOA-Michigan/FOA-Florida Merger are legally authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u, and the resulting bank may retain and operate the three banks' offices under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[10]

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the mergers may be approved under section 1828(c).

1. Competitive Analysis

Since FOA-Michigan, FOA-Indiana and FOA-Florida (the successor to FOA-FSB) are already owned by the same bank holding company, their merger will have no anticompetitive effects.

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provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

[10] The merger of FOA-Indiana into FOA-Michigan is also consistent with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). FOA-Indiana is a BIF member, and FOA-Michigan is a SAIF member. The merger of a BIF member into a SAIF member is a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(ii). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3). In the FOA-Michigan/FOA-Indiana merger, a SAIF member is the acquiring institution; thus, of the standards for approval, only the capital requirements of subparagraph (d)(3)(E)(iii) are applicable, and they are met here. (In particular, the requirements of subparagraph (d)(3)(F) apply only when a BIF member acquires a SAIF member.) Thus, this merger is permissible under section 1815(d)(3).

2. Financial and managerial resources

The financial and managerial resources of all three institutions are presently satisfactory. FOA-Michigan expects to achieve efficiencies by operating the offices in Florida and Indiana as branches rather than as separate corporate entities. The geographic diversification of its operations will also strengthen the combined bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the mergers.[11]

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. FOA-Michigan will continue to serve the same areas in Michigan, and it will add FOA-Florida's offices in Florida and FOA-Indiana's offices in Indiana. There will be no reductions in the banking products or services offered as a result of the mergers. The combined bank will continue to offer a full line of banking products and services. The branches in Florida and Indiana will continue to engage in the same business, serving the same communities, that FOA-FSB/FOA-Florida and FOA-Indiana are currently engaged in.

Upon completion of the mergers, customers of each bank will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the mergers, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. Especially benefitting will be those customers who live in one state and work in another, particularly along the border of Michigan and Indiana. The mergers will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

No branch closings are contemplated as a result of the mergers since the three banks serve different areas. However, as part of its ongoing business plans, FOA-Michigan and First of America Bank Corporation evaluates its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. In this regard, prior to the filing of these applications, FOA-FSB notified the OTS of its intent to close a branch in Treasure Island, Florida, and a branch in Dunedin, Florida. These

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[11] The OCC received one letter protesting FOA-Michigan's proposed interstate merger transactions. The protestor claimed that FOA-Michigan did not provide adequate safeguards at its automated teller machines ("ATM") and did not comply with rules regarding security protections at all its ATM locations. OCC examiners review bank security procedures during examinations, as warranted. The OCC has not found that FOA-Michigan has violated any federal laws regarding security device requirements. After reviewing the allegations and the financial and managerial qualifications of the banks involved, the OCC determined that the protest did not serve as a basis for denial or conditioning the approval of the applications.

and any other such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

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

B. The Community Reinvestment Act

The Community Reinvestment Act requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. Both FOA-Michigan and FOA-Indiana have outstanding ratings, and FOA-FSB has a satisfactory rating from the OTS, with respect to CRA performance. No public comments relating to CRA were received by the OCC relating to these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA.

FOA-FSB's conversion to a national bank will have no adverse effect on the converting institution's CRA performance. The converted bank plans to carry forward and continue to serve the same communities. The bank will continue to use the same policies, programs, and personnel that it has today. Moreover, shortly after the conversion, the converted bank will merge into FOA-Michigan. Similarly, the mergers are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. FOA-Michigan will continue its current CRA programs and policies in Michigan. After FOA-Florida and FOA-Indiana are merged into FOA-Michigan, the Florida and Indiana offices will remain open as branches of FOA-Michigan. FOA-Michigan will carry forward the same CRA programs and policies that those institutions have today and add other programs developed by FOA-Michigan. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as FOA-Michigan, FOA-FSB/FOA-Florida, and FOA-Indiana have today as separate banks. The mergers and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed mergers is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Conversion Application, the FOA-Michigan/FOA-Florida Merger, and the FOA-Michigan/FOA-Indiana Merger are all legally authorized and meet the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 06-01-97

Julie L. Williams Date
Chief Counsel

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