



**CRA Decision #220
October 2021**

September 28, 2021

Gregory J. Lyons, Partner
Debevoise & Plimpton LLC
919 Third Avenue
New York, New York 10022

Re: Application by Citizens Bank, National Association, Providence, Rhode Island to purchase and assume certain assets and liabilities of HSBC Bank USA, National Association, Tysons, Virginia

OCC Control Number: 2021-LB-Combination-321907
Charter Number: 24571

Dear Mr. Lyons:

The Office of the Comptroller of the Currency (OCC) hereby approves the application filed on behalf of Citizens Bank, National Association (Citizens Bank or Bank) Providence, Rhode Island to acquire certain deposit liabilities, certain assets, including eighty branches (East Coast Branches) relating to HSBC Bank, USA, National Association's (HSBC) branch operations on the east coast and national online deposit business, as set forth in the application dated June 21, 2021.¹ The OCC received a number of comments on the proposed transaction. The OCC has carefully considered the concerns of the commenters as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including performance under the Community Reinvestment Act (CRA), and the probable effects of the transaction on the convenience and needs of the communities to be served. The public comments are discussed below. This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and by Citizens Bank's representatives during the application process.

¹ The purchase and assumption agreement also provide for Citizens Securities, Inc.'s (CSI) acquisition of HSBC Securities (USA) Inc.'s retail wealth management business held by the East Coast Branches' customers. CSI is a wholly owned financial subsidiary of Citizens Bank. CSI is currently engaged in all of the activities that it will acquire from HSBC Securities (USA) Inc. through the proposed transaction and therefore it is permissible for CSI to acquire these activities, and a separate application is not required under 12 CFR 5.39.

I. Legal Authority for the Transaction

Statutory authority for the proposed transaction is found in 12 USC 24(Seventh). National banks are expressly authorized to engage in certain banking activities and to exercise “all such incidental powers as shall be necessary to carry on the business of banking.”² The OCC has long permitted national banks to purchase assets and assume liabilities as incidental to the business of banking under 12 USC 24(Seventh), subject to the Bank Merger Act (BMA), 12 USC 1828(c), and applicable sections of 12 CFR 5.33.

The OCC reviewed the proposed transaction under the criteria of the BMA, 12 USC 1828(c), and applicable OCC regulations. Among other matters, we found that the proposed transaction would not have significant anticompetitive effects. We also considered the financial and managerial resources of the banks, their future prospects, their effectiveness in combating money laundering activities, the convenience and needs of the communities to be served and the risk of the transaction to the stability of the United States banking or financial system. Furthermore, the OCC reviewed the Bank’s record of compliance with the Community Reinvestment Act, 12 USC 2903(a)(2) as discussed in further detail below. The OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. We considered these factors and found them consistent with approval.

As part of the purchase and assumption transaction, Citizens Bank seeks approval to retain the East Coast Branches of HSBC as branches of Citizens Bank. The intrastate branch acquisitions are authorized under 12 USC 36(c).

The business combination of Citizens Bank and HSBC is legally authorized as an interstate merger transaction under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act), 12 USC 1831u, and the resulting bank is authorized to retain and operate interstate branches of HSBC under 12 USC 1831u(a)(4)(A).

II. Community Reinvestment Act and Convenience and Needs

In evaluating this proposed transaction, the OCC has carefully considered: (i) Citizens Bank’s most recent CRA performance evaluation (PE); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) written public comments; and (iv) information Citizens Bank provided in response to the public comments.

A. Community Reinvestment Act

The OCC considers the filer’s CRA record of performance in helping meet the credit needs of its communities, including low-and moderate-income neighborhoods, when evaluating applications

² 12 U.S.C. § 24(Seventh).

under the Bank Merger Act, 12 USC 1828(c).³ Accordingly, the OCC considered Citizens Bank's CRA PE. Based on this review, the OCC concluded that Citizens Bank's record of CRA performance is consistent with approval of the application.

In the most recent CRA PE dated September 30, 2019 (2019 CRA PE),⁴ Citizens Bank received an overall CRA rating of "Outstanding" as well as "Outstanding" ratings for the lending test, service test,⁵ and investment test based on ratings in two MCSAs, the Boston-Worcester-Providence-MA-RI-NH-CT MCSA (Boston MCSA) and the New York-Newark, NY-NJ-CT-PA MCSA (New York MCSA), and eight states. The major factors supporting this rating included: (i) lending levels that reflected excellent responsiveness to the credit needs of the assessment areas; (ii) adequate to good geographic distribution of loans; (iii) leadership in making community development (CD) loans and providing CD services; (iv) excellent level of qualified CD investment and grants and excellent responsiveness to credit and community economic development needs; (v) good to excellent distribution of loans among individuals of different income levels and businesses of different sizes; and (vi) service delivery systems that were accessible to geographies and individuals of different income levels.

B. Convenience and Needs

Under the BMA, the OCC also considers the convenience and needs of the communities served by the resulting bank.⁶ Though the bank's CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (November 2017), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis.⁷

³ See 12 CFR 5.33(e)(1)(iii)(A); see also 12 CFR 25.02(a)(3).

⁴ The OCC evaluated Citizens Bank as a large institution for the evaluation period beginning January 1, 2016 and ending December 31, 2018. In evaluating the bank's lending performance, the OCC reviewed home mortgage loans reported under the Home Mortgage Disclosure Act (HMDA) and small loans to businesses reported under the CRA. All home mortgage products were reviewed, and conclusions reached in the aggregate. In each state where the bank has an office, one or more AAs within that state was selected for a full-scope review. A copy of the 2019 CRA PE is available at <http://www.occ.gov/static/cra/craeval/Jul20/24571.pdf>.

⁵ The service test rating was based on the significant weighting of the Boston Multistate Combined Statistical Area (MCSA). Outstanding performance was noted in five rating areas, including the Boston MCSA, and High Satisfactory performance was noted in five rating areas.

⁶ See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

⁷ *Comptroller's Licensing Manual*, Public Notice and Comments (November 2017).

The OCC has concluded that approval of the transaction is consistent with the needs of the communities that the resulting bank will serve.

III. Public Comments and Analysis

A. Summary of Public Comments and Analysis

The OCC received four public comments from three commenters opposing the proposed transaction. The comments raised largely similar concerns, except that one comment included additional details, concerns, and recommendations.

Commenters expressed concern that Citizens Bank's application did not explain how the bank will meet the needs of the communities it is entering with the proposed acquisition. Commenters also stated that there was no public benefit associated with the transaction. The commenters specifically raised concerns with: (i) the lack of transparency regarding potential branch closures following the acquisition of HSBC branches; (ii) the absence of a plan detailing how Citizens Bank will meet its CRA obligations in new assessment areas and similarly how HSBC will meet its obligations in areas where it is divesting;⁸ (iii) Citizens Bank's record of lending to LMI communities and Black and Hispanic borrowers; and (iv) Citizens Bank's record with regard to overdraft fees. All commenters stated that absent the development and presentation of comprehensive plans to address CRA obligations, the application should be denied.

Branches

Commenters stated that the public portion of the application does not contain material information regarding potential branch closings and their impacts, and that such information is essential to the full consideration of the application. One commenter noted that Citizens Bank relies heavily on internet lending and internet banking, which studies have shown is not the best way to reach unbanked residents. The commenters urged Citizens Bank to disclose its plan for branch closures and develop a plan to provide in-person banking services to the unbanked and underbanked as part of its efforts to serve its communities.

Citizens Bank represented that it has conducted a branch-by-branch analysis focused on geographic overlap, historical performance, and future opportunities to determine that there would be no branch closures by the purchase date. Citizens Bank represented that to the extent it determines to close or consolidate any branches after the closing of the acquisition, it will comply with all applicable branch closure or consolidation procedures.⁹

⁸ HSBC is not required to make a filing to sell branches. At HSBC's next CRA evaluation, the OCC will assess whether the sale has affected HSBC's CRA record of performance.

⁹ See 12 USC 1831r-1.

CRA Plans and Community Engagement

Commenters stated that the application should be denied absent the development and presentation of CRA plans showing how Citizens Bank will address the CRA needs of its communities if this transaction is approved. Commenters noted that this acquisition will greatly expand Citizens Bank's assessment areas into geographic areas in which it has little or no experience. Citizens Bank will expand into two new Metropolitan Statistical Areas (MSAs) and a number of new Metropolitan Divisions (MDs) in the Washington-Arlington-Alexandria, Miami-Fort Lauderdale-Pompano Beach, and New York-Newark-Jersey City areas. Citizens Bank will also expand its branch footprint within the New York-New Jersey-PA MD to include branches in all five boroughs of New York City. The commenters urged Citizens Bank to engage with the communities it serves to develop a comprehensive CRA plan, created with community input and approval throughout its footprint and especially in areas with new CRA obligations. Finally, commenters suggested specific programs Citizens Bank could include to address the CRA needs of its communities.

In response to these comments, Citizens Bank stated that following the acquisition of the HSBC branches,¹⁰ it anticipates delivering all of its products to the new markets. Citizens Bank referenced existing proprietary programs that will be deployed to serve the needs of new markets following the acquisition. Those programs include: (i) Citizens Bank Destination Home Loan Program, which allows home purchases with minimal downpayments; (ii) Citizens Bank Closing Cost/Down Payment Assistance Program, which offers eligible low- and moderate-income (LMI) borrowers grants to be applied towards downpayments and closing costs; (iii) the availability of dedicated CRA loan officers; and (iv) Citizens Bank Goal Builder Home Equity Line of Credit (HELOC), an accessible and flexible home equity option for qualified low- and moderate-income homeowners.

In terms of CD activities, Citizens Bank pointed to its efforts to strengthen communities through loans and investments, financial education, and CD managers who work with local non-profit organizations, civic leaders, and municipalities to help facilitate Citizens Bank's active engagement in local communities. Citizens Bank noted its support of Community Development Corporations, Community Development Financial Institutions, mission-driven Small Business Investment Corporations and other public welfare investments leveraging tax advantaged tools like Low-Income Housing Tax Credits, New Market Tax Credits and Historic Tax Credits. Citizens Bank noted that all of these approaches will be implemented in its new markets following the acquisition.

¹⁰ In its response, Citizens Bank also noted that it is also in the process of acquiring Investors Bancorp (Investors), headquartered in Short Hills, New Jersey. The Investors acquisition would add another 154 branches in the greater New York City and Philadelphia metropolitan areas and across New Jersey to Citizens Bank's footprint in those communities. Citizens noted that its expanded physical presence will enable it to effectively deliver services to new communities in the New York City Metro area and New Jersey.

As previously noted, for its 2019 CRA examination, the OCC assigned Citizens Bank a composite rating of “Outstanding” with “Outstanding” ratings for the lending, investment, and service tests. Although under the CRA the OCC evaluates a bank’s record of meeting the credit needs of its entire community, the CRA does not require banks to engage in any particular type of activity or to enter agreements with third parties.¹¹

Lending to LMI Communities and Underserved Populations

Two commenters expressed concern that Citizens Bank does not have a strong record of reaching LMI communities or Black and Hispanic borrowers. Relying on HMDA data, one commenter expressed concern regarding Citizens Bank’s record of lending to African American borrowers in New York. Another commenter noted that while Citizens Bank has increased its residential mortgage lending over the past few years, it ranks at the lower end of top 10 lenders in loans to LMI borrowers and Black and Hispanic borrowers. Commenters suggested that this issue should be addressed through community engagement and that Citizens Bank should be required to present a CRA plan before this application is approved.

The OCC notes that HMDA data alone are generally not adequate to provide a basis for concluding that an institution is engaged in lending discrimination, nor do they reflect the full range of an institution’s lending activities and efforts. However, disparities in mortgage lending that are correlated with prohibited basis characteristics are of concern to the OCC, and the OCC monitors HMDA data reported by the institutions it regulates to determine those institutions that exhibit increased fair lending risk. Citizens Bank is subject to the OCC’s ongoing supervisory program to monitor fair lending risk and compliance with the Fair Housing Act and its implementing regulation.¹²

Citizens Bank noted that the data the commenters referenced pertains to total mortgage lending volume and does not account for distinctions between closed-end and open-end mortgage loans. Citizens Bank noted its effectiveness as an open-end, home equity line of credit lender in New York State. Citizens Bank represented that in 2020, it held the number one position in open-end mortgage loan originations with an 11% market share, as compared to a 1.96% market share for closed-end loans such as home purchase and refinance loans. Citizens Bank stated that it was equally as successful in delivering open-end mortgage loans to Black borrowers in New York State. Among Black borrowers, Citizens Bank also ranked number one with an 11.31% market share. Finally, Citizens Bank noted that its 2020 approval ratio for open-end mortgage loans to Black borrowers was 32.4%, well ahead of state-wide industry average of 27%.

¹¹ “Interagency Questions and Answers Regarding Community Reinvestment,” 81 Fed. Reg. 48,506 (July 25, 2016) (Q&A § __.29(b) -2).

¹² 42 USC 3601 *et seq.*; 24 CFR Part 100. Citizens Bank is subject to the Consumer Financial Protection Bureau’s supervisory and enforcement authority with respect to the Equal Credit Opportunity Act. 15 USC 1691 *et seq.*; 12 CFR Part 1002.

Overdraft Fees

One commenter noted a concern about Citizens Bank's level of income from overdraft fees as compared to HSBC. The commenter further expressed concern that Citizens Bank's overdraft practices are problematic in that the fees themselves are higher than average and the Bank allows for up to seven overdraft fees per day, imposes extended overdraft fees, and reorders transactions from high to low in order to maximize the chance of an overdraft. The commenter noted that Citizens Bank has acknowledged the need to make changes to its practices but has not committed to any changes. Specifically, the commenter recommended that Citizens Bank offer a no-overdraft product and change its overdraft policies on all Citizens accounts to minimize overdraft charges.

Citizens Bank represented in response to this comment that it is pursuing a multi-pronged solution to increase value for customers and reduce the impact of overdraft fees. First, in line with the commenter's initial recommendation, Citizens Bank is developing "safe" product offerings, including a "BankOn" product, that will not have overdraft fees. Consistent with the commenter's second recommendation, Citizens Bank is updating its policies with respect to overdrafts, including (i) expanding the window for overdraft fees to be waived or rebated and (ii) reducing the number of overdraft fees that Citizens Bank will charge to any account. Moreover, Citizens Bank is investing in digital capabilities that make it easier for customers to monitor balances and to receive alerts intended to assist customers to avoid overdraft fees. Citizens Bank is focused on delivering these enhancements by the first quarter of 2022.

B. Request for Extension of Comment Period and Public Hearing

The commenters requested that if the OCC does not deny the application, it should extend the comment period to allow additional time to conduct research and further assess the concerns they noted along with Citizens Bank's CRA activity and plans. The standard that applies to determine whether to extend the comment period is set forth in 12 CFR 5.10(b)(2). The OCC may extend a comment period if a person requesting additional time satisfactorily demonstrates that additional time is necessary to develop factual information that the OCC determines is needed for the filing, or the OCC determines that other extenuating circumstances exist.¹³ After careful consideration, the OCC determined not to extend the public comment period. None of the reasons set forth in 12 CFR 5.10(b)(2) as justification for extending the comment period were evident in connection with this application.

C. Summary of Consideration of Public Comments

The OCC has considered all of the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information

¹³ See 12 CFR 5.10(b)(2)(ii), (iii).

provided by Citizens Bank, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

IV. Consummation Requirements

Please advise OCC Large Bank Licensing in writing ten (10) days in advance of the desired effective date for the purchase and assumption transaction, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval, if applicable. The OCC will issue a letter certifying consummation of the transaction when we receive documentation that all other regulatory approvals, non-objections, or waivers have been obtained, as applicable.

If the purchase and assumption is not consummated within six months from the approval date, the approval will automatically terminate, unless the OCC grants an extension of the time period.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A separate letter is enclosed requesting your feedback on how we handled this application. We would appreciate your response so we may improve our service. Please include the OCC control number on any correspondence related to this filing. If you have any questions, please contact Senior Licensing Analyst Wai-Fan Chang at (212) 790-4055 or Director for Large Bank Licensing Jason Almonte at (917) 344-3405 or by email at jason.almonte@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing