



October 14, 2022

Cristina Regojo Gedan
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950 F Street, NW
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Re: Application to merge MUFG Union Bank, National Association, San Francisco, California with and into U.S. Bank National Association, Cincinnati, Ohio

OCC Control No. 2021-LB-Combination-323603

Charter No. 24

Dear Chief Regulatory Counsel Gedan:

The Office of the Comptroller of the Currency (OCC) conditionally approves the application by U.S. Bank National Association, Cincinnati, Ohio (U.S. Bank) to merge with MUFG Union Bank, National Association, San Francisco, California (Union), with U.S. Bank surviving (the Resulting Bank).

This conditional approval of the bank merger is granted based on a thorough review of all information available, including commitments and representations made in the application and by representatives of U.S. Bank and Union, as well as the written comments received and testimony provided at the public meeting on March 8, 2022.

I. Background and Transaction

U.S. Bank, approximately \$582 billion in assets, is a wholly-owned subsidiary of U.S. Bancorp, a Delaware corporation and registered financial holding company. U.S. Bank has approximately 2,258 branches, primarily in the midwestern and western parts of the United States.

Union, approximately \$125 billion in assets, is a wholly-owned subsidiary of MUFG Americas Holding Corporation, a Delaware corporation and registered financial holding company (MUFG Americas), and an indirect subsidiary of Mitsubishi UFJ Financial Group, Inc. (MUFG) and MUFG Bank, Ltd. (MUFG Ltd.), both of Tokyo, Japan. Union operates approximately 300 branches in California, Oregon, and Washington.

Subject to approval by the Board of Governors of the Federal Reserve System (FRB), U.S. Bancorp will acquire all of the issued and outstanding shares of common stock of Union from MUFG Americas (the Acquisition). U.S. Bancorp will operate U.S. Bank and Union as two separate, affiliated national bank subsidiaries for approximately six months.¹ Afterwards, Union will merge with and into U.S. Bank (the Bank Merger, and together with the Acquisition, the Proposed Transaction).

II. Legal Authority and Analysis

U.S. Bank applied to the OCC for approval to merge Union with and into U.S. Bank under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal), including 12 USC 215a-1 and 12 USC 1831u, and under the Bank Merger Act, 12 USC 1828(c) (BMA). In addition, U.S. Bank intends to acquire certain Union subsidiaries and investments in connection with the Bank Merger.

A. Riegle-Neal

Riegle-Neal enacted 12 USC 1831u, which authorizes certain interstate merger transactions, as well as 12 USC 215a-1, which authorizes an out-of-state bank to merge with and into a national bank if the transaction is approved pursuant to 12 USC 1831u. Mergers conducted pursuant to Riegle-Neal are subject to the following: (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal's limits; (ii) compliance with certain state filing requirements, to the extent the filing requirements are permitted in Riegle-Neal; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills. The OCC has considered these requirements and determined that the merger satisfies all applicable requirements in Riegle-Neal, including 12 USC 215a-1 and 12 USC 1831u.

B. The Bank Merger Act

The OCC reviewed the proposed merger under the BMA as well as applicable related OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition.² The BMA 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. 12 USC 1828(c)(5).³ The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering

¹ Immediately following the consummation of the Acquisition, U.S. Bancorp will replace Union's board of directors with the same directors serving as directors for both U.S. Bank and U.S. Bancorp. U.S. Bancorp requested that the OCC grant Union multiple waivers of the residency requirements in 12 USC 72 for the period following the Acquisition but before consummation of the Bank Merger. The OCC hereby approves that request such that up to 10 members of Union's board of directors will not be required to satisfy the residency requirements.

² 12 USC 1828(c)(5)(A)-(B).

³ See sections III and IV for discussion on the OCC's conclusions on convenience and needs and the Community Reinvestment Act (CRA).

activities. 12 USC 1828(c)(11). Furthermore, the OCC must consider the transaction's risk to the stability of the U.S. Banking or financial system. 12 USC 1828(c)(5). As discussed in more detail below, the OCC has concluded that approval of the Bank Merger is consistent with these factors, subject to the conditions set forth in Section VI of this letter.

1. Competitive Analysis

The U.S. Department of Justice (DOJ) required, and U.S. Bancorp agreed to, divestiture of three branches in San Bernadino, California within a specified timeframe. The DOJ concluded that if the divestitures are made as specified, it would support a conclusion by the OCC that the Proposed Transaction likely would not have a significant adverse effect on competition. The OCC has considered the competitive effects of this transaction and finds them consistent with approval.

2. Financial and Managerial Resources and Future Prospects

Based on information from various sources, including quarterly financial reports, the application, and supervisory information, both U.S. Bank and Union are in an overall satisfactory financial condition and are well capitalized. The Resulting Bank will be well capitalized at consummation, and financial projections show satisfactory capital ratios and earnings projections that appear reasonable.

U.S. Bank's management team, which will manage the Resulting Bank, has a record of performance sufficient to lead the Resulting Bank, including extensive banking experience and successful merger execution. Union entered into a Consent Order with the OCC on September 9, 2021 (2021 Consent Order) related to deficiencies in Union's technology and operational risk management, as well as noncompliance with the Interagency Guidelines Establishing Information Security Standards contained in Appendix B to 12 CFR Part 30. At the time of the Bank Merger, U.S. Bank intends to migrate Union's existing technology platforms and operations to that of U.S. Bank.⁴ The OCC finds that approval of the application is consistent with the financial, managerial, and future prospects evaluative factors.

3. Effectiveness in Combating Money Laundering

The OCC must consider the effectiveness of any insured depository institution involved in a merger transaction in combating money laundering activities. The Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) compliance programs at both banks are satisfactory and commensurate with BSA/AML risk profiles of each bank. The U.S. Bank BSA/AML compliance program will govern the Resulting Bank. The federal branches of MUFJ Ltd. are subject to a consent order, dated February 21, 2019, related to BSA/AML deficiencies but Union is not subject to that consent order. The OCC finds that the records of both banks in combating money laundering activities are consistent with approval.

⁴ See section V of this letter for additional discussion on the 2021 Consent Order.

4. Financial Stability

The BMA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), requires the OCC to consider “the risk to the stability of the United States banking or financial system” when reviewing transactions subject to the act.⁵ This consideration is separate from other statutory considerations of financial stability, such as those in sections 165 and 604 of the Dodd-Frank Act.⁶ Thus, Congress included consideration of financial stability concerns not only in the context of prudential requirements at the bank holding company level, but also at both the bank and bank holding company level for mergers subject to BMA.

When applying this standard, the OCC reviews and analyzes the following factors: (a) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions; (b) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions; (c) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (d) whether the transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system; (e) whether the transaction would materially increase the extent of cross-border activities of the combining institutions; (f) the relative degree of difficulty of resolving or winding up the combined institution’s business in the event of failure or insolvency; and (g) any other factor that could indicate the transaction poses a risk to the U.S. Banking or financial system.⁷

Based on the foregoing factors, the Proposed Transaction presents increased potential risk to the stability of the U.S. Banking or financial systems but, with proper mitigants, the financial stability factor is consistent with approval. In particular, the OCC concludes, as described further below, that the size of the Resulting Bank and attendant resolution concerns could present some increased risk.

Size: The size of the Resulting Bank following the Bank Merger could potentially pose additional risk to the financial stability of the U.S. financial or banking system. The Resulting Bank will have approximately \$679.6 billion in total assets and will remain the fifth largest commercial bank headquartered in the United States. Despite remaining substantially smaller

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

⁶ Section 165 of the Dodd-Frank Act requires, among other things, the FRB and FDIC to establish and apply enhanced prudential standards for bank holding companies of a certain size. Section 604 amended the Bank Holding Company Act to require the FRB to “consider the extent to which [a] proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.” See 12 USC 1842.

⁷ *Comptroller’s Licensing Manual*, “Business Combinations” (July 2018); see also [Corporate Decision 2012-05](#). The FRB has adopted similar factors. See, e.g., Order No. 2021-04, Approving the Acquisition of a Bank Holding Company: PNC Financial Services Group—BBVA USA Bancshares (May 14, 2021).

than the global systemically important banks (GSIBs),⁸ the Resulting Bank would be large enough on an absolute basis to implicate resolution concerns.

Resolvability: A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the financial system. The relative degree of difficulty in resolving a combined institution may be informed by the other financial stability factors. For example, the larger, more complex, or more interconnected an institution, the more likely a resolution would present challenges that affect the financial system. For very large institutions, a potential but significant concern is lack of optionality, where the only viable solution to the resolution of a large or complex bank would be acquisition by a larger institution.⁹ Such an outcome would cause the acquiring GSIB to become significantly larger and more systemic, thereby creating further concentration in the banking sector.¹⁰

Should the Resulting Bank fail or experience significant financial distress, because of its size, there are a limited number of organizations that could acquire the Resulting Bank. For example, assuming that the Resulting Bank would need to merge with a larger institution, all of those potential merger partners are either GSIBs or subsidiaries of a GSIB.¹¹ Thus, the limited options for resolvability given the size of the Resulting Bank and its potential acquirors could pose additional risk to the financial stability of the U.S. financial or banking system.

These resolvability concerns are partially mitigated by *ex ante* resolution planning requirements. Following the Proposed Transaction, the Resulting Bank and its holding company, U.S. Bancorp, will continue to be subject to certain recovery and resolution planning requirements or guidelines. For example, U.S. Bancorp, after the Proposed Transaction, will continue to be subject to the requirement to periodically submit plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.¹² Additionally, the

⁸ For example, the Resulting Bank will be less than half the size of the fourth largest bank and about one-fifth of the size of the largest bank. Estimates based on Federal Reserve Statistical Release – Commercial Banks (June 30, 2022).

⁹ See Michael J. Hsu, Acting Comptroller of the Currency, Remarks Before the Wharton Financial Regulation Conference 2022: Financial Stability and Large Bank Resolvability, at 3 (April 1, 2022). Congressional Research Service, *Systemically Important or “Too Big to Fail” Financial Institutions* (Updated Sept. 24, 2018) at 31 (“In the case of a large failing firm, the only entity capable of absorbing it in whole might be an even larger institution, leading to greater concentration.”); William C. Dudley, President and Chief Executive Officer, Federal Reserve Bank of New York, Remarks at the Clearing House’s Second Annual Business Meeting and Conference (Nov. 15, 2012) (“The [too-big-to-fail] problem was exacerbated during the crisis by the acquisition of weakened firms by stronger firms, a development that was actively promoted by policymakers in a bid to avoid or temper the consequences of their failure. . . . This, of course, made the surviving firms even bigger and more complex.”). See also Financial Stability Board, *Evaluation of the Effects of Too-Big-to-Fail Reforms* (April 1, 2021) at 20-31 (discussing resolution frameworks).

¹⁰ Application, Public Volume, at 3-4.

¹¹ There are currently only four banks that have a greater asset size than the Resulting Bank, which are already subsidiaries of entities considered globally systemic or GSIBs. Additionally, there are two other holding company groups that will be larger than the resulting U.S. Bancorp, both of which are GSIBs.

¹² 12 CFR 243.

Resulting Bank remains subject to recovery planning guidelines in Appendix E to 12 CFR 30.¹³ These guidelines establish a framework to effectively and efficiently address the financial effects of severe stress events and avoid failure or resolution.

Other Considerations: In some important ways, the Proposed Transaction may also have countervailing positive impacts on financial stability. The acquisition of Union by U.S. Bancorp will result in the application of U.S. Bancorp’s stronger enterprise government framework to Union following the Acquisition. In addition, upon consummation of the Bank Merger, U.S. Bank’s stronger technology systems will apply to the Resulting Bank, which should correct many of the underlying concerns that resulted in the 2021 Consent Order. Moreover, the Proposed Transaction better positions U.S. Bank to compete in the West Coast markets, which are largely dominated by the GSIBs, thus providing customers with greater options and enhancing certain aspects of financial stability.

Financial Stability Conclusion: In summary, when considering the financial stability factors outlined above, the OCC concludes the Bank Merger presents increased potential for risk to the stability of the U.S. Banking or financial systems; however, with proper mitigants, the financial stability factor is consistent with approval. In addition to the financial stability mitigants already in place as discussed above, the OCC is including a condition imposed in writing that requires the Resulting Bank to (a) develop a list of business lines and/or portfolios that could be sold quickly in the event of stress, and (b) prepare a plan to effectuate such separability, including through the establishment of a “data room” that includes or could be quickly populated with information pertinent to a potential divestiture (*hereinafter*, Financial Stability Condition). In addition, the Financial Stability Condition would promote the recovery of the Resulting Bank should it experience financial distress.

The OCC imposes conditions on a case-by-case basis after applying the statutory and regulatory factors to the merger’s facts and circumstances. Such conditions are not limited to those that directly impact safety and soundness, and may include conditions “necessary or appropriate to ensure that approval is consistent with relevant statutory...standards.”¹⁴ For example, the OCC has conditionally approved other transactions such that an applicant must comply with an agreement reached with the DOJ on divestitures.¹⁵ The Financial Stability Condition is necessary and appropriate to ensure the approval is consistent with relevant statutory standards (*i.e.*, consideration of financial stability pursuant to 12 USC 1828(c)(5)).¹⁶ In addition, U.S. Bank has provided commitments that it will satisfy the Financial Stability Condition

¹³ A covered bank for purposes of resolution planning includes one with consolidated assets over \$250 billion. *See also Comptroller’s Handbook*, “Recovery Planning” (March 2019).

¹⁴ 12 CFR 5.13(a)(1).

¹⁵ *Comptroller’s Licensing Manual*, “Business Combinations,” at 6; *see, e.g.*, OCC CRA Decision No. 186 (Oct. 16, 2017) (conditioning the BMA approval upon compliance with certain divestiture-related commitments).

¹⁶ *See* 12 USC 1818(b); 12 CFR 5.13(a)(1).

C. Subsidiaries and Investments

The Resulting Bank may retain the subsidiaries and investments currently held by Union. A national bank “may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under statutory authority.” 12 CFR 5.34(e)(1)(i). U.S. Bank will acquire seven Union operating subsidiaries that have been approved by the OCC or have been established in accordance with regulatory requirements. The activities in the subsidiaries continue to be permissible for the Resulting Bank, and the Resulting Bank may retain them following the Bank Merger.

U.S. Bank will also acquire several equity investments. As a national bank, Union’s investments are already permissible for a national bank. Thus, the investments remain permissible for the Resulting Bank, and the Resulting Bank may retain these investments following the Bank Merger.

III. Community Reinvestment Act and Convenience and Needs

In evaluating this proposed transaction, the OCC has carefully considered: (i) U.S. Bank’s most recent CRA performance evaluation (PE); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) oral and written public comments; and (iv) information U.S. Bank provided in response to the public comments. The OCC received 98 written comments on the Bank Merger and also received testimony from 123 members of the public at a public meeting, conducted in combination with the FRB, on March 8, 2022 (Public Meeting). The OCC carefully considered the concerns raised by commenters and those who testified at the Public Meeting as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including performance under the CRA, and the probable effects of the transaction on the convenience and needs of the communities to be served. Based on this review, the OCC concluded that U.S. Bank’s record of performance under the CRA and the probable effects of the merger on the convenience and needs of the community to be served are consistent with approval of the application.¹⁷

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 (LMI) neighborhoods, when evaluating applications under the BMA, 12 USC 1828(c).¹⁸

¹⁷ The OCC is aware of the recent consent order U.S. Bank entered into with the Consumer Financial Protection Bureau (CFPB) to resolve that agency’s findings regarding improper sales practices. *In re U.S. Bank National Association*, No. 2022-CFPB-0006 (July 28, 2022). The OCC is aware of the facts underlying this order as part of its supervisory responsibilities for U.S. Bank. In reviewing the application, the OCC has considered those facts, the CFPB’s findings, and the actions U.S. Bank is required to take under the CFPB’s order to remedy those practices and to pay redress to customers.

¹⁸ See 12 CFR 5.33(e)(1)(iii)(A); see also 12 CFR 25.29(a)(3).

In its most recent CRA PE dated October 16, 2017, covering an assessment period from January 1, 2012, through December 31, 2015, with consideration of community development (CD) activities from April 1, 2012, through December 31, 2015, U.S. Bank received an overall rating of “Outstanding.”¹⁹ During the 2017 CRA PE, U.S. Bank’s overall performance level for each of the lending, service and investment tests was rated “Outstanding.” U.S. Bank received a rating of “Outstanding” for the investment test in each of the 40 different states or metropolitan statistical areas (MSA) in which it was evaluated, a rating of “Outstanding” or “High Satisfactory” for the lending test in each of these 40 states and MSAs, and a rating of “Outstanding” or “High Satisfactory” for the service test in all but one of these 40 states and MSAs. U.S. Bank also received a composite rating of at least “Satisfactory” in each state and MSA.

These ratings were based on: CD lending that had a significantly positive impact on lending performance in most of the 44 full-scope assessment areas (AA); borrower and geographic distributions that were at least good in a majority of the 44 full-scope AAs; and lending activity in relation to bank resources and capacity that was good to excellent in most of U.S. Bank’s AAs, and no less than adequate in any AA. U.S. Bank’s volume of AA-specific investments in relation to bank capacity and available opportunity was excellent in most of its full-scope AAs, and its investments were responsive to CD needs with a focus on affordable housing and revitalization and stabilization initiatives. U.S. Bank’s retail delivery systems were readily accessible in a majority of the 44 full-scope AAs, and its branching activity did not adversely affect retail accessibility in the 44 full-scope AAs.

B. Convenience and Needs

Under the BMA, the OCC considers the convenience and needs of the community to be served by the resulting bank.²⁰ Though the bank’s CRA performance and the probable effects of the proposed transaction on the convenience and needs of the community to be served are interrelated, as explained in the “Public Notice and Comments” booklet of the *Comptroller’s Licensing Manual* (April 2022), 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.²¹

Community Benefits Plan

Numerous commenters asserted that U.S. Bank should enter into a community benefits plan or agreement and indicated that they would oppose the merger unless U.S. Bank included specific provisions in such a plan or agreement.²² On May 9, 2022, U.S. Bank announced a five-year,

¹⁹ A copy of U.S. Bank’s most recent CRA evaluation is available at: <https://www.occ.gov/static/cra/craeval/sep19/24.pdf>.

²⁰ See 12 USC 1828(e)(5); 12 CFR 5.33(e)(1)(ii)(C).

²¹ *Comptroller’s Licensing Manual*, Public Notice and Comments (April 2022) at 11.

²² 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.

\$100 billion Community Benefits Plan (CBP). As described by U.S. Bank, the CBP focuses on access to homeownership; small business access to capital and technical assistance; CD lending and investment; philanthropy and community service; branch services in California; environmental stewardship and commitment; advancing a diverse and equitable workforce; supplier diversity; and plan implementation and accountability.

IV. Public Comments and Analysis

A. Summary of Public Comments and Analysis

The OCC received 98 written public comments concerning the proposed transaction, as well as testimony from 123 members of the public at the Public Meeting.²³ While a majority of the comments received were supportive of the merger,²⁴ a substantial portion of commenters opposed the merger. Commenters opposing the merger stated that U.S. Bank has not established that it will meet the convenience and needs of the communities impacted by the merger²⁵ and specifically raised concerns including:

- i. U.S. Bank’s past record of branch closures and its plan to consider proximity to determine whether to close a branch if the merger is approved;
- ii. The potential loss of expertise and community relationships if Union’s community development staff lose their jobs due to the merger;
- iii. U.S. Bank’s lending practices in Native American communities, with regard to Black, Latino, and Native American borrowers, and in mortgage loan originations, approvals, and purchases for qualified borrowers in LMI areas and communities of color in California;
- iv. U.S. Bank’s loss mitigation policies to prevent any unnecessary foreclosures;
- v. The potential risk of fewer low-income housing tax credit (LIHTC) investments;

The OCC does not monitor compliance with nor enforce these agreements. “Interagency Questions and Answers Regarding Community Reinvestment,” 81 Fed. Reg. 48,506 (July 25, 2016) (Q&A § __.29(b)—2).

²³ The Public Meeting is described further in section IV.B. Additionally, the OCC received one comment following the close of the comment period.

²⁴ The OCC is aware that U.S. Bank requested support from its customers, partners, and grantees for its application in the form of public comments and statements, but believes that the range of comments received, as well as the testimony presented at the Public Meeting, reflect a full range of views. The OCC has carefully considered all comments, including the concerns raised by commenters opposing the merger.

²⁵ Some commenters also asserted that the OCC should only approve the merger if it finds a public benefit. The BMA requires the appropriate federal banking agency to consider the convenience and needs of the community in connection with its review of a BMA application, and as noted previously, the OCC considers the CRA performance of the filer and the probable effects of the business combination on the convenience and needs of the communities to be served in accordance with the BMA.

- vi. U.S. Bank's overdraft and fee policies;
- vii. Level of engagement with very small businesses, including businesses owned by women and Black, Indigenous and people of color, including continuation of U.S. Bank's Minority, Women and Disadvantaged Business Enterprise (MWDDBE) vendor programs; and
- viii. Contents of a CBP that U.S. Bank should develop in coordination with community groups.

Branches

Commenters expressed concern that U.S. Bank will close branches as a result of the merger, including in LMI communities and communities of color. Specifically, commenters stated that U.S. Bank has a higher rate of branch closures in California and nationally than its peers. Given this past record of closures, commenters voiced concerns about U.S. Bank's proposed post-merger plan to close or consolidate branches. Commenters further reiterated their concerns about potential branch closures during the Public Meeting and through written comments submitted after the meeting.

In response to the commenters' concerns, U.S. Bank represented that it is committed to staying in every market that Union currently serves in California, Washington, and Oregon. Further, U.S. Bank represented that it is committed to maintaining a viable physical presence, including in LMI communities, and that branches will continue to play an important role in its strategy and efforts to serve the community. In support of this effort, U.S. Bank represented that, pursuant to its CBP, in California it will:

- Not close branches in LMI or middle-income majority minority communities more than one mile from another branch for five years, absent circumstances outside U.S. Bank's control;
- Open five new branches in LMI or middle-income majority minority communities over five years;
- Open or preserve five additional branches in LMI or middle-income majority minority communities over five years decisioned with input from the California Reinvestment Coalition;
- Partner with community groups to establish five locations with nonprofit organizations that will provide access to a knowledgeable banker to help with small business lending and helping individuals improve their credit scores, savings, and financial confidence; and
- Adopt Union's high school and junior college branch program and make further investments to support financial education outreach.

U.S. Bank has also represented that prior to reaching a decision on closing any branch in an LMI area, it will analyze the demographics of the neighborhood, consider community input, and consider alternatives to closure, as well as alternative delivery options to minimize the impact of the closure.

U.S. Bank represented that there is an industry trend towards ATM, digital, and mobile usage and away from in-person transactions. In response to these industry trends, U.S. Bank stated that it recognizes that the future of banking will be a hybrid digital and physical experience and, in addition to its physical branch network, the bank is developing and investing in its digital channels to improve the customer experience. U.S. Bank has represented that it will invest \$49 million to upgrade the functionality and accessibility of Union's and U.S. Bank's legacy ATMs.

Finally, U.S. Bank represented that it is committed to providing ready access to its products and services so that all of its customers, including LMI customers, communities of color, and people with disabilities, can succeed financially. U.S. Bank represented that it offers materials in a number of languages and drives awareness of its financial education offerings through focused outreach to priority groups, including to those identifying as female, Black, Asian, Hispanic and lesbian, gay, bisexual, transgender and queer. U.S. Bank also represented that it offers a number of financial education and well-being resources through an online financial education resource hub and has partnerships with financial education and technical resource organizations.

Job Loss and Staffing Adequacy

Commenters stated that the merger could eliminate or negatively affect jobs for front-line and community development bank employees. Commenters noted the potential negative impact on communities, including loss of expertise and strong community relationships, if U.S. Bank prioritizes cost savings and efficiencies over the expertise of Union CRA and CD staff, which have strong community relationships.

In response to these concerns, U.S. Bank reiterated the commitment contained in the application to retain all of Union's front-line branch employees following the closing of the proposed transaction. Further, U.S. Bank represented that in the case of employees in branches subject to closure or consolidation, it intends to retain employees at branches in close proximity to the closed or consolidated branch. U.S. Bank also represented that it is continuing to assess employee talent, including Union's CRA and CD employees, to protect and leverage the talent of both organizations.

Home Lending Practices

Commenters raised concerns about U.S. Bank's Native American lending practices based on the available HMDA data. Specifically, commenters claimed that U.S. Bank was lending to Native American borrowers at half the rate of all lenders. Commenters urged U.S. Bank to develop a Special Purpose Credit Program and lending commitment targeted to the tribal land and Native American communities in order to meet those communities' credit needs.

Some commenters also expressed concern that U.S. Bank's mortgage lending in California underperformed the industry in multiple categories, including: (1) lending to Black, Latino, Native American, and LMI borrowers; (2) LMI applications and originations; and (3) FHA loans. Additionally, some commenters referenced geographic data analysis of lending in communities of color and LMI communities that they believe raise red flags concerning U.S. Bank's compliance with the Fair Housing Act and CRA performance.

In response to comments concerning its lending to Native American communities, U.S. Bank represented that it recognizes the importance of providing access to financial services to address the unique credit needs of Native American borrowers and communities, including mortgage financing. In support of providing credit to Native American borrowers, U.S. Bank stated that it maintains credit policies specifically designed to allow access to financing for Native American borrowers on tribal lands. U.S. Bank represented that Native American borrowers who wish to purchase homes on reservations often deal with special concerns and challenges, including the trust status of the land and the lack of various elements that facilitate homeownership. U.S. Bank represented that its credit policies are designed to ensure these challenges are not insurmountable.

In addition to its credit policies, U.S. Bank also represented that it is committed to providing CD financing to support economic development in Native American communities both in California and other parts of the United States through low-income housing and new market tax credits. U.S. Bank identified several low-income housing and new market tax credit projects funded in conjunction with Native American communities in the southern, midwestern, and western United States.

Further, U.S. Bank represented that it is committed to continuing its work with nonprofit organizations, CD advocates, and other coalitions to identify opportunities to deploy U.S. Bank's lending and investment capabilities in Native American communities and looks forward to helping expand lending and investment activities for Native American communities across the country.

In response to the commenters' concerns regarding its general lending practices in California, U.S. Bank represented that its loan underwriting and approval processes have been designed with fair lending requirements in mind. U.S. Bank stated that its policies, procedures, and training address prohibited lending practices. U.S. Bank further represented that its Fair and Responsible Banking Division performs in-house fair lending analysis and testing across applicable credit products; independently completes fair lending risk reviews of marketing, disclosures, procedures, and other compliance impacting materials/criteria; and reviews relevant complaints and bank complaint responses to ensure appropriate resolution and to address any control gaps. Finally, U.S. Bank noted that the OCC did not identify any discriminatory or other illegal credit practices during its CRA PE.

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

correlated with prohibited basis characteristics are of substantial concern to the OCC, and the OCC monitors HMDA data reported by the institutions it regulates to identify institutions that exhibit increased fair lending risk. U.S. 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.²⁶

U.S. Bank represented that its commitment to fair lending and supporting all segments of its communities, including LMI neighborhoods and minority borrowers, is demonstrated by its broad offerings of specialized mortgage products that are designed to meet the needs of LMI individuals, as well as U.S. Bank's outreach efforts targeted to LMI geographies and communities of color. U.S. Bank represented that it offers more than 118 affordable mortgage products involving national and local programs. From 2016 to 2020, these products generated more than 381,373 loans totaling \$133 billion. U.S. Bank also stated that it participates in several nationwide, statewide, and local mortgage down payment and special assistance programs. From 2016 to 2020, U.S. Bank represented that it facilitated 7,942 instances of affordable homeownership-related assistance.

U.S. Bank described some of its LMI loan products, including the American Dream Home Loan Program, which provides borrowers with access to credit through low down payments and down payment and closing cost assistance. U.S. Bank also represented that it offers a no interest loan in the form of a "soft second" mortgage with a deferred payment schedule in which a borrower does not have to make any payments unless and until the borrower sells the home or refinances the mortgage, or the property becomes non-owner occupied. U.S. Bank represented that from 2009 through 2020, more than 13,900 households across its footprint have used the American Dream Home Loan Program to achieve homeownership. U.S. Bank also represented that Union offers affordable mortgage products as well.²⁷

U.S. Bank also described its "Access Commitment," which it described as its long-term approach to building wealth and redefining how the bank serves racially diverse communities. The Access Commitment, launched in February 2021, builds on the \$116 million commitment U.S. Bank made in 2020 to help address the persistent racial wealth gap, starting with the Black community. As part of the Access Commitment program, U.S. Bank introduced its Access Home Initiative, focused on advancing Black homeownership and increasing Black employment in the mortgage banking industry. The initiative includes financial education, expanding community-based partnerships, and a mortgage loan officer development program.

²⁶ 42 USC 3601 *et seq.*; 24 CFR 100. U.S. 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 1002.

²⁷ U.S. Bank is continuing to evaluate which of Union's products it will offer after the merger.

In addition to its existing programs, U.S. Bank stated in the CBP its intention to:

- Provide at least a 20 percent increase in mortgage lending units nationally and a 30 percent increase in California to LMI borrowers, LMI communities, and communities of color over five years.
- Increase lending to small businesses and small farms by 15 percent nationally and 25 percent in California.
- Increase lending and investing by over 40 percent nationally and over 50 percent in California in community and economic development, affordable housing, and environmental and social impact lending and investments during the five-year period of the CBP, with a focus on racial equity and access to credit for organizations and developers of color.
- Develop three Special Purpose Credit Programs—Small Business, Mortgage, and Affordable Housing Development.

Foreclosure Prevention and Property Disposition

Commenters requested that U.S. Bank commit to implement loss mitigation best practices to ensure homeownership retention when possible and develop real estate owned (REO) policies geared towards keeping units affordable.

In response to these comments, U.S. Bank represented that it focuses on numerous contacts with borrowers to assist them throughout the delinquency cycle, including access to multi-language assistance and offering contact information of HUD-certified counselors. In addition, U.S. Bank represented that it offers loss mitigation options to borrowers in the form of payment assistance, repayment plans, and hardship loan modifications. U.S. Bank also represented that it has formed partnerships with states to offer Treasury-backed assistance programs, including the implementation and development of the Hardest Hit Fund and the Homeowner Assistance Fund.

With regard to commenters' concerns regarding its REO policy, U.S. Bank represented that through its Community Stabilization Assistance Program, the bank works to facilitate the transfer of REO properties to counties, cities, and nonprofit organizations that are seeking revitalization of neighborhoods and sustainable homeownership or rental opportunities for individuals and families in need. U.S. Bank further represented that its goal is to help stabilize communities by offering REO properties at discounted prices or as donations.

Affordable Housing and LIHTC

Many commenters recognized Union as playing an important role in supporting the development of affordable housing, particularly with respect to LIHTC investments and lending. Commenters expressed concern that the loss of Union as a separate financial institution creates a risk of negatively impacting California's efforts to address the affordable housing crisis. These

commenters are concerned that the merger will result in fewer LIHTC investments; reduce competition and the resulting favorable pricing for lending to LIHTC projects; and greater costs and uncertainty for nonprofit housing developer partners.

In response, U.S. Bank represented that these concerns are unfounded. In support of this position, U.S. Bank represented that it expects the combined institution to make more LIHTC investments following the proposed transaction. U.S. Bank further represented that it has been an active investor in affordable housing projects in California, and in 2021, approximately 35 percent of its total LIHTC investments were made in California. In addition, U.S. Bank represented that it was one of the first banks to invest primarily on a “direct” basis in its markets by partnering with developers at the lower tier partnership of LIHTC investments. U.S. Bank also represented that it has developed an expertise that allows it to invest in some of the most complex financial structures in affordable housing and support new and innovative programs and provided a number of examples. Finally, U.S. Bank represented that it offers a variety of products to serve affordable housing development and made \$400 million in construction loans to affordable housing developments in California in 2021.

Overdraft and Other Fees

Some commenters requested U.S. Bank to consider ending or substantially modifying its overdraft fee policies. Commenters also stated that U.S. Bank’s current overdraft policy levies an excessive amount on families, especially during the COVID-19 pandemic. Furthermore, commenters expressed concern about U.S. Bank’s ability to meet community needs because U.S. Bank collects three times more in overdraft fees than it reinvests in California communities. Finally, commenters expressed concern that U.S. Bank’s overdraft fee policies and practices are more aggressive than Union’s.

In response to commenters’ concerns, U.S. Bank represented that the percentage of overdraft-related service charges to total fee income has decreased since 2018. Further, U.S. Bank expects this trend to continue with its elimination of non-sufficient funds (NSF) fees, which began in January 2022, as well as other recent changes to its overdraft policies. U.S. Bank represented that it expects these changes to reduce the overdraft fees it collects by approximately \$170 million annually.

U.S. Bank further represented that it also offers products and services that mitigate the risk of overdrafts at no fee. For example, U.S. Bank cited its U.S. Bank Safe Debit product, which provides customers with banking services without overdraft or insufficient funds fees, along with account-related alerts. U.S. Bank also represented that it: (1) encourages its customers to link their accounts for overdraft protection with no fees or maximum number of transfers; (2) offers its customers digital tools, including account alerts, budgeting, and goal setting to help customers track and manage their cash flows; and (3) processes transactions in an order favorable to customers, which reduces the likelihood of overdrafts. U.S. Bank also represented that in late 2022 it will begin offering a digital account-balance dashboard that will alert customers of potential negative balances before they occur.

U.S. Bank represented that it has implemented additional features to help consumers better manage their cash flow and avoid fees. Specifically, U.S. Bank represented that the amount an account can be overdrawn prior to the assessment of a fee increased from \$5 to \$50 in May 2022. Relatedly, U.S. Bank introduced an offering that will provide account holders a full day to deposit funds to avoid a fee when their negative balance is more than \$50. U.S. Bank also represented that it will discontinue charging an Extended Overdraft Fee when a customer has a continuous overdraft for eight consecutive days, in September 2022.

Finally, U.S. Bank represented that it does not link its philanthropic decisions to total fee income collected, and any reduction in fees will not have an impact on U.S. Bank's philanthropic efforts or level of community reinvestment.

MWDBE Vendor Program, Support for Small Businesses, and CDFI investments

Commenters commended both U.S. Bank and Union for developing supplier diversity programs. However, commenters raised concerns about U.S. Bank's procurement spending with Black-owned businesses appearing to be approximately 1/50th of Union's total expenditure. Commenters also discussed the need to support very small businesses, including businesses owned by women and Black, Indigenous, and people of color.

In response to the commenters' concerns, U.S. Bank represented that the differences between U.S. Bank's and Union's existing supplier diversity programs (including differences in supplier selection criteria) may make direct comparisons difficult. U.S. Bank represented that the mission of its supplier diversity program is to identify, develop, and build strong relationships with certified diverse businesses that are qualified to supply U.S. Bank with quality products and services. U.S. Bank represented that its strategic sourcing efforts work toward the inclusion and participation of certified, diverse-owned businesses in its requests for proposal and contracts.

U.S. Bank represented that it also engages its small business customers by providing services such as digital and mobile tools. U.S. Bank further represented that for loan amounts as low as \$5,000, digital business applications may be approved and funded in minutes with no origination fees. U.S. Bank also represented that business checking accounts can also be opened online, with no monthly maintenance fee and 125 free transactions per month. In addition, U.S. Bank represented that it assists businesses at all stages through the Small Business Association program, through which it facilitated approximately \$1.9 billion in loans in 2020.

U.S. Bank represented that it supports CD financing by working with Community Development Financial Institutions (CDFIs) to connect small businesses to technical assistance and access to capital. U.S. Bank further represented that it has been a long-time partner of CDFIs and has worked with CDFIs to provide capital to entrepreneurs and small businesses in underserved communities. U.S. Bank further represented that it has helped ensure more than \$500 million in capital was available for CDFIs and their customers. U.S. Bank also represented that it supports access to capital for all businesses and communities through its partnership with a nonprofit fund with a mission to empower people to improve their lives and strengthen their communities through financial innovation, to which U.S. Bank has referred over 1,100 small businesses since 2017.

In addition, under its Access Commitment, U.S. Bank represented that the U.S. Bank Foundation and the U.S. Bank Community Development Corporation (USBCDC) will provide \$25 million in grants and investment through a new microbusiness fund for businesses owned by women of color. U.S. Bank represented that USBCDC will provide \$20 million in debt capital to Black-led and women-focused CDFIs. U.S. Bank further represented that the U.S. Bank Foundation will provide \$5 million in grants to support expansion, capability building, technical assistance, and mentorship/networking. Finally, in the CBP, U.S. Bank indicated that it will provide at least \$250 million in flexible loans and investments over five years to CDFIs, Black-owned or led funds, and other entities to support LMI communities and small businesses.

B. Requests for Public Hearing and Extension of Comment Period

Opposing commentors also requested the regulators hold public hearings in California. In response, the OCC and FRB held a virtual²⁸ Public Meeting regarding the application on March 8, 2022.²⁹ The panel of representatives from the OCC, FRB, and Federal Reserve Bank of Minneapolis received oral comments from a variety of community group representatives and individuals, expressing both support for and opposition to the merger. One hundred and twenty-three members of the public testified, with approximately 70 expressing support for the merger, 50 expressing opposition to the merger, and 3 neither opposing nor supporting the merger.

Opposing commentors also requested the OCC extend the comment period to ensure all impacted communities have a meaningful opportunity to provide comments to inform the regulators' deliberations.³⁰ After consideration, the OCC determined it was appropriate to extend the comment period through 5:00 PM EST on March 11, 2022, in connection with the Public Meeting.

C. Summary of Consideration of Public Comments

The OCC has considered all of the facts of record, including U.S. Bank's CRA record of performance, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by U.S. Bank and Union, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

²⁸ The meeting was held virtually to protect the health and safety of all participants in light of the ongoing COVID-19 pandemic.

²⁹ See 12 CFR 5.11(i).

³⁰ 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. See 12 CFR 5.10(b)(2)(ii), (iii).

V. Union Consent Order

Union's 2021 Consent Order addressed outstanding safety and soundness concerns related to its technology and operational risk management, and noncompliance with the Interagency Guidelines Establishing Information Security Standards in Appendix B to 12 CFR Part 30. Following the acquisition of Union but before Union is merged with and into U.S. Bank, the OCC will continue to assess compliance with the 2021 Consent Order and take appropriate action as necessary.

In addition, the OCC is including a condition that will require the Resulting Bank to abide by the terms and obligations of the 2021 Consent Order immediately upon consummation of the Bank Merger. The OCC will conduct an examination of the Resulting Bank to determine compliance with the 2021 Consent Order.

VI. Conditions

This approval is subject to the following conditions:

1. The Resulting Bank shall (a) develop a list of business lines and/or portfolios (each an "object of sale") that could be sold quickly in the event of stress and (b) prepare a plan, including a timeline, to effectuate such separability, including through the establishment of "data rooms" for each object of sale. Within six months of consummation of the Bank Merger, the Resulting Bank must submit these items to the OCC for a written determination of no supervisory objection.
2. The Resulting Bank shall immediately succeed to the terms and obligations of the 2021 Consent Order, and shall undertake to fully and timely perform all of the obligations and responsibilities originally imposed by the 2021 Consent Order on Union.
3. The Resulting Bank shall comply with the commitments contained in the letter from Andrew Cecere, Chairman, President and Chief Executive Officer, U.S. Bank National Association, to Tanya Smith, Deputy Comptroller for Large Bank Supervision, dated October 10, 2022.
4. The Resulting Bank shall abide by the letter of agreement reached with the DOJ to address competitive concerns related to the Proposed Transaction within the specified timeframes.

The conditions of this approval are conditions "imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

VII. Consummation Requirements

Please advise OCC Large Bank Licensing in writing ten (10) days in advance of the desired effective date for the Bank Merger, so it may issue the necessary certification letter. The effective date must follow any other required regulatory approval, as 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 merger transaction is not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This conditional 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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Our approval is based on bank representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this conditional 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.

A separate letter is enclosed requesting your feedback on how we handled the 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 Large Bank Senior Licensing Analyst, Patricia Roberts, at (202) 768-1070 or patricia.roberts@occ.treas.gov, or Director for Large Bank Licensing, Jason Almonte, at (917) 344-3405 or by email at jason.almonte@occ.treas.gov.

Sincerely,

Stephen A. Lybarger
Deputy Comptroller for Licensing