



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #98-21
May 1998**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
CORESTATES BANK, NATIONAL ASSOCIATION,
PHILADELPHIA, PENNSYLVANIA,
WITH AND INTO
FIRST UNION NATIONAL BANK
CHARLOTTE, NORTH CAROLINA**

April 15, 1998

I. INTRODUCTION

On February 12, 1998, First Union National Bank, Charlotte, North Carolina (FUNB), filed an Application with the Office of the Comptroller of the Currency (OCC) for approval to acquire through merger CoreStates Bank, National Association, Philadelphia, Pennsylvania (CSB). While FUNB and CSB are not currently subsidiaries of the same holding company, at the time that FUNB proposes to consummate this merger, both FUNB and CSB will be wholly-owned by First Union Corporation (the bank holding company), currently the holding company of FUNB.¹ Both parties to the merger are members of the Bank Insurance Fund.

As of December 31, 1997, FUNB had assets of approximately \$125 billion and deposit liabilities of approximately \$91 billion.² In addition to its main office in Charlotte, North Carolina, it has branch offices in North Carolina, New Jersey, New York, Pennsylvania,

¹ CSB is currently a subsidiary of CoreStates Financial Corporation which has agreed to merge into the bank holding company. This merger has been approved by the Federal Reserve Board (FRB). See First Union Corporation, Charlotte, North Carolina, FRB Order Approving the Merger of Bank Holding Companies (April 13, 1998) (the FRB order). FUNB has represented to the OCC that consummation of the merger of the two banks is contingent upon consummation of the holding company merger.

² We note that since then, FUNB has merged with an affiliated entity, First Union National Bank, Avondale, Pennsylvania, which as of December 31, 1997, had assets of approximately \$27.9 billion and deposit liabilities of approximately \$21.5 billion.

Florida, Georgia, South Carolina, Tennessee, Virginia, Maryland, Connecticut and the District of Columbia. As of that same date, CSB had assets of approximately \$45.4 billion and deposit liabilities of approximately \$35.1 billion. In addition to its main office in Philadelphia, Pennsylvania, CSB has branches in Pennsylvania, New Jersey and Delaware. Following the merger, FUNB proposes to continue to operate its main office in North Carolina and branches in all states in which it or CSB currently operate branches.

II. LEGAL AUTHORITY

A. The bank merger and retention of branches in each state in which the banks currently have branches is authorized under 12 U.S.C. § 215a-1, 1831u, & 36(d)

1. The bank merger is authorized

Because FUNB and CSB have their main offices in different states, FUNB has chosen to submit the merger application based on the authority of the 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), which Congress enacted to create a framework for interstate mergers and branching by banks. 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)).³

Section 44 authorizes mergers between banks with different home states:

(I) 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.

³ Alternatively, because CSB has its main office in Pennsylvania, a state in which FUNB has branches, the application could be filed based on authority contained in 12 U.S.C. § 215a governing mergers between banks situated in the same state. Given FUNB's reliance, however, on the provisions of the Riegle-Neal Act, we need not analyze the transaction under the authority of section 215a.

12 U.S.C. § 1831u(a)(1).⁴ The Act permits a state to elect to prohibit 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). In this merger, the home states of the banks are North Carolina and Pennsylvania; neither state exercised its option to prohibit interstate branching. Accordingly, the proposed interstate merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a) assuming compliance with 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 requirements, if any, subject to the Act's limitations; (2) compliance with certain state filing requirements to the extent filing requirements are permitted by the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment act compliance; and (5) adequacy of capital and management skills.

The proposed interstate merger application satisfies all of these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). 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." See 12 U.S.C. § 1831u(a)(5)(A). But the maximum age requirement permitted is five years. See 12 U.S.C. § 1831u(a)(5)(B). For purposes of complying with state-imposed age requirements, the host state for this application is Pennsylvania because FUNB is acquiring by merger CSB, a bank with its main office in Pennsylvania. The Pennsylvania interstate bank merger statutes do not impose a minimum requirement on the acquisition of a bank with its main office in Pennsylvania by an out-of-state national bank. Thus, the application satisfies the Riegle-Neal Act's requirement of compliance with state age laws.⁵

Second, the proposed merger meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect

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).

⁵ We note that CSB was formed on October 1, 1990 with the merger of the Philadelphia National Bank into First Pennsylvania Bank, NA. Thus, even without taking into account the age of its predecessor institutions, CSB satisfies the maximum age requirement that could have been imposed pursuant to the Riegle-Neal Act.

to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state. See 12 U.S.C. § 1831u(b)(1).⁶ Of the three states in which CSB has branches -- Pennsylvania, New Jersey and Delaware -- the only state that will become a host state of FUNB as a result of this merger is Delaware since FUNB already has branches in the other two states.⁷ The Delaware interstate bank merger statute does not contain a provision making the “qualify to do business” filing requirement imposed on nonbanking corporations applicable to out-of-state banks with branches in Delaware.⁸ Thus, the proposed merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

⁶ 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 only impose 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).

⁷ See Letter by Richard T. Erb, Licensing Manager, to Robert L. Andersen, Assistant General Counsel, First Union Corporation (February 3, 1998) (the Erb letter). This letter approved a transaction in which FUNB acquired branches in New Jersey and Pennsylvania. The New Jersey interstate bank merger and branching statutes does not appear to contain a “qualify to do business” filing requirement applicable to out-of-state national banks acquiring banks with branches in the state. See N.J. Stat. Ann. §§ 17:9A-133.1., 17:9A-148 (West 1984 & Supp. 1997). The Pennsylvania statute requires only that where a proposed merger or consolidation will result in a national bank or an interstate bank, that the banking department be notified of the merger, and that, upon request of the banking department, they be provided evidence of the adoption of the plan of merger. See Pa. Stat. Ann. tit. 7, § 1603(g) (1995 & Supp. 1997). FUNB has represented that it has sent to the Pennsylvania banking department a copy of the current application and that the department has confirmed that no additional filing is required.

⁸ In addition, compliance with state filing requirements as applied to interstate merger transactions, including the procurement of any necessary certificates, were complied with in connection with previous mergers involving FUNB. See Decision of the Comptroller of the Currency on the Application to Merge First Union National Bank of South Carolina, Greenville, South Carolina, First Union national Bank of Tennessee, Nashville, Tennessee, First Union National Bank of Virginia, Roanoke, Virginia, First Union National Bank of Washington, D.C., Washington, D.C., First Union National Bank of Maryland, Rockville, Maryland, and First Union National Bank of Connecticut, Stamford, Connecticut, with and into First Union National Bank, Charlotte, North Carolina, (OCC Corporate Decision 97-71, July 14, 1997); Decision of the Comptroller of the Currency on the Application to Merge First Union National Bank of Georgia, Atlanta, Georgia, and First Union National Bank of Florida, Jacksonville, Florida, with and into First Union National Bank of North Carolina, Charlotte, North Carolina (OCC Corporate Decision 97-37, June 1, 1997); the Erb letter (approving a merger with branches resulting in New York which requires only that a copy of the filing submitted by the out-of-state bank with the appropriate federal banking agency be filed with the state, see N.Y. Banking Law § 225.2. (McKinney 1990 & Supp. 1997-1998).

In addition, a bank applying for an interstate merger transaction must submit a copy of the application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1). This requirement is satisfied in this case; in fact, the bank has represented that it has supplied a copy of the application to the state bank supervisors in all of the states involved in this transaction: Pennsylvania, New Jersey, Delaware, Connecticut, New York, Florida, Georgia, South Carolina, North Carolina, Tennessee, Virginia, Maryland, and the District of Columbia. Thus, the proposed merger satisfies this filing requirement of the Riegle-Neal Act.

Third, the proposed interstate merger transaction does 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). At the time of consummation, FUNB and CSB already will be affiliates; thus, section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does 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 CRA, 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank that 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 because 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 this application, FUNB (the bank submitting the application as the acquiring bank) already has branches in Pennsylvania and New Jersey, as an affiliated bank (CSB) in Pennsylvania and New Jersey and two affiliated banks (CSB and First Union Bank of Delaware, a state-chartered bank) in Delaware 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 the proposed merger. However, the CRA 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). As of the date the application was filed, FUNB and CSB satisfied all regulatory and supervisory requirements related to adequate capitalization and each is at least

satisfactorily managed. The OCC has determined that, following the merger, the resulting bank 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 transaction between FUNB and CSB is legally permissible under section 1831u.

2. Following the merger, the resulting bank may retain each of the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

The applicant has requested that, upon completion of the merger, FUNB (the resulting bank in the merger) be permitted to retain and continue to operate its main office in Charlotte, North Carolina, as the main office of the resulting bank and to retain and continue to operate as branches (1) the branches of FUNB and (2) the main office and branches of CSB as branches of FUNB in Pennsylvania, New Jersey and Delaware. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operations 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)]." See 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 Transaction. -- 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)(10)(B)). Therefore, the resulting bank in this interstate merger transaction, may retain and operate FUNB's main office in Charlotte, North Carolina, as its main office under section 1831u(d)(1) (quoted provisions

above), and it may retain and continue to operate as branches all of the other existing banking offices of the two merging banks under 12 U.S.C. §§ 36(d) and 1831u(d)(1).⁹

Moreover, at its branches in each of the states, the resulting bank 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 rights, franchises and interests, including fiduciary appointments, of the merging banks), and 1831u(d)(1) (continued operations at retained interstate branches). *See also* OCC Interpretive Letter No. 695, December 8, 1995, *reprinted in* [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-010 (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).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act

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

1. Competitive Analysis.

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) refers 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 to interstate national banks, because the OCC had approved interstate main office relocation transactions that also involved mergers with affiliated 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 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).

As discussed more fully below, the OCC received public comments on various aspects of the proposal including its competitive aspects. Commenters alleged that consummation of this transaction would be anticompetitive and provide FUNB with market power in Pennsylvania, particularly Philadelphia. In this regard, commenters contend that the geographic market for small business lending in Philadelphia should be smaller than the market defined by the Federal Reserve System. The competitive aspects of FUNB's acquisition of CSB have already been fully evaluated by the FRB and the Department of Justice in connection with the related holding company merger application. Subject to FUNB's commitment to divest 32 branches in five Pennsylvania counties, the FRB concluded that the proposal would not produce a significantly adverse effect on competition or the concentration of banking resources in the relevant markets. See the FRB order at pp. 16, 21, and 22. See also Letter by J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, Department of Justice, to Julie L. Williams, Acting Comptroller of the Currency (April 10, 1998). Moreover, the application filed with the OCC is structured as a corporate reorganization. As the bank level merger will not occur until after CSB has first come under the control of FUNB pursuant to the FRB's approval, there are no competitive issues involved in this application. For these reasons, the OCC has concluded that competitive considerations are consistent with approval.

2. Financial and managerial resources.

The financial and managerial resources of both banks are presently satisfactory. FUNB expects to achieve administrative efficiencies in New Jersey and Pennsylvania by operating the offices of the two institutions in each state as part of the same bank rather than in separate corporate entities. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find that the financial and managerial resources factor is consistent with approval of this transaction.

Several commenters submitted comments that relate to the financial and managerial resources factors. Some contended that the compensation package of CSB's two top executive officers is excessive. The OCC notes that the shareholders of both organizations approved the compensation package when they approved the merger. While the OCC does review management compensation plans as part of its supervisory responsibility, it does not appear that the compensation plan in this case is unsafe or unsound, or otherwise raises issues that would warrant denial of this proposal.

Other commenters thought the price paid by the bank holding company for this acquisition was too high. The OCC notes that the acquisition will be accomplished through an exchange of common shares rather than an outlay of cash, and that the offered price and manner of payment have been accepted by the shareholders of both organizations.

3. Convenience and needs

FUNB will continue its banking presence in the same areas of Connecticut, Florida, Georgia, North Carolina, South Carolina, Tennessee, Virginia, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia that it currently serves, and will add CSB's offices in Pennsylvania, Delaware and New Jersey. Both FUNB and CSB currently offer a full line of banking services, and there will be no reduction in the products or services available from FUNB following the consolidation.

Based upon this information and the commitments described below, the OCC believes FUNB will help meet the convenience and needs of the communities to be served. FUNB has represented to the OCC that it has adopted and intends to implement a community reinvestment plan outlining how it will meet community credit needs in Delaware, New Jersey and Pennsylvania over the next five years. Under this plan, FUNB will commit approximately \$14 billion to community reinvestment activities in these jurisdictions over the five-year period (Pennsylvania -- \$7.3 billion; New Jersey -- \$6.2 billion; and Delaware -- \$.5 billion). The plan contemplates that the \$14 billion will be allocated among affordable mortgage loans in low- and moderate-income (LMI) communities (\$875 million), home improvement and other consumer lending in LMI areas (\$2 billion), small business and small farm loans (\$10.2 billion), community development loans (\$750 million), and CRA-qualified investments and contributions (\$45 million).¹⁰ In addition, the plan calls for FUNB to provide at least \$55 million in Low-Income Housing Tax Credit investments, and includes other provisions relating to matters such as financial support for community-based home ownership counseling programs.¹¹ Separately, FUNB has stated that it intends, for the time being, to continue certain CRA-related activities currently engaged in by CSB, including CSB's community development division and its Small Business Administration (SBA) lending program.

¹⁰ The \$14 billion commitment includes an increase in consumer lending by \$750 million, and in small business lending by \$250 million, as a result of FUNB's planned acquisition of The Money Store, Inc ("TMS").

¹¹ Some commenters were concerned about FUNB's plans for programs that target low- or moderate-income (LMI) borrowers and neighborhoods in the five Pennsylvania counties (Philadelphia, Bucks, Chester, Delaware, and Montgomery) included in the Philadelphia MSA, particularly in the City of Philadelphia. Under its five-year community reinvestment plan, FUNB has committed to make at least \$60 million per year (\$300 million over five years) of first and second mortgage loans in LMI census tracts in the five-county area. Of this amount, more than 85 percent will be targeted to the City of Philadelphia. FUNB also has committed to make at least \$75 million per year (\$375 million over five years) of consumer loans in LMI census tracts in the five-county area. Two-thirds of this amount will be targeted to the City of Philadelphia. FUNB also has committed to make at least \$600 million per year (\$3 billion over five years) of small business and small farm loans in amounts less than \$1 million in the five-county area, with more than 25 percent of this amount targeted to the City of Philadelphia. The plan also calls for FUNB to make at least \$25 million per year (\$125 million over five years) in community development loans that promote urban revitalization, affordable multifamily housing, and other projects that benefit LMI areas in the five-county area. Of this total, \$20 million per year will be targeted to the City of Philadelphia. FUNB also will make contributions and investments in the five-county area that qualify for CRA credit in the amount of \$6 million per year, or \$30 million over five years.

FUNB also committed to contribute approximately \$100 million¹² over the next five years in corporate philanthropy in Delaware, New Jersey, and Pennsylvania. This will maintain CSB's (\$17 million per year) and FUNB's (\$3 million per year) current levels of charitable giving for five years. Additionally, FUNB stated that it will fund a \$100 million charitable foundation that will serve Pennsylvania, New Jersey, and Delaware by April 30, 1998 in connection with this proposal. The foundation will donate to charities at least 5% of its asset value each year.

As part of the community reinvestment plan, FUNB will add three community leaders from the Pennsylvania, New Jersey and Delaware region as new members to its Ambassador Council. The Ambassador Council provides the bank with input, feedback and direction on its products, loan and investment volume and community reinvestment performance throughout the bank's service area. In addition, FUNB will create a Pennsylvania/Delaware Housing and Community Development Advisory Committee that will focus on activities in Pennsylvania, which will include providing input on new product design, review of community reinvestment performance in Pennsylvania and Philadelphia, and assistance in outreach and marketing activities.

a. Comments on branch closings

The OCC also received public comments relating to convenience and needs issues such as branch closings.

Commenters generally contended that FUNB plans to close a large number of branches in connection with this proposal, including branches located in LMI areas, which would result in a substantial adverse effect on minority and LMI communities by reducing access to and the availability of banking services.¹³ Commenters also alleged that FUNB's record of opening and closing branches is unfavorable, and worse than that of CSB's.

FUNB has preliminarily determined that branches, including some in LMI areas, will be considered for closing or consolidation in connection with this proposal. In considering potential branch closures in this case, the OCC carefully reviewed FUNB's branch closing policy, the bank's record of closing branches, and its preliminary plans,¹⁴ as well as the concerns expressed by commenters. In assessing the effect of the potential branch closures,

¹² A portion of the \$45 million in CRA-qualified investments and contributions mentioned previously is included in this \$100 million commitment.

¹³ Commenters also asserted that FUNB should be required to disclose its specific branch closing plans in connection with this proposal to enable a proper analysis of the convenience and needs issues in this case. FUNB provided certain preliminary branch closing information to the OCC on a confidential basis.

¹⁴ The OCC has considered both public information on this subject and the preliminary branch closing information submitted by FUNB on a confidential basis.

the OCC reviewed the branches in LMI areas that FUNB indicated are preliminary candidates for closure. FUNB has explained that the preliminary list of branches to be considered for consolidation or closing was based solely on a geographic mapping of existing branches of FUNB and CSB to determine where overlaps in service areas may exist. However, FUNB has not yet considered or applied all the criteria or followed the procedures set forth in its branch closing policy, and thus has not made a final decision on which branches would be closed in connection with this proposal.

FUNB's preliminary plans indicate that it will close approximately 168 branches in connection with this proposal, and that 27 of these branch closures will be in LMI areas. In order to limit the potential adverse effects of the closures, FUNB has committed to the OCC that, for at least the next three years, it will not close or consolidate a branch in an urban LMI census tract in connection with this proposal if the nearest remaining FUNB branch would be more than .3 miles away.¹⁵ FUNB also has indicated that, in certain circumstances in which it will close a branch consistent with the above commitments, it will try to sell the branch and its deposits to another financial institution, with priority given to minority-owned institutions.

In addition, FUNB's branch closing policy attempts to minimize any adverse effects on its assessment area that may result from branch closings, consolidations, or reductions in service. The bank has reaffirmed that its policy is to determine objectively the branches to be closed, consider alternative ways to provide banking services (such as maintaining ATMs or adjusting branch hours or services), identify and examine mechanisms to minimize potential inconvenience to and other adverse effects on the community, and communicate plans to affected customers and communities in advance of their implementation to minimize any inconvenience and other adverse effects. The bank's branch closing policy sets forth a number of criteria to be used in evaluating whether a particular branch should be closed, including criteria relating to overlap in service areas, branch earnings and projected growth, deposit levels, capacity and condition of the physical facility, and anticipated effect on income and expenses.

The policy also contains a series of procedures to be followed when a branch is identified as a candidate for closure. These procedures require involvement of the bank's community reinvestment personnel in the decision-making process, and include special procedures (which

¹⁵ FUNB has indicated that, for purposes of this commitment, an "urban" branch refers to large cities within Pennsylvania, New Jersey and Delaware that are densely populated and excludes smaller towns, villages and townships. FUNB will measure the distance between facilities on a straight-line basis (as opposed to actual pedestrian or driving distances), although FUNB will attempt to limit walking distance to the remaining branch to four blocks. FUNB also indicated that it will round to the nearest tenth of a mile for purposes of measuring distances and for purposes of its .3 miles commitment. In addition, the duration of the branch closing parameters described herein was extended in certain geographies and with respect to certain branches based on private agreements between FUNB and community organizations. The OCC notes that it has not based its evaluation of convenience and needs considerations on any private agreements.

may include, for example, additional analysis and community contacts) that are applicable when the branch is located in an LMI community. FUNB has represented, in response to concerns about potential adverse effects of branch closings in LMI areas, that when a branch in an LMI area is identified for potential closure, the decision undergoes rigorous review, including consideration of alternative courses of action.

During its review of this transaction, the OCC also considered examination findings and other supervisory information relating to past branch closures by FUNB, whether as a result of acquisitions or otherwise, to help it evaluate the likely effects of the preliminary proposed closures in this case. The OCC's 1997 examination of FUNB's performance under the Community Reinvestment Act (CRA) (12 U.S.C. § 2901 *et seq.*) in New Jersey and Pennsylvania,¹⁶ the areas of particular concern to commenters, found that FUNB had established and maintained branch locations that provided reasonable access to services offered by the bank. Examiners also found that FUNB followed its branch closing policy, that the policy complied with applicable legal requirements, and that branch closures have not resulted in material adverse effects on LMI neighborhoods in any assessment area.

FUNB did not enter the Pennsylvania and New Jersey markets until 1996. The OCC notes that since January 1, 1996, while FUNB has closed some branches in moderate-income areas of New Jersey and Pennsylvania, reducing slightly the percentage of its branches in those areas, it has closed only two branches in low-income communities. In addition, since January 1996, FUNB opened four branches in New Jersey, two of which were in moderate-income census tracts and two of which were in middle-income census tracts. Finally, in reviewing FUNB's public CRA file for Pennsylvania and New Jersey, the OCC found no complaints about FUNB's branch closings since the May 1997 CRA Performance Evaluation.

The OCC also reviewed allegations that FUNB does not maintain branches in numerous minority areas in the City of Philadelphia. The 1997 CRA Public Evaluation stated that FUNB's community delineation is reasonable and that no LMI areas are arbitrarily excluded. Furthermore, examiners determined that FUNB's branch locations provide reasonable access to banking services for all parts of the bank's assessment area. The OCC also reviewed FUNB's lending record in the areas in question and determined that, while the bank does not have branches in all minority census tracts in Philadelphia, it does provide loans to residents of those census tracts. Additionally, FUNB has stated that, for a period of three years, it will not close a branch in an urban census tract with a minority population greater than 40% in connection with this proposal, if the closest remaining FUNB branch is more than .3 miles away.

¹⁶ In the 1997 examination, the OCC reviewed the CRA performance of First Union National Bank, Summit, New Jersey (charter number 22693), which had an assessment area comprised of New Jersey, the Philadelphia MSA, Northeastern Pennsylvania, and the New York/Lower Hudson Valley.

The OCC notes that Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1) requires that a bank provide advance notice to the public and its primary supervisor before closing a branch. Further, when an interstate bank, such as FUNB, proposes to close a branch in an LMI area, Section 42 provides an opportunity for a meeting, if certain criteria are met, among the Federal Banking Agency, community leaders, and others to discuss the impact of the proposed branch closing on the availability of banking services in the area. The law does not authorize federal banking agencies to prevent the closing of any branch; however, the OCC notes that FUNB's record of branch closures is reviewed by examiners as part of the bank's CRA examinations, and any closures that result from this proposal will be reviewed in future CRA examinations of FUNB.

The above considerations, including the application of FUNB's branch closing policy and procedures, should help to mitigate any adverse effect on LMI areas that might result from potential branch closures and consolidations in this case. Nevertheless, due to the size of this transaction and the correspondingly large number of LMI areas that could be affected by branch closings, and the fact that FUNB's plans for branch closings are, at this point in time, still tentative, the OCC believes that additional information from LMI communities regarding the impact of potential branch closings on the availability of banking services in those areas would help FUNB to ensure that the proposal would not have a negative effect on FUNB's ability to serve the convenience and needs of those communities.

Accordingly, the OCC has determined that it would be appropriate and desirable, in addition to any public meetings convened under Section 42, in cases where comments received in response to FUNB's Section 42 branch closing notices issued in connection with this transaction (or the merger of Signet Bank, Richmond, Virginia, with and into FUNB) express concerns about a branch closing in an LMI area, for FUNB to convene a meeting with those commenters. FUNB has represented to the OCC that, in the event that any branch located in an LMI area in Delaware, New Jersey, or Pennsylvania is proposed to be closed in connection with this merger within three years after consummation of the transaction, and FUNB receives one or more written comments from local community residents, organizations, or businesses or government officials expressing concern about the proposed closure, FUNB will convene a local meeting to discuss those concerns and possible alternative courses of action. If FUNB receives a substantial number of comments with respect to any particular branch, it may hold additional meetings in order to ensure that the meeting size is manageable. FUNB has stated that the meeting will be held approximately 30 days prior to the proposed closing date, and that it will invite to the meeting both the commenters and, in its discretion, other appropriate persons and entities.¹⁷ Prior to the closing, FUNB also will discuss commenters' concerns internally and review possible alternative courses of action. In addition, FUNB will provide a copy of all comments relating to branch closings to the OCC within ten business days after

¹⁷ If additional comments concerning the proposed closure are received after the meeting is held, FUNB will attempt to contact and offer to meet personally with any such commenters.

receipt, and will promptly report the action that is taken in connection with each comment or commenter, including a summary of any meeting.¹⁸ The OCC has specifically relied upon the foregoing representations in evaluating the branch closing issues and convenience and needs factor in this case.

b. Other convenience and needs comments

Commenters raised several other issues concerning the effect of the proposal on the convenience and needs of the communities to be served. Commenters expressed concern that deposit account fees would increase as a result of the proposed transaction, that FUNB maintains restrictive hours in LMI areas in Delaware County, Pennsylvania, and that FUNB does not offer an adequate low-cost deposit account, as well as concerns on other matters.¹⁹

Commenters expressed concern that deposit account fees would increase as a result of the merger transaction. The OCC evaluated this concern in light of FUNB's existing low-cost banking products and the absence of any information to suggest that FUNB's fee practices are or will be discriminatory or otherwise prohibited by law. The OCC also compared fees for similar CSB and FUNB retail banking accounts and determined that FUNB fees were generally comparable to those assessed by CSB, and lower in some instances. Moreover, the acquisition

¹⁸ The OCC notes that FUNB has indicated that the procedures described above also will be implemented in Maryland, Virginia, and the District of Columbia for branch closings arising from the Signet merger in order to satisfy FUNB's commitments with respect to branch closing meetings made in connection with that transaction.

¹⁹ For example, commenters expressed concern regarding the elimination of jobs by FUNB in the Pennsylvania, New Jersey and Delaware area should the proposed transaction be completed. While the effect of the proposed merger on employment in a particular community where the acquired institution is located is not a factor required to be considered under the BMA, the OCC nevertheless consulted with FUNB concerning the loss of jobs. FUNB estimates job reductions of approximately 7,480. FUNB estimates that it will create 3,075 new jobs in the region. The addition of new jobs and estimated attrition of 3,072 results in a net impact on jobs of approximately 1,300. FUNB also noted that it will establish programs designed to minimize any adverse effect on employees, including the provision of at least \$39 million for a job training and assistance program for affected employees.

Concerns were also raised about FUNB's practice of requiring fingerprinting and identification for non-account holders cashing checks at FUNB branches. FUNB stated that the policy of requiring fingerprinting for all non-account holders cashing checks was adopted as a protection against check fraud. There is no evidence that this policy has been implemented in a discriminatory manner or that the policy violates any law. In addition, the OCC's review determined that two major competitors in the Philadelphia market also have policies requiring fingerprinting for non-account holders cashing checks.

Further, several commenters expressed concerns regarding the accessibility of ATMs for non-English speaking, elderly and disabled customers. FUNB indicated that its ATMs are available in languages other than English. FUNB also stated that its ATMs include braille and comply with the requirements of the Americans with Disabilities Act. Finally, several commenters raised concerns regarding specific transactions or operations of either CSB or FUNB. The OCC has reviewed those comments and determined that nothing contained in those comments raises concerns that would warrant denial of the proposal.

of CSB, after certain divestitures, has been found by the FRB and the Department of Justice not to have any significant anticompetitive effect. Since an adequate number of alternative financial service providers will remain in the relevant geographic areas, fees should continue to reflect the effects of a competitive market.

Commenters also alleged that FUNB provides more restrictive service hours in its Delaware County, Pennsylvania, branches that are located in LMI areas as compared to the hours of other branch locations. OCC staff reviewed information concerning FUNB's listed hours in Delaware County and determined that there are no significant disparities between branch hours in LMI areas and those in middle- and upper-income areas. However, FUNB has committed to the OCC to conduct a review of banking hours in Philadelphia and Delaware counties -- to respond to the concerns raised with respect to the adequacy and flexibility of service hours in light of the needs of community residents -- to determine whether adjustments are appropriate. This review will include consultation with community organizations and involvement of a CRA officer to ensure that special attention is given to LMI areas, and will be designed to ensure that FUNB remains responsive to community needs.

Commenters expressed concerns that FUNB does not offer an adequate basic banking account. FUNB currently offers two low-cost checking accounts to all customers, and has indicated that it will continue the terms of certain low-cost accounts offered by CSB for existing customers. FUNB's "No Minimum Checking" account entails a \$4.00 monthly maintenance fee, and provides account holders with unlimited access to teller transactions and eight free debit transactions per month. Commenters maintained that this account does not meet the needs of LMI customers because of the monthly maintenance fee. FUNB does offer an "Express Checking" account with no monthly maintenance fee, so long as a customer uses only direct deposit and ATM withdrawals. Commenters indicated that this account does not meet the needs of LMI or elderly customers because fees are imposed if a teller is used or deposits are made other than by direct deposit. Commenters also specifically noted that government benefit recipients in Pennsylvania will not be able to deposit their benefits directly in light of the manner in which the state of Pennsylvania's Electronic Benefit Transfer (EBT) program is currently structured. FUNB has represented to the OCC that it intends to meet jointly with the Eastern Philadelphia Organizing Project and the Pennsylvania Secretary of Public Welfare, or her designee, to attempt to develop a mechanism to tie EBT accounts to FUNB checking and savings accounts. Moreover, as noted previously, the OCC has determined that the retail account structures of FUNB and CSB are generally comparable, and that fees after the merger should continue to reflect the effects of a competitive market.

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 including mergers,

purchase and assumption transactions and conversions such as those involved in this series of applications. See 12 C.F.R. § 25.29(a)(3), (4).

In reaching its decision in this case, the OCC carefully considered information relevant to the proposal, including public comments made to the Federal Reserve System and to the OCC relating to the proposal, information from the March 13th public meeting in Philadelphia convened by the Federal Reserve, and joined by the OCC, with individuals, community organizations, and other parties concerning the proposal, and the records of performance of FUNB and CSB under the CRA.

The OCC also carefully considered supervisory information about FUNB's record of CRA performance, including the May 1997 performance evaluations of FUNB.²⁰ First Union National Bank of North Carolina, now FUNB, and First Union National Bank, Summit, New Jersey, received "Outstanding" CRA ratings. CSB received an "Outstanding" rating as of September 30, 1997. In addition, the OCC conducted targeted investigations of the issues raised by community organizations, elected officials, and individuals. The OCC has concluded that CRA considerations are consistent with approval of the proposal.

1. Public Meeting and Written Comments on the Proposal

Notice of the application was published on February 12, 1998 in Charlotte, North Carolina and Philadelphia, Pennsylvania. On February 24, 1998, the OCC removed the application from its expedited review procedures, pursuant to 12 CFR § 5.13(a)(2)(ii), in order to review further the issues raised by various commenters. The OCC participated with the Federal Reserve in a day-long public meeting on March 13th in Philadelphia, involving over eighty people providing testimony both in opposition and in favor of the merger. Comments in opposition to the merger included concerns about branch closings, FUNB's CRA performance, banking services for LMI individuals and areas, job losses, and the competitive effects of the merger, as well as other matters. The statutory comment period ended on March 13, 1998; however, in order to permit additional material to be filed on matters raised at the public meeting, the OCC extended the period for commenters who provided testimony at the meeting until March 20, 1998. All testimony at, and written submissions relating to, the public meeting have been

²⁰ The 1997 performance evaluations were prepared at the conclusion of the examination of nine affiliated national banks including First Union National Bank of Florida, First Union National Bank of Georgia, First Union National Bank of Tennessee, First Union National Bank of South Carolina, First Union National Bank of Virginia, First Union National Bank of Maryland, First National Bank of Washington, DC, First Union National Bank, Summit, New Jersey, and First Union Home Equity Bank, National Association. These institutions, with the exception of First Union Home Equity Bank, N.A., have now merged. In the 1997 evaluations, each constituent bank received an "Outstanding" rating for CRA performance and the home equity bank received a "Satisfactory" rating. Some commenters criticized the OCC's use of the former CRA regulation and examination procedures in connection with these examinations. However, the examinations commenced prior to July 1, 1997, the date on which all banks were subject to evaluation under the revised CRA regulation. The OCC will conduct its next CRA examination of FUNB under the standards of the revised regulation and related examination procedures.

included in the record of this matter. The OCC also notes that FUNB met with dozens of community organizations within Pennsylvania, New Jersey and Delaware, and signed private written agreements with several community organizations, during the comment period.

A total of ten parties submitted to the OCC written comments in opposition to the merger. The OCC also considered in its evaluation of this proposal all comments received by the Federal Reserve System in support of, and in opposition to, the merger. Commenters opposing this proposal raised a number of concerns based on the performance record of First Union's subsidiary banks under the CRA, the organization's compliance with fair lending laws, FUNB's plans to close branches in connection with this proposal (described above in the convenience and needs section), and other matters. The OCC considered these and other concerns expressed by commenters in evaluating the CRA, convenience and needs, and other factors in this case.²¹

The OCC welcomes and encourages CRA-related and other comments from the community in connection with applications and otherwise, and finds such comments extremely helpful in reviewing corporate applications and performing its supervisory role with respect to national banks.²² Such an open public comment process supports informed decision-making, and the OCC carefully considered the public comment received in its review of this application.

a. Lending performance

Commenters made several allegations regarding FUNB's CRA lending performance in the Philadelphia MSA.²³ Commenters raised concerns about FUNB's: 1) lending record in LMI areas as compared to its peers in the Philadelphia MSA; 2) lending record in an area designated by commenters as Eastern Philadelphia; 3) lending record in minority areas and to

²¹ Since FUNB has no branches in Delaware, the OCC does not currently evaluate the bank's CRA performance in that state. Accordingly, the OCC's investigation of the public comments did not address issues raised regarding FUNB's CRA performance in Delaware. First Union Bank of Delaware, a state-chartered bank, is not supervised by the OCC and is not a party to this transaction.

²² Some of the commenters raised concerns about a clause in some private agreements between the bank and community organizations in which the organizations agree not to file protests on future acquisitions by FUNB. A commenter also alleged the bank threatened to withdraw its support for a particular community organization if it testified in opposition to the merger at the public meeting. The bank stated that a bank officer involved with the organization's fund raising efforts said he would withdraw his personal involvement in the fund raising effort if the organization testified against the merger; however, the bank denied threatening to withdraw its lending or investment support from the community represented by the organization.

²³ Commenters also raised concerns regarding FUNB's lending performance in New York, in particular the Bronx. According to FUNB's CRA Performance Evaluation, FUNB's lending penetration in LMI census tracts was strong particularly in Bronx county. In addition, OCC examiners determined that FUNB's delineated community in New York was reasonable and did not arbitrarily exclude LMI areas.

minority borrowers;²⁴ 4) plans for programs that target LMI borrowers and neighborhoods in a five-county area within the Philadelphia MSA (Chester, Bucks, Delaware, Montgomery, and Philadelphia counties) (“five-county area”); and 5) participation in SBA and other small business lending programs, particularly in LMI neighborhoods. The OCC reviewed these concerns, as described below, and concluded that FUNB’s overall CRA performance indicates that its established record of helping to meet the credit needs of its communities, including through community development lending and investments and affordable mortgage products, is consistent with approval.

Commenters raised questions about FUNB’s lending record in LMI areas as compared to its peers in the Philadelphia MSA, and whether there has been any increase or decrease in lending levels over time. The OCC analyzed 1995 and 1996 Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) (“HMDA”) data for FUNB and compared this information to the 1995 and 1996 HMDA data for CSB, Mellon Bank, N.A., and PNC Bank, N.A. FUNB entered this market in 1996 through the purchase of First Fidelity Bank, N.A. (“First Fidelity”). In 1996, the level of home purchase mortgage loans, home improvement loans, and refinancing loans decreased from 1995 levels after FUNB purchased First Fidelity. Nonetheless, FUNB maintained its market share of originations in home purchase loans and home improvement loans in LMI census tracts and to LMI borrowers.²⁵ FUNB’s market share of home purchase originations (1.2%) was less than Mellon Bank’s (2.4%), CSB’s (4.7%), and PNC’s (4.0%) market shares. Also, FUNB’s market share in providing home improvement and refinancing loans was less than the market share of the three peers. FUNB’s smaller market share in home lending is reflective of its low level of deposits as compared to the three peers.

Other comments focused on FUNB’s lending record in an area designated by the commenters as Eastern Philadelphia. According to the commenters, this area is predominantly LMI, with a diverse ethnic makeup. Data reported under HMDA for 1995 indicate that a total of 4,533 loans were approved by 102 lenders in this neighborhood. Of these, First Fidelity, the predecessor of FUNB, made 169 loans (3.7%). Compared to other lenders, a larger percentage of First Fidelity’s portfolio was made up of home improvement and mortgage refinancing loans. The data indicate that First Fidelity’s home purchase mortgage lending was more likely than the average lender’s to be made in or to LMI census tracts and borrowers.

In 1996, a total of 4,552 HMDA-reportable loans were approved by 112 lenders in Eastern Philadelphia. Of these, FUNB made 132 (2.9%), a decrease of 22% when compared to First

²⁴ FUNB’s lending record to minority borrowers was reviewed in a 1996 fair lending examination.

²⁵ Preliminary indications from HMDA data collected by FUNB for 1997 activity are that FUNB substantially increased its lending performance in LMI census tracts in all three housing-related products: home purchase loans, home improvement loans, and refinancings. Once the data are evaluated for accuracy, final data for all HMDA reporters are expected to be made public by the Federal Financial Institutions Examination Council (FFIEC) in August 1998.

Fidelity's record in 1995. This decrease was attributable primarily to a decrease in mortgage refinancing loans. However, the data indicate that FUNB was more likely than the average lender to make a loan in or to LMI census tracts and borrowers.²⁶

From this data, the OCC has concluded that FUNB's lending in Eastern Philadelphia is more likely than that of other lenders in the market to be directed toward LMI borrowers and census tracts. In addition, FUNB's overall volume of HMDA lending in Eastern Philadelphia appears to be increasing.

Commenters also raised questions about FUNB's lending in minority areas and to minority borrowers in the five-county area. In analyzing FUNB's lending performance in minority census tracts in this area, the OCC considered 1995 and 1996 HMDA-reportable loans. The OCC did not consider FUNB's small business lending because the relevant data reported to the FFIEC (by FUNB and other lenders) does not provide for analysis of a bank's small business loans by individual census tract.²⁷

For home purchase mortgage loans, FUNB originated proportionately more loans in minority census tracts in the five-county area than it did in white census tracts. In 1995, while First Fidelity was the 22nd largest provider of home purchase loans, it was the 12th largest provider of these loans in minority census tracts. After FUNB acquired First Fidelity in 1996, it continued to be the 22nd largest home mortgage lender in the market, but it improved its rank to the eighth largest provider in minority neighborhoods.

For home improvement loans, in 1995, First Fidelity was the fourth largest provider of these loans in the overall market and the sixth largest provider in minority census tracts. However, in 1996, FUNB's performance fell to being the sixth largest provider of home improvement loans in the overall area and the ninth largest provider in minority areas. FUNB's market share in minority census tracts, however, decreased less than the decrease of its share in white census tracts.

For mortgage refinancing loans, in 1995, First Fidelity was the third largest provider in the overall market, and ranked 11th in minority census tracts. In 1996, FUNB's overall penetration of this market declined, with its rankings falling to 13th in the overall market and

²⁶ While the 1997 HMDA data for all lenders is not yet available, the OCC was able to analyze data from FUNB's preliminary HMDA submission for last year. Preliminary data indicate that FUNB increased its lending volume in 1997 as compared to its reported lending in 1996. This increase appears to be attributable primarily to an increase in home purchase mortgage lending.

²⁷ The small business loan data reported to the FFIEC contains information on such loans on a state-wide and county-wide basis, as well as general information on the income characteristics of the areas in which the loans were made; however, individual lenders do not report the particular census tracts in which their small business loans are made.

24th in minority census tracts. As in the case of home improvement loans, the bank's market share in minority census tracts decreased less than the decrease of its share in white census tracts.

In considering FUNB's lending record, the OCC also has considered special loan products of FUNB that are tailored to the needs of LMI communities and will continue to be offered in the affected areas. For example, FUNB offers several affordable mortgage products for customers in LMI census tracts that use flexible underwriting criteria. FUNB also forms partnerships with local community development groups to provide pre- and post-purchase home ownership education and counseling programs. FUNB will offer all its existing consumer credit products, including a variety of products that are designed for LMI persons or other borrowers with minor credit problems, including secured and unsecured home improvement loans up to \$25,000; a line of credit secured by a borrower's savings account; and a home equity loan program with reasonable interest rates for customers with credit problems. The OCC also notes that FUNB uses flexible underwriting guidelines in connection with certain products, including acceptable debt-to-income ratios as high as 50 percent.

Commenters questioned the current level of FUNB's participation in SBA and small business lending programs, particularly in LMI neighborhoods, as well as the bank's small business loan underwriting criteria. Last year was the first in which banks with \$250 million or more in assets were required to report their small business loans under the revised CRA regulation. In addition, because only one year of data have been reported, it is difficult to draw conclusions about trends in FUNB's small business lending performance.

According to the data reported in 1997, in the five-county area, FUNB in 1996 originated business loans of less than \$1 million in LMI areas at a level consistent with that of other lenders in light of FUNB's overall portfolio mix. However, FUNB's proportion of lending to small businesses with annual revenues of less than \$1 million in LMI tracts, relative to its overall market share, was lower than that of other lenders. SBA data indicate that FUNB was a preferred lender and made SBA loans in the general area, ranking 20th of 77 lenders in the King of Prussia district, which includes Philadelphia County.

FUNB has a small business banking division that is staffed with loan officers specializing in small business lending, and plans to expand its existing SBA lending unit to include dedicated SBA lenders and underwriters. FUNB also plans to participate in various loan pools and other programs that make financing more affordable for small farmers. It also will continue to work with other government-subsidized and -guaranteed loan programs and local lending pools to reach businesses whose credit needs are not met adequately by the financial services industry. In addition, the bank intends to continue to invest money and educational resources to support micro-enterprise loan programs, administered by local community-based organizations, that provide start-up capital and mentoring for new or expanding businesses. FUNB will continue its own micro-lending program for small business loans up to \$25,000, and will offer business credit cards to help small businesses manage their expenses and cash flows. FUNB also has

indicated that it will continue several activities of CSB that focus upon meeting the credit needs of LMI areas and borrowers, including the community development division and an SBA lending program.

FUNB's underwriting criteria are typical of standard banking practices relating to small business lending. For loan requests less than \$500,000, FUNB uses more flexible file information requirements than required for larger loan requests. For all loans up to \$1 million, the Bank offers a variety of loan types to small businesses, including secured and unsecured lines of credit. FUNB also operates a micro-lending program under which it makes loans from \$500 to \$25,000. This lending involves partnerships with local organizations to provide business counseling, preparation of business plans, and community-based loan committees. During 1996, FUNB made arrangements with two Pennsylvania organizations -- New Horizons and Boriquen -- to provide these services in conjunction with its micro-loans.

The OCC also has noted, among other community development activities, FUNB's provision of a \$3 million line of credit to the Philadelphia Housing Development Corporation, a nonprofit developer of affordable housing, to finance short-term receivables, and loans to nonprofit corporations involved in the Philadelphia Plan in exchange for state tax credits. The Philadelphia Plan is a program sponsored by local governmental entities and private corporations which establishes partnerships between private companies and nonprofit community development corporations and provides the latter with funding for operations and projects.

b. Fair lending and HMDA comments

Commenters raised several concerns regarding FUNB's fair lending and HMDA record. Specifically, commenters alleged that: 1) FUNB engages in racial discrimination in home mortgage lending, as evidenced by data it reported under HMDA, including data showing denial disparity ratios between white and minority credit applicants, lower approval rates in minority areas than in other areas, and FUNB's market share of loans to white and minority borrowers; 2) FUNB replaces normal interest rate direct bank lending with higher interest rate lending by First Union Home Equity Bank ("FUHEB") in LMI areas, and otherwise attempts to market high interest rate credit;²⁸ and 3) FUHEB violates HMDA by reporting that 98% of its applications were made without the applicant's race being provided, and, therefore, that FUHEB's fair lending performance should be questioned.

²⁸ Commenters expressed concerns about the fact that FUNB had a financial relationship with TMS which they allege charges higher rates to LMI and minority customers. During the comment period, FUNB announced its proposed acquisition of TMS. FUNB will file an operating subsidiary application with the OCC for its acquisition of TMS. The OCC will carefully evaluate all relevant issues raised by that proposal in connection with FUNB's application concerning TMS.

Reported denial disparity ratios are of concern to the OCC and are evaluated in fair lending examinations. HMDA data provide information about a bank's mortgage lending activity that is useful, as preliminary information, to highlight potential lending discrimination problems. However, HMDA data alone are inadequate to provide a basis for concluding that a bank has violated the fair lending laws. FUNB's compliance with the Fair Housing and Equal Credit Opportunity Acts was evaluated in connection with the 1996 fair lending examination and was included in the 1997 CRA examination.²⁹ OCC examiners concluded that for the loan products and decision centers reviewed in the examination, FUNB and other lending affiliates applied underwriting requirements consistently for different racial groups. In the fair lending examination, the OCC conducted a comparative file review and statistical analysis for race discrimination of HMDA-reportable applications decided by FUNB, FUHEB, and FUNB's subsidiary mortgage company. The sample included 1,013 applications and minority applications were selected from the American Indian, Black and Hispanic categories.

The OCC also notes that FUNB has instituted various measures to monitor and ensure its compliance with fair lending laws. For example, FUNB engages in comparative analysis of loan files for self-evaluation purposes and has implemented comprehensive training programs to enhance fair lending compliance. In addition, FUNB uses a second review process on proposed denials of loans subject to HMDA.

In response to concerns about FUHEB's interest rates, the OCC reviewed FUHEB's records and determined that only .3% of its loans have rates above 16%, with none over 18%. Commenters also alleged that FUNB searches databases for individuals with credit histories that include bankruptcies and offers to consumers fitting this profile credit card products with interest rates approaching 20%. The OCC's review of the bank's policies and practices with respect to credit cards disclosed that FUNB does not solicit potential customers on the basis of a prior bankruptcy. However, FUNB does not automatically exclude applicants with prior bankruptcies from qualifying for a credit card.

In response to errors in HMDA reporting at FUHEB that were discovered in 1997, FUHEB completed a systematic evaluation of its HMDA reporting activity, and took prompt corrective action to address deficiencies.³⁰ FUHEB implemented procedures that included conducting internal reviews to ensure compliance with HMDA. The OCC believes that accurate reporting of HMDA data is essential to implementation of the CRA and fair lending laws, and will review FUHEB's corrective measures and take into account information concerning any reporting errors as part of its ongoing supervisory process.

²⁹ In the 1996 fair lending examination, the OCC reviewed 1995 HMDA data.

³⁰ In 1997, the OCC determined that there was a significant error rate in FUHEB's gathering of HMDA monitoring data. One commenter asked whether the OCC required FUHEB to refile HMDA monitoring data. The OCC did not require FUHEB to refile HMDA monitoring data because the bank did not have the requisite information.

2. Conclusion

For the foregoing reasons, the OCC has concluded that CRA considerations are consistent with approval of the proposal.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, and based on compliance with all other appropriate regulatory requirements and receipt of all appropriate regulatory approvals, we find that the merger of FUNB and CSB is legally authorized and meets the other statutory criteria for approval and that FUNB may continue to operate its branch offices and the main office and branch offices of CSB as branches following consummation of the merger.³¹

Accordingly, this application is hereby approved.

_____/s/
Raymond Natter
Acting Chief Counsel

04-15-98
Date

Application Control Number: 98-ML-02-0005

³¹ In addition, we note, because a portion of the deposits of CSB, though a BIF member, are insured by the Savings Association Insurance Fund (SAIF) as a result of prior transactions, this transaction satisfies the requirements of 12 U.S.C. § 1815(d)(3). The resulting institution will meet all applicable capital requirements upon consummation of the transaction, 12 U.S.C. § 1815(d)(3)(E)(iii), and the requirements of paragraph (d)(3)(F) are inapplicable since no SAIF member is involved in the transaction.