



**CRA Decision #158  
June 2014**

May 14, 2014

Stephen T. Milligan  
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New York, New York 10004-2498

Subject: Application by U.S. Bank National Association, Cincinnati, Ohio to purchase certain assets and assume certain liabilities of RBS Citizens, National Association, Providence, Rhode Island Charter Number: 24  
OCC Control Number: 2014-CE-Combination-137227

Dear Mr. Milligan:

The Office of the Comptroller of the Currency (OCC) hereby approves the above-referenced application filed by U.S. Bank National Association, Cincinnati, Ohio (U.S. Bank or the bank). This approval is granted based on a thorough review of all information available, including comments and representations made in the application and those of your representatives.

**I. The Transaction**

U.S. Bank applied to the OCC for approval to purchase certain assets and assume certain liabilities of RBS Citizens, National Association, Providence, Rhode Island (RBS Citizens). The assets, deposits and liabilities to be transferred in the proposed purchase and assumption (P&A) transaction relate to 103 branches of RBS Citizens operating under the Charter One brand located in the Chicago, Illinois, metropolitan division. U.S. Bank has its main office in Cincinnati, Ohio, with branches in many states including Illinois. RBS Citizens has its main office in Providence, Rhode Island, with branches in many states including Illinois.

**II. Legal Authority for the Transaction**

On January 21, 2014, U.S. Bank applied to the OCC for prior approval to purchase certain assets and assume certain liabilities, including insured deposit liabilities, of RBS Citizens. A national banking association is legally authorized to acquire all or part of a depository institution through a purchase and assumption transaction pursuant to its general banking powers under 12 USC 24 (Seventh). Where the transaction involves one insured depository institution's assumption of the deposit liabilities of another insured depository institution, the assuming bank must comply with the substantive and procedural requirements of 12 USC 1828(c) (the Bank Merger Act), and its implementing regulation, 12 CFR 5.33, as well as the Community Reinvestment Act, 12 USC 2901 *et seq.* (the CRA). Accordingly, the bank must obtain prior approval from the OCC prior to

consummating the transaction. For the reasons discussed below, the OCC hereby grants such approval. Further discussion of the Bank Merger Act factors and a consideration of the banks' CRA performance are included below.

U.S. Bank has also requested approval from the OCC to retain certain branch offices of RBS Citizens located in the Chicago, Illinois metropolitan division, which it will acquire as part of the proposed transaction. With prior approval from the OCC, a national bank is authorized under 12 USC 36(c) to establish and operate branch offices in a state where it is situated if such establishment and operation is explicitly authorized for state banks by the statute law of the state in question. U.S. Bank currently owns and operates branches in Illinois and is therefore situated in Illinois for purposes of 12 USC 36(c). Illinois' intrastate branching law permits banks to establish and maintain, in addition to their main banking premises, branches that offer any banking services permitted at such main banking premises without limitation as to number, age, or location. Therefore, U.S. Bank may retain and operate the branch offices it will acquire in the proposed transaction so long as it receives prior approval from the OCC. The OCC hereby grants such approval. In making this determination, the OCC has considered the standards set forth in 12 CFR 5.30(e).

### **III. Bank Merger Act**

The OCC reviewed the proposed transaction under the criteria of the Bank Merger Act, 12 USC 1828(c), and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a transaction that would substantially lessen competition. The Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed transaction in combating money laundering activities. 12 USC 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 USC 1828(c)(5) (as amended by section 604 of Dodd-Frank). The OCC considered these factors and found them consistent with approval of this application.

### **IV. Community Reinvestment Act**

The CRA requires the OCC to take into account the records of the institutions' performance in helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, when evaluating applications under the Bank Merger Act. The OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. A review of these records, information provided by the bank in response to public comments relating to the pending application, information provided by U.S. Bank in response to the request for additional information by the OCC, and other information available to the OCC as a result of its supervisory responsibilities indicates that the institutions' records of helping to meet the credit needs of their communities are consistent with approval of this application.

**A. U.S. Bank, N.A.**

U.S. Bank's most recent PE, dated December 31, 2008, assigned the bank an overall "Outstanding" rating.<sup>1</sup> The major factors supporting the overall "Outstanding" rating were: (i) an excellent distribution of loans by income level of the borrower; (ii) excellent lending activity; (iii) good distribution of loans by income level of the geography; (iv) community development lending that had a significantly positive influence; (v) an excellent volume of qualified investments originated in the evaluation period demonstrating excellent responsiveness to the identified investment needs of its communities, particularly through investment vehicles that promote affordable housing for low- and moderate-income individuals; (vi) a branch network that was readily accessible to geographies and individuals of different income levels in the vast majority of the bank's assessment areas (AA); (vii) a record of opening and closing branch offices that generally improved access; and (viii) a good level of community development services in most full scope AAs.

**B. RBS Citizens, N.A.**

RBS Citizens' most recent PE, dated December 31, 2012, assigned the bank an overall "Satisfactory" rating.<sup>2</sup> The major factors that support this rating include: (i) good geographic distribution of loans; (ii) good distribution of loans by borrower income; (iii) good level of community development investments; (iv) a generally excellent level of lending; (v) excellent level of community development services; and (vi) a branch distribution system that is accessible to geographies and individuals of different income levels, especially when branches bordering low- or moderate-income geographies were considered.

**V. Public Comments**

The OCC received five public comments in response to U.S. Bank's proposed P&A of RBS Citizens branches operating under the Charter One brand located in the Chicago, Illinois, metropolitan division (hereinafter the Chicago MD).<sup>3</sup> Two of the public comments generally viewed the proposed P&A favorably, but commented on particular aspects of U.S. Bank's CRA performance and community involvement. The three remaining comments, all from the same commenter, expressed concerns about U.S. Bank's record for closing branches and home mortgage lending performance in the Chicago MD and three Ohio metropolitan statistical areas (MSAs).

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<sup>1</sup> U.S. Bank, N.A. was evaluated as a large bank on December 31, 2008 for the period of January 1, 2006 through December 31, 2008 and received "Outstanding" ratings for the lending test, investment test, and service test. A copy of the PE is available at <http://www.occ.gov/static/cra/craeval/AUG10/24.pdf>.

<sup>2</sup> RBS Citizens, N.A. was evaluated as a large bank for the period of January 1, 2010 through December 31, 2012 and received "High Satisfactory" ratings for the lending and investment tests and an "Outstanding" for the service test.

<sup>3</sup> For consistency purposes, this letter uses the term Chicago MD to describe U.S. Bank's Chicago market. The comment letters and U.S. Bank's responses also refer to the Chicago MSA and the Chicago AA; however, in this circumstance, the use of different geographic areas did not produce materially different results.

Two commenters, both community organizations, addressed areas of concern and/or interest to their organizations and requested consideration of these interests during the application process. Specifically, one commenter expressed hope that U.S. Bank would “continue to uphold [RBS Citizens’] fine example of supporting local housing agencies and the clients they serve by maintaining competitive, affordable loan products and impactful, performance based grant funding.” Similarly, a second commenter requested that, following the proposed P&A, U.S. Bank maintain specific U.S. Bank and RBS Citizens products that uniquely benefit underserved communities. In addition, the second commenter stated that based on 2012 HMDA data, U.S. Bank had underperformed its peers in home mortgage lending to African American, Latino/Hispanic, female, and low- and moderate-income borrowers, and to borrowers in majority-minority census tracts. Based on this asserted underperformance, the second commenter also requested that U.S. Bank make certain commitments to increase lending to the above-referenced groups. Further, the second commenter requested that, based on the percentage of the population in low- and moderate-income areas and majority-minority areas, the OCC prohibit U.S. Bank from closing branches in those areas in connection with the proposed P&A. Furthermore, the same commenter also requested that U.S. Bank commit to opening new branches in those areas in the future. The second commenter also asked that U.S. Bank commit to maintaining or expanding the current level of community development grants, investments, and lending in the Chicago MD provided by both institutions. Lastly, the second commenter requested that any approval of the application be conditioned upon U.S. Bank making commitments to provide a public benefit to communities in the Chicago MD.

The three remaining letters, all submitted by the same commenter, objected to the proposed P&A of branches, and expressed concerns about U.S. Bank’s record of closing branches and its volume of home mortgage lending to African American and Latino/Hispanic borrowers. Citing 2012 HMDA data, the commenter asserted that: (i) U.S. Bank made substantially fewer home purchase loans to African American and Latino/Hispanic applicants than to white applicants in the Chicago MD; (ii) U.S. Bank made substantially fewer home purchase loans and refinance loans to African American and Latino/Hispanic applicants than to white applicants, and had denial rate disparities for refinance loans in the Cincinnati, Ohio MSA; (iii) U.S. Bank made substantially fewer home purchase loans and refinance loans to African American applicants than to white applicants, made no home purchase or refinance loans to Latino/Hispanic applicants, and had denial rate disparities in the Akron, Ohio MSA; and (iv) U.S. Bank made substantially fewer home purchase loans and refinance loans to African American and Latino/Hispanic applicants than to white applicants in the Cleveland, Ohio MSA. Based on these assertions, the commenter requested that the comment period be extended, U.S. Bank be required to disclose any branches that the bank plans to close, and that the OCC hold public hearings on the matter.

The OCC has carefully considered the commenters’ concerns as they relate to the statutory and regulatory factors considered by the OCC when reviewing an application under the Bank Merger Act. The commenters’ concerns are summarized and addressed below.

## A. Convenience and Needs

Two commenters indicated that the OCC should consider how the institution that would result from the proposed P&A will benefit the communities it serves, whether by continuing specific products and services or by committing to improving or increasing lending, services, and investments. As previously discussed, the Bank Merger Act requires the OCC to take into consideration the convenience and needs of the community to be served when reviewing a proposed P&A. In connection with this requirement, the OCC considered each of the commenters' requests and concerns.

As previously stated, one commenter expressed hope that U.S. Bank would continue to support local housing counseling agencies, affordable loan products, and grant funding. In responding to this comment, U.S. Bank represented that since 2010 it has partnered with or contributed to over 175 non-profits in the Chicago MD, the community impacted by the proposed P&A.<sup>4</sup> Of these, over 20 non-profit partnerships related to affordable housing, including those that support multifamily housing development, single-family homeownership, down payment assistance programs, and homebuyer education. In addition, U.S. Bank represented that it offers a number of mortgage products targeted to low- and moderate-income individuals and/or neighborhoods. In particular, U.S. Bank identified the American Dream Mortgage<sup>5</sup> and Federal Housing Administration (FHA) guaranteed loans<sup>6</sup> as programs that benefit low- and moderate-income individuals.<sup>7</sup> Further, in addition to other community development loans and investments, U.S. Bank indicated that the bank provided funding for approximately \$5.19 million in grants in the Chicago MD from 2010 through 2013.

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<sup>4</sup> Examples of the organizations that U.S. Bank has worked with include: (i) St. Bernard Hospital, which partnered with local organizations to build single family homes around the hospital in an effort to revitalize the neighborhood; (ii) Neighborhood Housing Services of Chicago (NHS) (U.S. Bank's relationship with the organization includes the provision of grants, lending, and a membership on NHS' board); (iii) Chicago Neighborhood Initiatives (U.S. Bank's involvement has included providing capital and technical assistance to the organization to become a standalone, not-for-profit entity and serving on the board of directors); and (iv) The Spanish Coalition for Housing, (U.S. Bank's partnership involves providing corporate contributions and employee volunteers to serve on the board of directors and/or teach financial education classes).

<sup>5</sup> U.S. Bank's American Dream Mortgage is a program offered through the bank's dedicated CRA loan officers. The American Dream Mortgage is available to homebuyers who either have low- or moderate-incomes or who are buying homes in low- or moderate-income census tracts. For borrowers who have completed the required pre-purchase homebuyer education class, the program offers flexible underwriting and low down payment requirements. In addition, the program does not require private mortgage insurance and provides the opportunity to finance up to \$5,000 in home repairs. U.S. Bank originated a total of approximately \$334 million in American Dream Mortgage loans in 2012 and 2013 across its footprint.

<sup>6</sup> U.S. Bank offers FHA guaranteed loans to the bank's customers. The features of FHA guaranteed loans include flexible qualification guidelines and low down payment requirements. U.S. Bank originated a total of approximately \$21 billion in FHA guaranteed loans in 2012 and 2013 across its footprint.

<sup>7</sup> U.S. Bank offers additional mortgage products targeted to low- and moderate-income individuals and neighborhoods including: (i) Freddie Mac Home Possible, (ii) Illinois Housing Development Authority bond programs, (iii) USDA Guaranteed Rural Housing program, and (iv) Ohio Housing Finance Agency bond programs. Moreover, U.S. Bank participates in a number of down payment assistance programs that can help low- and moderate-income individuals qualify to purchase homes.

Another commenter encouraged the OCC to approve the proposed P&A with the condition that U.S. Bank make certain commitments to address public needs. The commenter requested that the OCC ensure that the proposed P&A result in a clear, significant public benefit to communities in the Chicago MD. Specifically, the commenter requested that U.S. Bank make commitments to “increase mortgage lending [to] traditionally underserved borrowers; maintain or increase combined levels of existing community development investments and grants from both institutions; adopt and expand key products and services offered by RBS Citizens targeted at underserved communities; and maintain existing branches in low- and moderate-income and minority communities.” This commenter also expressed concern that overall community investments could significantly decrease following the proposed P&A, which the commenter asserts would have a negative impact on the operations of community organizations that depend on the institutions for support. Notably, this same commenter commended U.S. Bank on its small business lending. Specifically, the commenter noted that based on its assessment of 2012 data for the Chicago MD, U.S. Bank performed equal to or above the bank’s peers in small business lending in low- and moderate-income census tracts, to businesses with less than one million dollars in revenue, and with loans less than \$100,000. Based on this performance, the commenter urged U.S. Bank to further expand lending in low- and moderate-income census tracts.

In response to the commenter’s concerns, U.S. Bank represented that it has a strong history of financing community development in the Chicago MD. Specifically, U.S. Bank indicated that it has extended more than \$151 million in community development loans and committed approximately \$229 million in investments in the Chicago MD since 2010. U.S. Bank indicated that it supports a number of organizations that promote economic development and job creation, such as its partnership with Accion Chicago, which provides microloans and technical assistance to Chicago small businesses that do not qualify for traditional bank lending; and its partnership with the Chicago Neighborhood Initiatives. Further, U.S. Bank indicated that following a past acquisition, the bank continued to fund several legacy affordable housing programs and loan pools that supported low- and moderate- individuals or census tracts and/or supported the availability of or access to affordable housing.<sup>8</sup> Moreover, U.S. Bank’s PE indicates that the bank’s investment test performance was excellent across AAs and that the bank has a strong record of meeting community needs. The PE states that U.S. Bank demonstrated excellent responsiveness to the identified investment needs of its communities. Finally, the PE noted that the bank’s investments were particularly responsive to the affordable housing needs of low- and moderate-income individuals.

In seeking a commitment that U.S. Bank would adopt and expand key products and services offered by U.S. Bank and RBS Citizens targeted at underserved communities, this second commenter highlighted four products that it hoped would continue to be offered following consummation of the proposed P&A: U.S. Bank’s American Dream mortgage product, RBS Citizens’ energy efficiency loan program, RBS Citizens’ One Deposit checking account, and RBS Citizens’ Credit Builder loan program.

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<sup>8</sup> The legacy programs referenced were not specific products or services offered by the acquired institution.

In response to this comment, U.S. Bank indicated that it would continue to offer the American Dream mortgage product, which will be made available to RBS Citizens' customers following the proposed P&A. Conversely, U.S. Bank stated it would not transition the three RBS Citizens products to U.S. Bank following the proposed P&A. U.S. Bank represented that it did not purchase RBS Citizens' energy efficiency loan program or RBS Citizens' Credit Builder loan program and associated savings accounts. While U.S. Bank stated that it does not offer similar products, it represented that it offers two products that are designed to be credit builder solutions. Specifically, U.S. Bank's Secured Visa Card allows such a customer to set up a savings account as collateral for the customer's U.S. Bank issued credit card, and U.S. Bank also offers a certificate of deposit (CD) secured loan.<sup>9</sup> For customers with RBS Citizens One Deposit checking accounts, U.S. Bank represented that it intends to convert those customers to one of three U.S. Bank checking accounts depending on the age of the customer and pursuant to a migration strategy that aligns RBS Citizens customers with U.S. Bank's lowest cost and highest value checking products.<sup>10</sup> Overall, U.S. Bank represented that it believes that the proposed P&A will enhance its ability to serve the convenience and needs of its communities, including through expanded access to financial products and services available at additional branch locations and ATMs in the Chicago market.

## **B. Branch Closures**

Two commenters expressed concerns related to the potential for U.S. Bank to close branches in the Chicago MD. The first commenter noted disparities between the percentage of the population in low- and moderate-income census tracts and majority-minority census tracts and the percentage of U.S. Bank branches in those census tracts. Based on these disparities, the commenter encouraged the OCC to prohibit U.S. Bank from closing any of its branches or newly acquired RBS Citizens' branches in low- and moderate-income or majority-minority census tracts.<sup>11</sup> Another commenter, who submitted three comment letters, asserted that U.S. Bank has a record of closing branches. In support of this assertion, the commenter cited to a Chicago Tribune article in which U.S. Bank mentioned that there was overlap between U.S. Bank and RBS Citizens branches in the Chicago market. The commenter stated that U.S. Bank should be required to disclose which branches it plans to close in connection with the proposed P&A.

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<sup>9</sup> U.S. Bank's Secured Visa Card is available with deposit/credit limits between \$300 and \$5,000. The product requires no minimum FICO score (some limitations apply) and customers may request a manual review after the initial 12-month period for a possible release of collateral. In addition, U.S. Bank offers a CD-secured loan to consumers with a minimum FICO score of 600. The minimum loan amount is \$3,000 and the repayment terms can be fully amortizing, single pay, or interest only. For both products, U.S. Bank reports loan performance to all three credit bureaus.

<sup>10</sup> U.S. Bank's migration strategy provides that customers will be matched with the account that offers the "best fit" and that each customer will receive a welcome kit that explains the full range of U.S. Bank's products. In addition, all RBS Citizens customers will be provided a 90-day period during which no monthly maintenance fees will be assessed to ensure that customers are aligned with the account that best meets their needs. The majority of customers with RBS Citizens One Deposit checking accounts will convert to a U.S. Bank Easy Checking Account. The One Deposit checking accounts of customers under 18 will be converted to a U.S. Bank Student Checking account. The One Deposit checking accounts for customers over 65 will be converted to a U.S. Bank Premier Checking account.

<sup>11</sup> 12 USC 1831r-1 requires a notice to the OCC. No regulatory approval is required to close a branch.

With respect to U.S. Bank's current branches, the CRA PE rated the bank's service test performance "Outstanding." The PE indicated that U.S. Bank's branch network was readily accessible to geographies and individuals of different income levels in the vast majority of the bank's AAs. However, the PE also indicated that performance in the Chicago MD was adequate and that the bank's branches were unreasonably inaccessible to certain portions of the Chicago MD.<sup>12</sup> As previously mentioned, U.S. Bank has represented that it believes that the proposed P&A will result in an enhanced ability to serve the Chicago community via additional branch locations and ATMs. Specifically, U.S. Bank indicated that due to RBS Citizens' larger branch presence in the Chicago AAs, including in low- and moderate-income, African American, and Latino communities, the proposed P&A will expand U.S. Bank's presence in low- and moderate-income and majority-minority census tracts. Of the 103 RBS Citizens' branches that are part of the proposed P&A, U.S. Bank indicated that seven are located in low-income census tracts and thirteen are located in moderate-income census tracts.

U.S. Bank also specifically addressed the commenter's concerns related to branch closures. On March 21, 2014, U.S. Bank provided its customers with an advance closure notice. In its notice, U.S. Bank stated that it intends to close ten RBS Citizens branches and three U.S. Bank branches in connection with the proposed P&A. U.S. Bank indicated that two of the branches being closed are located in low-income areas.<sup>13</sup> One low-income branch is within a mile of another branch that is in a moderate-income area. The second low-income branch is less than half a mile away from another branch, also in a low-income area. Both receiving branches are Charter One branches that are being acquired by U.S. Bank. U.S. Bank stated that the decision to close the identified branches was based on numerous factors.

U.S. Bank represented that, when considering a branch closure, it maintains a Branch Closing Policy, which requires explicit consideration of the needs of the communities served by the branches the bank proposes closing. Among other factors, U.S. Bank represented it considers the income level of the census tract where the branch is located and how the closing may impact the community served by the branch, the proximity between the closing branch and the nearest U.S. Bank alternative, the customer convenience of the closing branch compared to the alternative branch, and the proximity of other financial institutions in the area. Moreover, U.S. Bank represented that if the branch closure will have more than a minimal impact on a low- or moderate-income geography the bank attempts to mitigate the impact on the community through strategies such as customer communication and education through a welcome letter on the availability of banking services through alternative delivery systems. In addition, the bank represented that it would offer customers the full range of banking products and services through its various delivery channels: branch, ATM, mobile banking, internet banking, and banking by phone. With regard to the branch closings identified in connection with the proposed P&A, U.S. Bank represented that customer communication will be the primary mitigation strategy.

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<sup>12</sup> Of the 48 offices and 103 deposit-taking ATMs in the Chicago MD, none were located in low-income census tracts. Moreover, the percentage of branches located in moderate-income census tracts was significantly below the percentage of the population living there.

<sup>13</sup> The bank will be closing one RBS Citizens branch and one U.S. Bank branch located in low-income census tracts.

### **C. Fair Lending**

Two commenters expressed concerns regarding U.S. Bank's volume of home mortgage lending to African American and Latino/Hispanic borrowers in the Chicago MD. In addition, one of the two commenters also expressed concerns about U.S. Bank's volume of home mortgage lending to female, and low- and moderate-income borrowers, and to borrowers in majority-minority census tracts in the Chicago MD. The other commenter expressed additional concerns regarding U.S. Bank's volume of home mortgage lending to African American and Latino/Hispanic borrowers in three markets unaffected by the proposed P&A: the Cincinnati, Ohio MSA, the Akron, Ohio MSA, and the Cleveland, Ohio MSA (collectively, the Ohio MSAs). The commenters suggested that, based on analysis of 2012 HMDA data, the bank's lending to several traditionally underserved groups within the Chicago MD and the Ohio MSAs was unsatisfactory. When comparing the denial rates for home mortgage lending and refinance loans, one commenter stated a higher denial rate for African Americans and Latinos when compared to whites for the Chicago MD and Ohio MSAs.

Pursuant to 12 CFR 25.28(c), the results of the OCC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The OCC may lower the overall rating of an institution based on findings of discriminatory or other illegal credit practices in any geography by the bank, or in any AA by any affiliate whose loans are considered part of the bank's lending performance. U.S. Bank's PE noted that the OCC had not identified evidence of discriminatory or other illegal credit practices inconsistent with helping meet community credit needs with respect to this institution.

Regarding the lending concerns raised by the commenters, it should be noted that HMDA data alone is not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities and efforts.

The OCC has reviewed U.S. Bank's home mortgage lending in the Chicago MD to assess possible discrimination in a number of areas including loan underwriting and marketing. Further, in consideration of this application, the OCC also reviewed U.S. Bank's 2012 HMDA data and compared the results to the commenters' concerns relating to U.S. Bank's home mortgage lending, including conventional and government home purchase loans and home refinance and improvement loans in the Chicago MD. None of the OCC's supervisory reviews have resulted in findings of discrimination relating to U.S. Bank's home mortgage retail transactions. It should be noted that in 2012, the Chicago MD had 249 banks with a branch presence and that U.S. Bank had less than a two percent market share. The proposed P&A will provide the bank with greater opportunities to serve this market.

One of the commenters also expressed concerns related to U.S. Bank's home purchase loan and home refinance loan HMDA data in the Ohio MSAs. Notably, the commenter's analysis of 2012

HMDA data did not include lending by U.S. Bank's former affiliate, U.S. Bank National Association ND<sup>14</sup>, which accounted for a substantial percentage of the bank's refinance lending in the year 2012 in those MSAs. Taking into account lending by the affiliate, and considering other performance context factors, the OCC's review of the bank's HMDA data for the Ohio MSAs did not reveal evidence of discrimination.

During the CRA performance evaluation, the OCC also reviewed U.S. Bank's lending practices to low- and moderate-income individuals and in low- and moderate-income geographies. As previously noted, U.S. Bank's overall lending test performance in the PE was rated "Outstanding." Similarly, U.S. Bank's lending performance was rated "Outstanding" in the State of Illinois, based on the full scope review of the Chicago MD.<sup>15</sup> The PE indicates that lending performance in the Chicago MD was excellent. In particular, the PE notes that distribution of loans by income level of the borrower was excellent, distribution of loans by income level of the geography was adequate, and community development lending had a significantly positive impact on lending performance.

U.S. Bank specifically addressed the commenters' fair lending concerns by representing that it has engaged in many activities and outreach, and as previously mentioned, partnered with organizations that target or support low- and moderate-income individuals and/or geographies, minorities, and women.<sup>16</sup> In addition to these outreach and partnership activities, U.S. Bank further represented that it has been working to improve the bank's residential mortgage performance in the Chicago MD. To this end, U.S. Bank represented that in 2010 it formed a CRA lending team in the Chicago MD. U.S. Bank represented that this team works with nonprofit organizations, real estate agents, and other professionals to serve low- and moderate-income borrowers and borrowers in low- and moderate-income census tracts.

Lastly, U.S. Bank represented that it maintains a Fair Lending Compliance Policy and Program (Fair Lending Policy) that emphasizes the bank's commitment to fair lending compliance. Moreover, U.S. Bank represented that consistent with the Fair Lending Policy, the bank makes lending products and services available to all applicants on a consistent and fair basis, provided the applicants meet safety and soundness guidelines. U.S. Bank indicated that under its Fair Lending Policy it maintains three lines of defense for fair lending compliance risk management.<sup>17</sup> As part of these three lines of defense, U.S. Bank stated that its Fair Lending

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<sup>14</sup> U.S. Bank National Association ND merged into U.S. Bank on May 13, 2013.

<sup>15</sup> U.S. Bank's lending test performance was also rated "Outstanding" in the Cincinnati-Middletown, OH-KY-IN Multistate Metropolitan Statistical Area (MMSA) and the State of Ohio.

<sup>16</sup> In addition to the organizations listed in footnote 4, U.S. Bank has partnered with the following organizations in the Chicago MD: (i) Local Initiatives Support Coalition Chicago, in targeted neighborhoods, many of which are low- and moderate-income; (ii) Coalition for Community Banking (while the formal agreement ended in 2013, U.S. Bank continues to meet with coalition members to strategize ways to meet the needs of the Westside of Chicago); (iii) The Hispanic Chamber of Commerce; (iv) The Puerto Rican Arts Alliance; and (v) The Chicago Urban League, an organization that works for economic, educational and social progress for African Americans.

<sup>17</sup> The three lines of defense are: (1) Business line management is responsible for developing effective preventive and detective controls commensurate with applicable fair lending risk; (2) the Fair Lending Compliance Division independently oversees enterprise-wide fair banking and implements the Fair Lending Policies and Programs; and

Compliance Division performs targeted risk assessments based on certain products and business units' fair lending risks. Furthermore, U.S. Bank stated that as part of its overall fair lending review the bank compares HMDA application data to peer HMDA application data with respect to gender, race, ethnicity, and age. In addition, U.S. Bank represented that its CRA Program Team evaluates HMDA data and small business lending to low- and moderate-income borrowers and borrowers in low- and moderate-income census tracts. If the comparison shows that an AA's performance is below U.S. Bank's stated goals then employees are asked to implement action plans to address CRA performance promptly. Lastly, U.S. Bank stated that its fair lending oversight continues to evolve and deepen and that it is the bank's goal to build on both institutions' performance through the expanded branch network in order to better serve the Chicago MD, including its minority communities and low- and moderate-income residents.

#### **D. Request for an Extension of the Comment Period**

A commenter who submitted multiple comments requested that the OCC extend the comment period and deny the application. The standard that the OCC applies to determine whether to extend a public comment period is set forth in 12 CFR 5.10(b)(2), which provides:

The OCC may extend the comment period if: (i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested parties or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information; (ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or (iii) The OCC determines that other extenuating circumstances exist.

After careful consideration, the OCC has determined not to extend the public comment period.<sup>18</sup> None of the reasons set forth in 12 CFR 5.10(b) as justification for extending a comment period were evident in connection with this application.

#### **E. Summary**

Accordingly, based upon our review of the respective records of the banks involved in the proposed P&A, the application, the public comments and the bank's response to those comments, and supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, we conclude that U.S. Bank's and RBS Citizens' records of helping to meet the credit needs of their communities are consistent with approval of the application.

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(3) Corporate Audit Services independently evaluates the effectiveness of the Fair Lending Program and the first and second lines of defense.

<sup>18</sup> It is the OCC's practice to accept public comments after the close of the comment period.

## **VI. Consummation Requirements**

The OCC will issue a letter certifying consummation of the transaction when we receive:

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
- An executed P&A agreement.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.
- Documentation that all other conditions that the OCC imposed have been met.

If the P&A by U.S. Bank has not been consummated within twelve months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time. The OCC must be advised in writing of the desired effective date for the transaction so it may issue the necessary certification letter.

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

A separate letter is enclosed requesting the bank's feedback on how we handled the referenced application. If you have any questions, please contact Senior Licensing Analyst John O'Brien by e-mail at [john.obrien@occ.treas.gov](mailto:john.obrien@occ.treas.gov) or by telephone at (312) 660-8720. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller for Licensing

Enclosure: Survey Letter