



**CRA Decision #171  
December 2015**

November 12, 2015

George J. Getman, Esq.  
Executive Vice President and General Counsel  
Community Bank, National Association  
5790 Widewaters Parkway  
DeWitt, New York 13214

Re: Application to merge The Oneida Savings Bank, Oneida, New York and The State Bank of Chittenango, Chittenango, New York with and into Community Bank, National Association, Canton, New York (Charter No. 8531)  
OCC Control Numbers: 2015-NE-Combination-142284, 2015-NE-Subs&Equities-14231, and 142315

Dear Mr. Getman:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge The Oneida Savings Bank, Oneida, New York (Oneida) and The State Bank of Chittenango, Chittenango, New York (Chittenango) with and into Community Bank, National Association, Canton, New York (Community), under the charter and title of the latter. The OCC also approves the acquisition and retention by Community from Oneida of seven subsidiaries. The OCC concludes the activities of the subsidiaries are legally permissible for national banks and their subsidiaries.

The conditional approvals are granted after a thorough review of the application, other materials each of the banks and its representatives supplied, and additional information available to the OCC, including commitments and representations made in the application, and by the banks' representatives during the application process.

**I. The Transaction**

Community is a wholly owned subsidiary of Community Bank System, Inc. (CBSI), Dewitt, New York, a one-bank holding company. Community is a national bank with its main office located in Canton, New York. Oneida, a state chartered savings bank, is a wholly owned subsidiary of Oneida Financial Corp. (OFC), Oneida, New York, a savings and loan holding company. Chittenango is a wholly owned subsidiary of Oneida and is a limited purpose, state chartered commercial bank providing municipal deposit services.

In the proposed transaction, OFC will merge with and into CBSI (Parent Company Merger), with CBSI being the surviving entity. Immediately after the Parent Company Merger, first Oneida,

and then Chittenango will merge with and into Community, with Community being the surviving entity. As part of the transaction, Community will acquire seven subsidiaries from Oneida as follows: OneGroup NY, Inc., Vanguard Risk Managers, Inc., Oneida Wealth Management, Inc., Oneida Preferred Funding Corp., Oneida Preferred Funding 11, LLC, Workplace Health Solutions, Inc., and McMahon, Fernaroli and White, Inc. Upon review of the activities conducted by Oneida's subsidiaries, the OCC has determined that such activities are legally permissible for a national bank and may be performed by operating and financial subsidiaries of a national bank.<sup>1</sup>

## **II. Legal Authority**

### **A. Consolidation and Merger**

Community's proposed merger with Oneida and Chittenango is subject to review under (i) 12 USC 215a; (ii) the Bank Merger Act (12 USC 1828(c)(2)) (BMA); (iii) the Community Reinvestment Act (CRA) (12 USC Chapter 30); and (iv) OCC's implementing regulations set forth at 12 CFR 5.33 and 25.29.

12 USC 215a and 12 CFR 5.33(g)(1) govern consolidations and mergers by national banks and state banks located within the same state resulting in a national bank. Such mergers must be approved, in writing, by a majority of the directors of each bank and be ratified and confirmed by the affirmative vote of the shareholders owning at least two-thirds of its outstanding capital stock, unless a greater proportion of the vote, as to the state bank, is required by the law of the state where the state bank is organized. The merger agreement must also specify the amount of the capital stock of the receiving association as well as provide that the receiving association shall be liable for all the target institution's liabilities. In addition, 12 USC 215a(d) requires that a merger involving a state bank may not be in contravention of state law. OCC review under 12 USC 215a included consideration of the provisions contained in 12 USC 36(b)(2) for the request by Community to retain, following the merger, the main office and branches of Oneida.<sup>2</sup> The OCC considered these factors and found them consistent with approval of this application.

Under the BMA, 12 USC 1828(c), "[n]o insured depository institution shall merge or consolidate with any other depository institution or, either directly or indirectly, acquire the assets of, or assume the liabilities to pay deposits made in, any other insured depository institution except with the prior written approval of" the OCC when the acquiring bank is a national bank or federal savings association. *See* 12 USC 1828(c)(2)(A). Under the BMA, the OCC may not

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<sup>1</sup> Oneida Wealth Management, Inc., Oneida Preferred Funding Corp., and Oneida Preferred Funding II, LLC are to be established as operating subsidiaries of Community. OneGroup NY, Inc., and Vanguard Risk Managers Inc., are to be established as financial subsidiaries of Community. Oneida's other two subsidiaries are inactive and if not dissolved prior to consummation, Community intends to dissolve them.

<sup>2</sup> Chittenango has no branches and its main office operates exclusively from Oneida's Chittenango branch in Chittenango, New York. Community plans to close the Chittenango office post-merger, but to maintain Oneida's Chittenango branch.

approve a merger that would have an anti-competitive effect and lessen competition. 12 USC 1828(c)(5) and 12 CFR 5.33(e)(1)(A). The OCC must also consider the financial and managerial resources and future prospects of the existing and resulting banks, and the convenience and needs of the community to be served. 12 USC 1828(c)(5) and 12 CFR 5.33(e)(1)(B) and (C). The OCC must review the CRA compliance records of each applicant bank in a merger transaction<sup>3</sup>. 12 USC 2903(a)(2), 12 CFR 5.33(e)(1)(ii), and 25.29(a)(3). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 USC 1828(c)(11) and 12 CFR 5.33(e)(1)(iii). Additionally, 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). The OCC considered these factors and, subject to the conditions contained in Section V below, found them consistent with approval of this application.

### **B. Divestiture of Other Holdings and Investments**

Oneida owns an office building at 5232 Witz Drive, North Syracuse, New York that recently housed the operations of two of Oneida's subsidiaries, OneGroup NY, Inc., and Oneida Wealth Management, Inc. However, in June 2015, the operations of both subsidiaries moved to the newly completed offices at 706 North Clinton Street, Syracuse, New York. As a result, the 5232 Witz Drive building no longer houses operations of Oneida. Community commits to divest of the property within two years of merger consummation.

Oneida holds certain corporate equity securities and investment company shares. Specifically, Oneida holds shares of Federal Home Loan Mortgage Corporation preferred stock, an AMF Fund, and MetLife preferred stock. To the extent that the above-mentioned securities are still held by Oneida as of the closing of the merger, Community committed to divest the securities within 60 days after the closing of the merger.

### **III. Community Reinvestment Act**

The CRA requires the OCC to take into account the records of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income (LMI) neighborhoods, when evaluating applications under the BMA. The OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. Under the regulations implementing the CRA, a bank's record of performance may be the basis for denying or conditioning approval of an application subject to the BMA. 12 CFR 25.29(d). For the reasons described below, after a review of the banks' records, information provided by Community in response to public comments relating to the proposed transaction, information provided by Community in response to additional information requests from the Board of Governors of the

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<sup>3</sup> As a limited purpose, state chartered bank providing municipal deposit services, Chittenango is no longer subject to the requirements of CRA. Its most recent CRA PE was May 1, 1998 when it received a Satisfactory Rating.

Federal Reserve System (FRB) and the OCC,<sup>4</sup> and supervisory materials and other information available to the OCC as a result of its regulatory responsibilities the OCC has concluded that the banks' records of helping to meet the needs of their communities support approval of this application with the conditions discussed in Section 5 of this letter.

### **A. Community Bank**

Community's most recent CRA PE, dated March 12, 2012, assigned the bank an overall "Satisfactory" rating.<sup>5</sup> The major factors supporting Community's overall "Satisfactory" rating were (i) lending levels that reflected excellent responsiveness by the bank to the credit needs of its assessment areas (AA); (ii) a good distribution of loans among borrowers of different income levels throughout its AAs; (iii) a good distribution of loans among census tracts of different income levels throughout its AAs, along with an excellent ratio of loans originated inside the AAs; (iv) community development (CD) lending that had a positive impact on the bank's lending performance; (v) flexible lending products that had a positive impact on the bank's lending performance; (vi) investments that reflected good responsiveness to the credit and CD needs of the bank's AAs; (vii) service delivery systems that were accessible to census tracts and individuals of different income levels in the AAs; and (viii) good performance in providing CD services.

### **B. The Oneida Savings Bank**

Oneida's most recent CRA PE, dated June 30, 2014, assigned the bank an overall "Satisfactory" rating.<sup>6</sup> The following points summarize Oneida's lending test and community development test performance: (i) its loan-to-deposit ratio since the previous evaluation was reasonable given the institution's size, financial condition, and AA credit needs; (ii) a substantial majority of the bank's home mortgage loans were made inside its AAs; (iii) the geographic distribution of loans

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<sup>4</sup> The OCC and the FRB requested additional information from Community Bank and Community Bank Systems, Inc., respectively. All responses were provided by Community Bank Systems, Inc. In addressing the commenter's concerns, this letter uses the term Community when discussing the information contained in the additional information request responses provided to both the OCC and the FRB.

<sup>5</sup> The OCC evaluated Community's CRA performance under the lending, investment, and service tests applicable to large banks on March 12, 2012. The evaluation covered the period between January 1, 2008 and December 31, 2011 for home mortgage loans, small business loans, and small farm loans. The evaluation period for community development loans, investments, and services was December 12, 2008 through March 11, 2012. The CRA PE assigned Community overall "High Satisfactory" ratings on the lending, investment, and service tests. A copy of the CRA PE is available at <http://www.occ.gov/static/cra/craeval/sep12/8531.pdf>.

<sup>6</sup> The FDIC evaluated Oneida's CRA performance under the standards applicable to an intermediate small bank on June 30, 2014. The CRA PE considered all home mortgage loans reported pursuant to the Home Mortgage Disclosure Act (HMDA) that were originated in 2012 and 2013. The CRA PE's community development test was based on a review of Oneida's qualified community development lending, qualified investment, and community development service activities for the period of February 14, 2011 through June 30, 2014. As an intermediate small bank, Oneida did not collect and report small business and small farm loans. A copy of the 2013 CRA PE is available at [https://www5.fdic.gov/crapes/2014/15975\\_140630.PDF](https://www5.fdic.gov/crapes/2014/15975_140630.PDF).

reflected reasonable dispersion throughout Oneida's AAs;<sup>7</sup> (iv) the distribution of borrowers reflected, given the demographics of the AAs, reasonable penetration among individuals of different income levels (including LMI); and (v) no CRA-related complaints were received since the prior evaluation.

#### **IV. Public Comment and Analysis**

The FRB received two public comments from the same commenter, which were forwarded to the OCC for consideration in its decision process. The comments addressed Community's and Oneida's records of helping to meet the needs of their communities, particularly their home mortgage lending to African Americans and Hispanics, and the delineation of the proposed combined assessment areas.<sup>8</sup>

The commenter, citing 2013 HMDA data, expressed concerns regarding Community's home mortgage lending practices. Specifically, the commenter asserted that in the Syracuse MSA, Rochester MSA, and Buffalo-Niagara MSA, Community had not originated any conventional home purchase loans to Latinos. Further, the commenter asserted that Community had originated only two conventional home purchase loans to African Americans in the Rochester MSA, and one conventional home purchase loan to an African American in the Syracuse MSA. In comparison, the commenter asserted that Community had originated 72, 108, and 44 conventional home purchase loans to whites in the Syracuse MSA, Rochester MSA, and Buffalo-Niagara MSA, respectively. In addition, the commenter asserted that Community had a 100 percent denial rate to Latinos in the Rochester MSA. The commenter asserted that Community's home mortgage lending had worsened since it submitted a comment in connection with prior applications by the bank. The commenter also expressed concerns related to Oneida's home mortgage lending practices. Specifically, citing to 2013 HMDA data, the commenter asserted that Oneida had originated 75 conventional home purchase loans to whites, two to Asians, and none to African Americans or Latinos. In addition to the commenter's lending related concerns, based on information about the combined bank's proposed assessment areas contained in one of Community's additional information request responses, the commenter also alleged that Community was "gerrymandering" the future CRA assessment area.

##### **A. CRA and Convenience and Needs**

In deciding whether to approve the proposed transaction, the OCC considers the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs

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<sup>7</sup> The CRA PE indicates that this conclusion was based primarily on Oneida's performance within its AA located in the Syracuse Metropolitan Statistical Area (MSA).

<sup>8</sup> The commenter also commented on issues not directly related to Community's and Oneida's CRA performance and the convenience and needs of the communities to be served; these comments are not addressed herein. These comments relate to a news article that discussed an instruction from the FRB that Community sign a document declaring that it will not control expenses or hiring at Oneida prior to consummation of the proposed transaction, compliance with the Bank Holding Company Act, potential job losses resulting from the proposed transaction, a request for extension of the comment period, and a request for a public hearing.

of the communities to be served. Although these factors are interrelated, as explained in the “Public Notice and Comments” booklet of the *Comptroller’s Licensing Manual* (Mar. 2007), consideration of a bank’s CRA performance primarily assesses how the bank has performed in the past. In contrast, a convenience and needs assessment considers how the merged entity will help to meet the needs of its communities on a prospective basis.

The commenter expressed concerns regarding the extent to which the bank resulting from the proposed transaction would benefit the communities it will serve. The commenter’s concerns focused on Community’s, and to a lesser extent, Oneida’s lending performance and the proposed assessment areas. The banks’ CRA performance and the probable effect of the proposed transaction on the convenience and needs of the communities to be served are discussed below.

*i. CRA Performance*

As discussed above, Community received an overall “Satisfactory” rating in its most recent CRA PE. The CRA PE describes the institution and the performance context factors that were taken into consideration when assessing the bank’s performance. The CRA PE describes Community as one of the largest community banking franchises headquartered in Upstate New York.<sup>9</sup> The CRA PE states that Community offers a wide range of financial services, with a primary focus on originating loans to consumers. The CRA PE indicates that, at the time of the evaluation, Community had 15 AAs, 13 of which were located in New York State (New York). Of these 13 AAs, the Northern Region Non-MSA (Northern) AA and the Southern Region Non-MSA (Southern) AA combined represented 79 percent of Community’s total lending, 65 percent of its total branches, and 64 percent of its total deposits. The remaining 11 AAs in New York accounted for approximately seven percent of Community’s total lending, 20 percent of its total branches, and 19 percent of its total deposits.

Community’s New York rating was primarily based on full scope assessments of the Northern AA and the Southern AA, which had the highest concentrations of deposits, loans, and branches. The CRA PE notes that home mortgage products received the greatest weight. Based largely on Community’s performance in these two AAs, the bank received an overall “High Satisfactory” rating for the lending test. Within these AAs, the CRA PE indicates that Community was one of the top two originators and purchasers of home mortgage loans and of loans to businesses with \$1 million or less in annual gross revenue in terms of market share. Community’s overall good geographic distribution of home mortgage loans, which considered only moderate-income census tracts, contributed to the bank’s performance.<sup>10</sup> In addition, the CRA PE indicates that

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<sup>9</sup> Community has added a number of branches to its network and expanded its AAs since the CRA PE. The impact of those actions is discussed below in conjunction with the convenience and needs standards.

<sup>10</sup> At the time of the evaluation, there were four low-income census tracts in the Bank’s Northern and Southern AAs; over 80 percent of the census tracts in the AAs were designated as middle-income. The CRA PE states that there is no owner occupied housing in the one low-income census tract in the Northern AA and minimal owner occupied housing (.21 percent) located in the three low-income census tracts in the Southern AA.

Community's CD lending had a positive impact on the evaluation of lending performance in New York. Community's CD lending mainly supported affordable housing for LMI individuals. With regard to Community's remaining AAs, the PE states that its lending test performance was either stronger than, or not inconsistent with, the performance in the Northern AA and Southern AA.

Community also received overall "High Satisfactory" ratings on the investment test and service test. The CRA PE states that Community's delivery systems are accessible to census tracts and individuals of different income levels. Community's branch network increased due to acquisitions during the evaluation period. Further, the CRA PE indicates that Community offered services that provided easy access to funds for low-income people who receive government assistance by cashing government checks for non-customers for a fee. Further, the CRA PE notes that Community cashed all Federal government checks for free (except for income tax refund checks). In addition, Community allowed all recipients of New York State Public Assistance to withdraw funds from Electronic Benefits Transfer Program cards from any Community ATM for free. Although Community offered alternative delivery systems, such as online banking, the CRA PE did not place significant weight on these delivery systems because no data was available to determine the impact of these systems on LMI individuals and geographies.<sup>11</sup> Concerning investments, the CRA PE stated that the bank's performance was good, due to the generally excellent investment activity that demonstrated adequate to good responsiveness to community needs,<sup>12</sup> depending on the AA.

*ii. Convenience and Needs*

The commenter expressed concerns regarding the extent to which Community, and to a lesser extent, Oneida serve the credit needs of their communities. As discussed above, the BMA requires the OCC to take into consideration the convenience and needs of the community to be

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<sup>11</sup> In its response to the OCC in connection with this transaction, Community asserted that, in addition to serving its community through its branch network, its products and services are increasingly available through online and mobile banking. Moreover, Community represented that it has expanded its online and mobile banking services and capabilities to enable it to serve its customers and communities that may not be in close proximity to a physical branch. The CRA implementing regulations provide that the availability and effectiveness of alternative delivery systems, such as online and mobile banking, for delivering retail banking services in LMI geographies and to LMI individuals are part of the service test performance criteria. Community's CRA PE states that the OCC did not place significant weight on the alternative delivery systems of online banking, bank-by-phone, and bank-by-mail because no data was available to determine the impact of these retail banking services on LMI individuals and geographies. A description of the type of information or data that the OCC may consider in evaluating alternative delivery systems for possible consideration under the service test is available in the 2014 proposed Questions and Answers regarding community reinvestment. A copy of the 2014 proposed Questions and Answers are available at <http://www.occ.gov/news-issuances/news-releases/2014/nr-ia-2014-121a.pdf>.

<sup>12</sup> Two of the investment test performance criteria are (i) the dollar amount of the bank's qualified investments and (ii) the responsiveness of the bank's qualified investments to credit and community development needs. See 12 CFR 25.23(e). The CRA PE explains that the dollar amount of Community's qualified investments was generally excellent and that the responsiveness to credit and community development needs was adequate to good depending on the AA.

served. In considering the convenience and needs of the community to be served, the OCC considers the probable effects of the merger on the community to be served, including any planned branch office closings or reductions in service that would follow consummation of the proposed transaction. Moreover, the OCC considers additional relevant factors, including the resulting national bank's ability and plans to provide expanded or less costly services to the community.

**a. Branch Network and Assessment Areas**

In considering how Community will serve the convenience and needs of its communities following consummation of the proposed transaction, the OCC has assessed how Community has served its communities both prior to and since its most recent CRA PE. This assessment considered whether the Community's plans for the proposed transaction will further efforts to serve the convenience and needs of its communities consistent with its stated business philosophy, which is to operate as a community bank with local decision-making, principally in non-metropolitan markets,<sup>13</sup> providing a broad array of banking and financial services to retail, commercial, and municipal customers. Community stated that it currently operates 180 customer facilities, primarily in Upstate New York and Northeastern Pennsylvania. Public records indicate that in addition to full service branches, Community also operates a small number of limited service administrative and messenger offices, limited service facilities, and loan production offices. Community further represented that its branches are generally located in rural areas, smaller towns, and cities within this geographic market. The proposed transaction would add additional branches in the Upstate New York area in geographies that are consistent with this description and in locations where Community does not have a current branch presence.

Community represented that a majority of its branches are located in middle-income census tracts, including 15 percent of its branches that are located in distressed or underserved nonmetropolitan middle-income geographies. Community represented that it maintains 23 branches in LMI census tracts and no branches in majority-minority census tracts. Oneida has maintained one branch in a moderate-income census tract, and none in a majority-minority census tract; in addition, Community noted that there are no low-income census tracts, six moderate-income census tracts, and one majority-minority census tract in Oneida's current AAs. Community stated that, to the extent that it has branches in MSAs, such as the Rochester and Buffalo-Niagara MSAs,<sup>14</sup> these branches are primarily the result of branch acquisitions from large banks leaving the less populated non-metropolitan areas in those MSAs.

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<sup>13</sup> Community represented that by "non-metropolitan markets" it intended to convey that the bank's branches are generally located in smaller, more rural towns, villages, and cities within its geographic market areas of Upstate New York and Northeastern Pennsylvania.

<sup>14</sup> Community maintains no branches in Monroe County, the county where the City of Rochester is located, and 25 branches in the Rochester MSA overall. Community maintains one branch in Orchard Park, New York, approximately ten to fifteen miles from the City of Buffalo, and four branches in the Buffalo-Niagara MSA overall. In both MSAs, Community's branches are not located near the city centers, and generally are not in close proximity to LMI or majority-minority census tracts.



Community also represented that it will continue to serve the needs of its communities, including LMI and majority-minority communities, through its existing branch network. Community stated that there are 41 majority-minority census tracts in its AAs. Further, Community highlighted that four of the majority-minority census tracts in its AAs include Native American reservations, and that it believes it is effectively serving these populations by maintaining branches in close proximity to these census tracts. In addition, Community represented that three of the majority-minority census tracts in its AAs are located in Hazelton, Pennsylvania, which has a large Hispanic population. Community stated that it maintains two branches less than a mile from the Hazelton, Pennsylvania majority-minority census tracts.

Of the remaining majority-minority census tracts in Community's AAs, most are in the Syracuse MSA, which is located in Onondaga County. Community represented that until 2008 it had only one branch in the southwest corner of Onondaga County in the community of Skaneateles, New York. As such, Community represented that until 2008 it included only a part of Onondaga County in its AA. Community further represented that in 2008 it expanded its AA to cover all of Onondaga County when it opened a limited service branch at its administrative offices in DeWitt, New York, which is approximately four to five miles east of the City of Syracuse, to allow it to service its employees. Community represented that its presence in the Syracuse MSA increased again in 2011 when it acquired a branch in Cicero New York, which is nine to ten miles north of the City of Syracuse, as part of its acquisition of Wilber National Bank. Community represented that following the addition of these branches, it endeavored to meet the needs of the communities across Onondaga County; however, due to its limited branch presence and the location of its branches outside the city of Syracuse, serving these communities' needs has been challenging. Community represented that in an effort to better serve its communities, it opened a full-service branch in DeWitt, New York in December 2014. Community further represented that this branch is located within five miles of the center of Syracuse in what it believes is a more accessible location to various neighborhoods across Onondaga County. Community also represented that it will continue to evaluate its AA in Onondaga County and how best to meet the needs of the communities therein.

Community represented that it has ensured the continued availability of banking services in rural, underserved communities by acquiring branches from other financial institutions that are vacating the area. Community represented that in instances of branch closures it would be sensitive to the resulting impact on the local community and would make a good faith effort to mitigate the impact. Community represented that such mitigating steps often vary based on the facts and circumstances, but may include (i) talking to local officials to assess the community concerns and impact and possible ways to mitigate such concerns; (ii) discussing the community concerns and impact amongst senior management and the bank's CRA Committee; (iii) actively assisting impacted customers to set up electronic banking services; (iv) offering a free safety deposit box at a near-by branch for impacted customers; (v) assessing the communities' access to surrounding towns where the bank retains a branch; (vi) maintaining reduced hours at the subject branch; (vii) retaining an automated teller machine (ATM) at the branch location; (viii) limiting lay-offs by relocating employees to a near-by branch; and (ix) donating the building back to the respective town for continued use by the community.

The commenter's concern regarding alleged gerrymandering of Community's AAs, was made after Community submitted a revised response to the FRB regarding its post-consummation proposed AAs, which stated that its original submission had inaccurately overstated Oneida's AAs and, as a result, the combined entity's proposed AAs. Community represented that the revised response was a correction to the initial error, and reflected the boundaries of Oneida's current AAs, which Community planned to adopt. In addition, in the revised response Community represented that it was continuing to evaluate the proposed combined AAs and might adjust them. Community's initial responses had stated that Oneida's AAs include all of Onondaga County and Oneida County, but the revised response clarified, as stated in Oneida's CRA PE, that Oneida's current AAs include portions of each of those two counties. The PE also stated that the AAs were defined in accordance with the requirements of the CRA regulation and did not arbitrarily exclude LMI geographies. Although Oneida's CRA PE stated that the delineation of its AAs complied with the requirements of the CRA regulation, that is not conclusive regarding whether combining Oneida's existing AAs with Community's existing AAs will comply with the requirements of the CRA regulation. The OCC reviewed the combined AAs proposed by Community in the August 18, 2015 revised response, as well as Community's other AAs in New York State and Northeastern Pennsylvania, and identified several concerns with the AA delineations.

Identified concerns included the exclusion from Community's current or proposed AAs of portions of certain counties; some of the excluded areas contained LMI census tracts and majority-minority census tracts where Community had lending activity in 2013 and 2014 and that were in relative proximity to the bank's branches. The CRA regulations specify that a bank's AAs *must*:

(1) Consist generally of one or more MSAs or metropolitan divisions ... or one or more contiguous political subdivisions, such as counties, cities, or towns; and (2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. . . .12 CFR 25.41(c).

However, the CRA regulations state that a bank *may*:

Adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers. 12 CFR 25.41(d).

As the Interagency Guidance included in the CRA Questions and Answers explains, whether a bank's AAs comply with the requirements of the CRA regulation is determined on a case-by-case basis after considering the facts relevant to the bank's AA delineation.<sup>15</sup> Following the

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<sup>15</sup> Information that the OCC will consider includes (i) the income levels in the bank's AAs and surrounding geographies; (ii) the locations of the bank's branches and deposit-taking ATMs; (iii) loan distribution in the bank's

identification of concerns during the OCC's review, Community committed to expanding its proposed combined AAs.<sup>16</sup> After taking into account information such as Community's size and financial condition, the revised AAs address identified concerns regarding AAs directly impacted by the proposed transaction, in light of the impact of the integration of Oneida's branches into Community's existing branch footprint. However, the OCC has continuing concerns with regard to Community's delineation of AAs in other communities served by the bank, particularly in southern central New York and Northeastern Pennsylvania. Moreover, since the 2012 CRA PE, Community has engaged in other transactions that have increased its branch network and impacted its CRA AAs, and the OCC's review indicates that Community has not consistently applied the standards articulated in 12 CFR 25.41 during re-evaluations of its AAs in connection with these expansionary activities.

### **b. Community Development Activities**

The stated purpose of the CRA is to encourage banks to help meet the credit needs of the local communities in which they are chartered, consistent with safe and sound banking practices. The CRA makes specific reference to the needs of LMI neighborhoods when charging Federal financial supervisory agencies with assessing a bank's record of meeting the credit needs of its community; however, the CRA regulation also places emphasis on other underserved communities. For example, banks can receive CRA consideration for CD activities conducted in designated distressed or underserved nonmetropolitan middle-income geographies. 12 CFR 25.12(g)(4)(iii). As discussed above, Community's branches are often located in rural areas and small towns within its geographic footprint. Community represented that it believes its community-oriented focus lends itself to more rural, less densely populated areas. Consistent with this approach, Community represented that it often serves the credit needs of underserved small towns and villages that larger institutions have exited over the course of the last twenty years. Community noted that in 40 percent of the towns where it does business it is one of only two or three banks serving the area's credit needs. Moreover, although not directly considered under the CRA, Community represented that 15 percent of its branches are in distressed or underserved nonmetropolitan middle-income geographies.

One of the ways that Community helps to meet the needs of its communities is through its CD activities. The CRA PE reflects that Community's CD lending has had a positive impact on its

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AAs and surrounding geographies; (iv) the institution's size; (v) the bank's financial condition; and (vi) the bank's business strategy, corporate structure, and production offerings. *See* CRA Q&As (§ \_\_.41(e)(3) – 1).

<sup>16</sup> Community committed to delineating its post-consummation AAs to include (unless otherwise stated all geographies discussed in this footnote are located in New York) (i) all of Oswego County, including the areas north of the Oswego River and the north shore of Oneida Lake; (ii) all of Oneida County, including the City of Utica; (iii) three census tracts previously excluded that form a triangle between the bank's Boiceville (Ulster County) and Fleischmanns (Delaware County) branches; (iv) the City of Binghamton and the census tracts south of the Susquehanna River and north of the state border; (v) all of Tioga County; (vi) all of Chemung County; (vi) the City of Ithaca and all of Tompkins County; and (vii), in Pennsylvania, the census tracts in Carbon County and Schuylkill County between the Lansford (Carbon County) and Lehighton (Carbon County) branches and the Hazelton (Luzerne County) branch.

CRA performance. Community also represented that since the conclusion of its most recent CRA PE, it has originated over \$20 million in CD loans. Community represented that its CD lending benefits LMI and minority individuals by financing affordable housing, transportation and other community services, and economic development.<sup>17</sup> In addition to benefiting LMI individuals through its CD lending, Community represented that it also actively serves the financial needs of the distressed and underserved nonmetropolitan middle-income census tracts where it has a branch presence through its CD lending and other outreach activities.<sup>18</sup>

In addition to its CD lending, Community represented that it serves the needs of its communities through its CD services and qualified investments and other outreach activities. Specifically, since the conclusion of its most recent CRA PE, Community has made approximately \$120 million in qualified investments in mortgage backed securities and municipal bonds<sup>19</sup> and approximately \$270,000 in donations. In addition, as discussed below, Community represented that as it expands its market share, it intends to take several measures to expand its outreach activities, staff, and other resources to service minority and LMI individuals across its AAs, including in the Buffalo-Niagara, Rochester, and Syracuse MSAs.

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<sup>17</sup> Examples of CD loans that Community has originated include (i) \$210,000 in loans to a nonprofit corporation serving primarily LMI individuals by providing community support services, including housing and transportation for children and adults with mental illness, intellectual disabilities, and autism – the loans were used to purchase transportation vehicles; (ii) \$120,000 in loans to a nonprofit organization that provides relief for the poor, distressed, or underprivileged, to lessen the burdens of government, neighborhood tensions, combat community deterioration, and aid the community by attracting new industry – the loans were used for the renovation of a five unit rental building that provides low-income housing; and (iii) a \$100,000 loan to an organization with the mission of promoting economic activity in New York State by providing innovative loans to small businesses, assisting partner banks in making such loans, and particularly, assisting minority-owned and women-owned businesses by offering credit opportunities not otherwise available to them – the loan was for the renewal of Community’s share of a note which funds New York State Business Development.

<sup>18</sup> Community represented that it has eight branches in Chautauqua County in census tracts designated as distressed or underserved nonmetropolitan middle-income geographies. Community represented that it has affiliations with certain organizations that benefit all of Chautauqua County, including the distressed and underserved geographies, including: (i) the Southern Tier Economic Development Organization, which provides gap financing to small businesses and (ii) the Chautauqua County Rural ministries, which provides rental assistance to low-income individuals. In addition, Community represented that it has an additional 19 branches in distressed or underserved nonmetropolitan middle-income census tracts across Franklin County, St. Lawrence County, and Schuyler County in New York, as well as Susquehanna County in Pennsylvania. Examples of CD loans that Community has originated that it represents are directly tied to particular distressed or underserved nonmetropolitan middle-income geographies include (i) a \$500,000 loan to a nonprofit agency that provides rehabilitative and support services to people with psychiatric disabilities and assistance with obtaining affordable housing for persons with special needs, many of whom are LMI; (ii) a \$200,000 loan to a medical services center serving such a census tract; and (iii) participation in the Adirondack Economic Development Corporation, an organization which offers a Small Business Loan Program to foster greater economic opportunities for the region’s residents.

<sup>19</sup> Community represented that it supports distressed and underserved nonmetropolitan middle-income geographies through its investment activities by purchasing municipal bonds issued by such communities within its branch network.

### **c. Products and Services**

Community represented that although it does not have any products or services specifically tailored or targeted to the needs of LMI individuals or minority individuals, it does offer products and services that benefit such individuals. Community represented that such products and services include (i) the Affordable Homeownership Grant Program,<sup>20</sup> (ii) the Guaranteed Rural Housing Program,<sup>21</sup> and (iii) mortgage lending programs through the State of New York Mortgage Agency (SONYMA).<sup>22</sup> Community represented that these programs have yielded over \$12 million in home mortgages to LMI borrowers over the last few years. In addition to these programs, Community represented that it offers No Closing Cost Mortgages and No Closing Cost Home Equity Loans and Lines of Credit. Community noted that LMI borrowers have accounted for 31 – 36 percent of its No Closing Cost mortgage loans over the last few years. Community represented that in addition to these lending products and programs, it offers a variety of free or low cost deposit products and services that meet the needs of its LMI communities, including, free checking, free savings, free online banking, and free bill pay.

With regard to Oneida, Community represented that Oneida also utilizes several lending programs and practices to meet the credit needs of LMI individuals. Community represented that these programs include the Community Action Program, Freddie Mac Home Possible Program, mortgage lending programs through SONYMA, and Federal Housing Association (FHA) and Veterans Administration (VA) loans. Further, Community represented that the mortgage and consumer loan products and affordable housing programs offered by Oneida and Community are similar in nature. Specifically, Community represented that like Oneida, it offers a portfolio loan product with low down payment requirements and a 97 percent loan-to-value (LTV), which it will continue to offer following consummation of the proposed transaction. In addition, Community represented that it began offering the Fannie Mae “My Community” program in August 2015.<sup>23</sup> Community represented that it will offer this “My Community” program in Oneida’s current markets following consummation of the proposed transaction.

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<sup>20</sup> Community represented that it offers an affordable housing mortgage product called the Affordable Homeownership Grant Program for LMI individuals through a number of non-profit agencies involved in affordable housing. Community represented that it provides mortgage loans through this program that feature an interest rate below the prevailing Community conventional no closing cost mortgage rates and pays for all closing costs.

<sup>21</sup> This program assists approved lenders in providing LMI households “the opportunity to own adequate, modest, decent, safe, and sanitary dwellings as their primary residence in rural areas.” The program provides a 90 percent loan note guarantee to approved lenders in order to reduce the risk of extending 100 percent loans to eligible rural home buyers. Additional information on this program is available at <http://www.rd.usda.gov/programs-services/single-family-housing-guaranteed-loan-program>.

<sup>22</sup> Additional information on the SONYMA loan programs is available at <http://www.nyshcr.org/Programs/>.

<sup>23</sup> Community represented that FNMA’s “My Community” first-time home buyer program is a program that targets LMI first-time home buyers and allows for loans with 3 percent down payments, reduced private mortgage insurance coverage requirements, more flexible underwriting standards, and more flexibility in the sources of funds used for the down payment.

Moreover, Community represented that the Fannie Mae “My Community” program will replace the Freddie Mac Home Possible Program currently offered by Oneida.<sup>24</sup> Community also represented that it will offer loans guaranteed by the USDA’s Guaranteed Rural Housing program in eligible Oneida markets following consummation of the proposed transaction. In addition, Community represented that following consummation of the proposed transaction, it intends to serve the needs of Oneida’s communities by participating in the Madison County Community Action Program, which provides first-time homebuyers with down payment and closing cost assistance and homebuyer education. Community also noted that it works with similar agency programs in several of its existing markets.

Community stated that it does not intend to continue offering FHA and VA loans currently offered by Oneida following consummation of the proposed transaction; however, Community noted that demand for such products has been low in Oneida’s markets<sup>25</sup> and it believes it offers products not currently offered by Oneida that meet a similar need. Specifically, Community asserted that its No Closing Cost products, the Fannie Mae “My Community” program, and the USDA Guaranteed Rural Housing program would meet the needs of borrowers interested in FHA or VA loans. With regard to non-lending products, Community represented that it does not intend to offer a student checking account similar to that offered by Oneida; however, Community intends to convert Oneida’s student checking accounts to Community’s free checking account product.<sup>26</sup> Community further represented that it does not intend to offer the online virtual check register service (a service that allows Oneida customers to electronically enter outstanding debits to track their running balance); the email, rush, and gift payment services; or the mobile text services, because there is either low demand for these services, addition of the services would require significant changes to Community’s platform while providing little benefit, or Community believes it offers comparable or better services.

#### **d. Compliance Enhancements**

In addition to the specific areas discussed above, Community represented that it has long recognized the importance of compliance and of continuing to strengthen its efforts in serving its communities as the bank grows. As such, Community represented that it formed an executive compliance committee<sup>27</sup> in 2013 to respond to its increasing compliance requirements and regulatory initiatives and developments. Community represented that this committee meets on a

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<sup>24</sup> Community represented that these two programs offer comparable features and benefits.

<sup>25</sup> Community represented that, since 2013, Oneida has originated only 10 FHA or VA loans.

<sup>26</sup> Community represented that unlike Oneida’s student checking account, which offers four free foreign ATM transactions per month but charges for checks exceeding five per month, its free checking account product does not offer any free foreign ATM transaction but does not charge per check fees.

<sup>27</sup> Community represented that its executive compliance committee is comprised of cross-functional senior leaders at the bank, including, the Chief Banking Officer, General Counsel, Chief Risk Officer, Associate General Counsel/Corporate Compliance, Chief Compliance Officer, and Director of Internal Audit.

quarterly basis, which facilitates communication and awareness at the business-line level and allows the bank to appropriately allocate resources to identified compliance risks. Community further represented that it has improved its HMDA and CRA data collection, reporting, and analysis capabilities through its extended utilization of compliance analytics software.<sup>28</sup>

In addition to these changes, Community represented that it formed a separate CRA committee in July 2015. Community represented that the CRA Committee will provide oversight and strategic thinking related to the bank's efforts to meet the needs of its communities. Community further represented that the CRA committee is tasked with (i) assessing community needs and ensuring that Community's products are responsive to such needs; (ii) assessing and engaging in increased minority outreach and marketing; (iii) ensuring that Community's CRA outreach and marketing efforts effectively educate customers and communities about financial literacy and the products that the bank offers; (iv) monitoring CRA marketing efforts; (v) improving community involvement and investments; and (vi) ensuring continual efforts to educate new and existing employees about affordable housing options and community involvement expectations. Community represented that the CRA committee plans to meet on a monthly basis. Further, Community represented that, thus far, the CRA committee has been most impactful in creating a formal platform among senior leaders at the bank to discuss how best to meet the needs of the bank's communities and how to best strengthen CRA efforts going forward. In addition, Community represented that the CRA committee has developed action plans related to the bank's affordable housing efforts, its CRA training, its CRA investment activities, and expanding its Spanish language marketing.

Community represented that as it continues to grow in size it acknowledges that additional measures should be taken to reach LMI borrowers within its communities. Specifically, Community represented that it intends to implement four measures to maintain and expand its outreach activities, staff, and other resources that serve the needs of LMI individuals in the proposed combined AAs. These measures include (i) expanding the number of lenders the bank has in the field who are qualified to offer USDA loans;<sup>29</sup> (ii) beginning to offer loans through the FNMA "My Community" first-time home buyer program; (iii) working to expand SONYMA loans into all markets in its lending footprint that are SONYMA eligible; and (iv) participation in the Federal Home Loan Bank of New York First Home Club (First Home Club) to offer financing to eligible first-time home buyers.<sup>30</sup>

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<sup>28</sup> Community referred to its compliance analytics software, which is Wolters Kluwer Financial Services' "Wiz" Software, as the PCI Wiz System.

<sup>29</sup> Community represented that it performed USDA training in April in an effort to grant authority to originate USDA loans to more of the bank's lenders.

<sup>30</sup> Community represented that the First Home Club provides down payment and closing cost assistance by granting \$4 in matching funds for each \$1 saved in a dedicated account, up to \$7,500 in matching funds, to eligible first-time homebuyers purchasing a home through approved member community lenders for pre-set intervals and terms.

## **B. Fair Lending**

The commenter expressed concerns regarding Community's level of applications received from, and loans originated to, African American borrowers and Hispanic borrowers in the Buffalo-Niagara, Rochester, and Syracuse MSAs. As noted above, citing 2013 HMDA data, the commenter asserted Community's lending practices have worsened since the submission of prior comments from the commenter related to previous transactions.<sup>31</sup>

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 as part of the bank's lending performance. Community's and Oneida's most recent CRA PEs state that the OCC and the FDIC, respectively, did not find evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs.

Regarding the lending concerns raised by the commenter, it should be noted that HMDA data alone are not adequate to provide a basis for concluding that a bank has 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.

Since the most recent CRA PEs, the OCC has conducted a number of supervisory activities to assess fair lending risk. These activities included reviewing Community's and Oneida's publicly available 2013 HMDA data during consideration of this application. In considering the proposed transaction, the OCC reviewed Community's and Oneida's 2013 HMDA data in the geographic regions referenced by the commenter. The OCC's review of the 2013 HMDA data revealed lending data similar to that cited by the commenter. Nonetheless, after accounting for other information available to the OCC as part of its regulatory responsibilities, the OCC's reviews have not resulted in findings of discrimination related to Community's or Oneida's home mortgage lending.

In responding to the commenter's fair lending-related concerns, Community represented that it has procedures and policies in place to ensure that its lending practices are based on criteria that ensure safe and sound lending and equal access to credit by creditworthy applicants regardless of race, ethnicity, national origin, gender, religion, or other prohibited bases. Specifically, Community represented that it maintains a board-approved Fair Lending Policy. Community further represented that its Fair Lending Policy requires an annual fair lending risk assessment by its Compliance Department, the results of which are communicated to the Board of Directors. In

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<sup>31</sup> Community represented that it last received a comment from the commenter in 2004 and that comment did not relate to the bank's lending performance.



addition, Community represented that its Internal Audit Department reviews fair lending on an annual basis, and reviews CRA and HMDA on a bi-annual basis. Community represented that the findings of these reviews are monitored until satisfactory resolution has occurred. Community further represented that it has a proactive Compliance Management System, which takes into account (i) appropriate Board of Directors and Senior Management oversight; (ii) comprehensive policies, procedures and controls, training; (iii) management of regulatory changes; (iv) compliance monitoring; (v) consumer complaint tracking and resolution; (vi) and compliance audit. Community represented that responses to observations made on CRA and fair lending monitoring reviews are typically verified during the next scheduled compliance monitoring review. In addition, Community represented that it maintains Customer Complaint Policy and Procedures, which provides procedures for routing and handling customer complaints. Community represented that substantive complaints<sup>32</sup> are directed to the Chief Risk Officer to ensure timely and appropriate resolution and tracking to help identify and address potential systemic issues. Community further represented that it maintains an Audit/Compliance/Risk Management Committee of the Board of Directors for the purpose of assisting the Board in fulfilling its compliance oversight responsibilities. Community represented that this committee is responsible for approving the bank's compliance management system and approving its policies that address consumer protection and fair lending laws. Further, Community represented that this committee receives briefings on compliance related topics including the major findings noted in the bank's Internal Audit reviews.

Community also represented that it has a "second review" process for any HMDA reportable loan denial of a minority applicant or sole female applicant. Specifically, any loan from such an applicant that Community intends to decline is required to be sent to a "Special Handling" group for evaluation prior to any denial decision being made and conveyed to the customer(s). Community further represented that all HMDA-reportable declined loan applications that require a second review are monitored on an ongoing basis to ensure that the evaluation was performed and that, where necessary, steps were taken to remediate errors. In addition, Community represented that its Compliance Department conducts its own review of declined loans to ensure compliance and distributes the results of its second review monitoring activities to the applicable department heads for appropriate action when necessary. Community further represented that in order to ensure that loan approvals are equitable regardless of gender, all applications from sole male applicants that meet certain underwriting criteria are sent to the "Special Handling" group for evaluation prior to an approval decision being made and conveyed to the customer. In addition, Community represented that the "Special Handling" group monitors compliance with the second review process at least monthly.

Community further represented that it provides ongoing fair lending training to all affected employees at least annually, including loan officers, and personnel involved in underwriting, appraisal review, loan servicing, credit administration, collections, and foreclosures. Community also represented that special fair lending training may be scheduled as needed. Community

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<sup>32</sup> Community represented that substantive complaints would include a routine operational complaint that is thematic, repetitive, or potentially systemic, or a complaint that implied or alleges a violation of law or regulation, such as Regulation B or the Fair Housing Act, or that has CRA ramifications.

represented that when employees are brought on as a result of a merger, it considers those employees new hires for training purposes and they are provided with specially scheduled compliance training promptly after the transaction is completed. Community stated that fair lending training is provided by the Compliance Officer or Compliance Manager, or it may be delivered by the bank's automated online training solution. Community represented that all active employees subject to annual fair lending training in 2014 successfully completed their assigned training.

In order to monitor its CRA and fair lending compliance, Community stated that throughout 2014 and 2015 it has been developing a forward-looking strategy to enhance its processes for effectively evaluating annual HMDA and CRA data. Community represented that, as a result of this evaluation, it purchased additional demographic data and peer data modules for its data analytics system, which will enable the bank to perform more meaningful analyses of its CRA performance and fair lending performance. Community represented that training focusing on performing annual CRA Self-Assessments and Fair Lending Reviews was concluded in April 2015. Community further represented that its Compliance Department recently completed its first enhanced CRA and Fair Lending self-analyses using the new data and that the Compliance Department has met on several occasions to digest and interpret the data from the first four months of the year. Moreover, Community represented that the Compliance Department intends to pull reports periodically throughout the year, brief the CRA Committee, and address any gaps that may be identified through the process.

Community addressed the commenter's concerns regarding its lending to minority individuals, as reflected in its HMDA data, by providing information related to its lending practices. Specifically, Community represented that it seeks out all qualified applicants, and as noted above, provides equal access to credit by creditworthy applicants regardless of race, ethnicity, national origin, gender, religion, or other prohibited basis. Community represented that its products and programs are equally appealing to all races and ethnicities. However, Community discussed several innovative and flexible products that it believes help to meet the credit needs of LMI individuals and minority individuals. As discussed above, these lending practices include the Affordable Homeownership Grant Program, the Guaranteed Rural Housing Program, and mortgage lending programs through SONYMA. Community represented that these products are promoted through in-branch discussions and Community's website and through other agencies, organizations, and real estate providers. In addition to these innovative and flexible lending products, as discussed above, Community represented that it also offers No Closing Cost Mortgages and No Closing Cost Home Equity Loans and Lines of Credit. Community represented that these products are marketed through print advertisements, direct mailings, radio ads, billboards, and online advertising, which is targeted to reach all individuals within a reasonable proximity of the bank's branches.<sup>33</sup>

With regard to marketing and outreach, Community represented that it does not design its advertisements for any specific background, income level, or ethnicity. Rather, Community

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<sup>33</sup> Community represented that it determines what is reasonable based on factors such as population density, competition, and surrounding geographies.

represented that it employs a broad, inclusive approach to marketing designed to appeal to all segments of the population. Further, Community represented that to the extent photographs are used, visual marketing campaigns are designed to display culturally diverse images and actors. Concerning its outreach, Community represented that bank employees have donated their time and expertise on behalf of the bank to several organizations within the bank's AAs that have community development as their primary mission and that also serve minority communities. Community represented that such organizations include affordable housing agencies, business development organizations, and women and children advocacy organizations.

To serve the Spanish speaking population in its AAs, Community represented that it has increasingly expanded its Spanish language capabilities, resources, and marketing across its AAs, including by (i) utilizing Spanish language posters and brochures in branch locations with high Spanish speaking populations; (ii) employing at least 14 Spanish speaking employees (who are also accessible to assist customers needing translation assistance in any of the bank's locations); (iii) providing Spanish language capabilities on a growing number of ATMs; and (iv) providing Spanish language telephone banking services. Community represented that it intends to increase its Spanish language capabilities and resources in the coming years by increasing in-branch Spanish merchandising, increasing Spanish advertising in certain markets, and exploring a Spanish language version of the bank's website.

Community also acknowledged that, as it continues to grow in size, additional measures should be taken to reach minority individuals and LMI individuals. To this end, Community represented that following consummation of the proposed transaction it intends to implement four measures to maintain and expand its outreach activities, staff, and other resources to continue to service minority individuals in its expanded AAs. Specifically, Community represented that it intends to (i) utilize its CRA Committee to explore and assess enhanced CRA activities and initiatives in conjunction with the bank's CRA officer and a new compliance analyst the bank intends to hire; (ii) hire a compliance analyst, whose duties would include spearheading CRA initiatives to identify and facilitate minority outreach, and to monitor, assess, and report to senior executives on the effectiveness of such outreach activities; (iii) continue to encourage staff to engage in local community events, organizations, charities, and boards, and conduct more extensive evaluation and oversight of these relationships as part of the bank's CRA oversight; and (iv) maintain a marketing approach that attracts and is inclusive of all demographics within the bank's branch network, and, as noted above, increase Spanish language marketing, resources, and capabilities where applicable.

## **V. Summary and Conditions of Approval**

As stated above, the CRA requires that the OCC consider the records of the banks' performance in helping to meet the credit needs of their communities, including LMI individuals and geographies, when evaluating applications under the BMA. Under the CRA, a bank delineates the AAs within which the OCC evaluates its record of helping to meet the credit needs of its communities by including those geographies where its branches are located, and the surrounding geographies as required and appropriate under the regulation. As discussed above, the OCC has

continuing concerns related to the manner in which Community has delineated, or proposed to delineate, its AAs.

Based upon review of the respective records of the institutions involved in the proposed transaction, the application, the public comments and Community's response to the comments, information provided by Community in response to requests for additional information by the OCC and the FRB relating to the pending transaction, and supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, the OCC concludes that the banks' records of helping to meet the credit needs of their communities and the probable effects of the convenience and needs of those communities are consistent with approval of the applications, subject to the following conditions.

1. Community shall comply with all the terms of its Assessment Area delineation commitment set forth in its commitment letter to Marva Cummings, Director of District Licensing dated October 29, 2015.
2. Community shall submit a CRA Assessment Area Delineation Policy to the OCC for review and written determination of no supervisory objection within 90 days of this decision. Community's CRA Assessment Area Delineation Policy shall conform with the requirements of 12 CFR 25.41. In particular, the policy shall detail the process for re-evaluating, and modifying as appropriate, the bank's assessment area delineations in the event of an expansion or contraction of the bank's branch or deposit-taking ATM footprint.
3. After receiving a written determination of no supervisory objection to the CRA Assessment Area Delineation Policy, Community shall re-evaluate and modify as appropriate its assessment areas in accordance with the new policy. Within 30 days of receiving the written determination of no supervisory objection on the policy, Community shall submit its revised assessment area delineations to the OCC for written determination of no supervisory objection on the revision.

In connection with the acquisition of certain assets and activities by Community from Oneida and commitments previously made by Community, the approvals are also subject to the following conditions.

4. For a period of two years following consummation, Community is permitted to retain its investment in the office building at 5232 Witz Drive, North Syracuse, New York. This investment must be terminated within the two-year period unless, the OCC determines that this investment is permissible or unless the OCC grants an extension of the time period.

George J. Getman, Esq.  
Community Bank, National Association  
OCC Control Numbers: 2015-NE-Combination-142284, 2015-NE-Subs&Equities-14231,  
2015-NE-Subs&Equities-142315

5. Within 60 days of consummation, Community shall divest of certain securities, if still held by Oneida at the time of consummation. These securities include shares of Federal Home Loan Mortgage Corporation preferred stock, an AMF Fund, and MetLife preferred stock.

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

## **VI. Consummation Requirements**

The Northeastern District Office must be advised in writing 10 days in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice’s injunction period and any other required regulatory approval.

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

- Confirmation that all other required regulatory approvals, nonobjections, or waivers have been received.

If the merger is not consummated within one year from the approval date, the conditional approval shall automatically terminate, unless the OCC grants an extension of the time.

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

If you have any questions please contact Laurie Powell, Licensing Analyst at (917) 344-3432 or [laurie.powell@occ.treas.gov](mailto:laurie.powell@occ.treas.gov).

Sincerely,

Stephen A. Lybarger  
Deputy Comptroller of Licensing