



**CRA Decision #177  
October 2016**

September 22, 2016

Paul N. Harris, Esq.  
General Counsel & Secretary  
KeyBank National Association  
127 Public Square  
Cleveland, Ohio 44114

Subject: Application for the merger of First Niagara Bank, National Association, Buffalo, New York into KeyBank National Association, Cleveland, Ohio  
OCC Control Number: 2015-CE-Combination-146240

Dear Mr. Harris:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge First Niagara Bank, National Association, Buffalo, New York (First Niagara) into KeyBank National Association, Cleveland, Ohio (KeyBank), under the title and charter of the latter. KeyBank is authorized to retain its own main office as the main office of the resulting bank, and to retain and operate as branches its existing branches and the main office and branches of First Niagara. The OCC also approves the retention of nine operating and two financial subsidiaries, and one non-controlling equity investment of First Niagara that engage in bank permissible activities. A list of the proposed subsidiaries and investments and their related activities is attached. Finally, the OCC authorizes the retention of First Niagara's Community Development Corporation and certain community development investments that were made directly by First Niagara as public welfare investments pursuant to 12 USC 24(Eleventh) and 12 CFR 24, as discussed below.

The 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. Background and the Transaction**

KeyBank is a national bank with headquarters in Cleveland, Ohio, and a direct wholly-owned subsidiary of KeyCorp, an Ohio corporation headquartered in Cleveland, Ohio, and a bank holding company that has elected to be a financial holding company under the Bank Holding Company Act of 1956 (BHC Act). KeyBank provides deposit, lending, cash management, and investment products and services to individuals and businesses. KeyBank owns or controls several subsidiaries that engage in a wide range of activities permissible for national banks,

including equipment finance, retail securities brokerage, and insurance agency and institutional asset management services. As of June 30, 2016, KeyBank had approximately \$99 billion of total assets, \$78 billion of total deposits, and 1006 branches operating in Ohio, New York, Washington, Oregon, Indiana, Colorado, Utah, Maine, Florida, Idaho, Michigan, Alaska and Vermont.

First Niagara is a national bank headquartered in Buffalo, New York. It became a subsidiary of KeyCorp on August 1, 2016,<sup>1</sup> but previously was owned by First Niagara Financial Group, Inc. (FNFG), a bank holding company headquartered in Buffalo, New York. As a result of the acquisition of FNFG by KeyCorp, KeyBank and First Niagara are affiliates.

First Niagara provides its retail and business customers with banking services, including residential and commercial real estate loans, commercial business loans and leases, consumer loans, and wealth management products, as well as retail and commercial deposit products. As of June 30, 2016, First Niagara had approximately \$40 billion of total assets, \$30 billion of total deposits, and 409 branches operating in New York, Pennsylvania, Connecticut, and Massachusetts.

The OCC and the Federal Reserve Board received numerous comment letters both in support of and in opposition to the proposed merger. The OCC has carefully considered the concerns of the commenters opposing the merger as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including financial and managerial resources and future prospects, financial stability, performance under the Community Reinvestment Act, and the probable effects of the transaction on the convenience and needs of the communities to be served. The public comments will be discussed, as applicable, under each of the statutory and regulatory factors throughout this letter.

## **II. Legal Authority for the Transaction**

KeyBank applied to the OCC for approval to merge First Niagara with and into KeyBank under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal), 12 USC 1831u, which authorizes mergers between insured banks with different home states, 12 USC 215a-1, and the Bank Merger Act, 12 USC 1828(c).

Mergers conducted pursuant to Riegle-Neal are subject to the requirements in 12 USC 1831u(a)(5) and 1831u(b). These are: (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal's limits; (ii) compliance with certain state filing requirements, if any; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills. The OCC has considered these factors and determined that the merger satisfies all applicable requirements in Riegle-Neal. Additionally, the resulting bank following the merger is authorized to retain and operate all of the offices of both banks under 12 USC 36(d) and 1831u(d)(1).

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<sup>1</sup> In connection with the parent company transaction, an application was submitted by KeyCorp to the Federal Reserve System pursuant to Sections 3(a)(3) and 3(a)(5) of the BHC Act, which was approved on July 12, 2016 in FRB Order No. 2016-12.

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

The OCC also reviewed the proposed merger under the criteria of the Bank Merger Act (BMA), and applicable related OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served. 12 USC 1828(c)(5). 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). 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 discussed in more detail below, the OCC has found that approval of the application is consistent with these factors, subject to the conditions set forth in Section VII below.<sup>2</sup>

#### **A. Competitive Analysis**

Under the BMA, the OCC may not approve a merger that would result in substantially adverse competitive effects, unless these effects are clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the communities to be served.

The Federal Reserve System and the OCC received comments from over 20 commenters objecting to the transaction on the grounds that it would have significant anticompetitive effects in certain upstate New York banking markets, particularly the Buffalo, New York market.

In connection with the transaction, on April 28, 2016, KeyCorp and FNFG entered into an agreement with the United States Department of Justice (DOJ) to divest 18 branches in and around the Buffalo, New York area to address competitive concerns. The DOJ conducted a detailed review of the potential competitive factors involved in the proposed merger, and on May 11, 2016 advised the OCC that it did not find any significantly adverse effect on competition.

As previously noted, the merging banking institutions became affiliated on August 1, 2016, following the consummation of the related holding company merger. As a result, the bank level merger will have no effect on competition.

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<sup>2</sup> In addition, under the BMA, the OCC may not approve any interstate merger transaction that results in the resulting insured national bank controlling more than 10 percent of the total amount of deposits of insured depository institutions in the United States. *See* 12 USC 1828(c)(13). The OCC has found that approval of the application is consistent with this factor. In addition, under 12 USC 1852, as implemented by Regulation XX, 12 CFR 251, an insured national bank generally may not merge with or acquire all or substantially all of the assets of another company, if the total consolidated liabilities of the acquiring institution upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the preceding calendar year. The OCC has examined the proposed transaction in light of these provisions and determined that the proposed transaction is permissible.

## **B. Financial and Managerial Resources and Future Prospects**

Based on information gathered from various sources, including quarterly financial reports, information provided in the application, and supervisory information, both KeyBank and First Niagara are in overall satisfactory financial condition. Both banks have capital ratios well above those necessary to be considered well capitalized. In addition, each bank has satisfactory earnings, asset quality, and liquidity. Future prospects for the resulting bank are positive. KeyBank will be well capitalized at consummation, with capital ratios well above the minimum to be considered well capitalized. Financial projections provided as part of the application appear reasonable, with the resulting bank having satisfactory capital ratios and earnings prospects. The projections reflect a reasonable rate of growth, and reflect earnings sufficient to support operations and maintain adequate capital and reserves. The resulting bank will have adequate resources to absorb the costs of the merger and to complete integration of the banks' operations. The resulting bank will have adequate managerial resources drawn from both institutions. The combined management team has extensive experience in banking and a record of performance sufficient to lead the resulting bank. In addition, the management teams of both institutions have experience successfully completing mergers and other business combinations.

Several commenters expressed concerns regarding the share price offered for First Niagara. It is noted that the board of directors and shareholders of FNFG voted in favor of the transaction based upon the consideration KeyCorp offered for FNFG shares.

Some commenters expressed concerns that the transaction would benefit First Niagara executives, and criticized payments that certain First Niagara executives may receive upon consummation of the proposal. Payments to senior First Niagara executives related to this transaction were publicly disclosed. Both applicant and target boards of directors and shareholders approved the transaction. In addition, the OCC reviews officer compensation as part of its supervisory examinations and will evaluate the compensation practices of the resulting bank using applicable regulatory guidance.

The OCC reviewed information as discussed above, and finds that approval of the application is consistent with the financial, managerial, and future prospects evaluative factors.

## **C. Convenience and Needs**

The OCC must also consider the convenience and needs of the communities to be served by the resulting bank. As discussed in detail under Section V(B), the OCC has concluded that the probable effect of the merger on the convenience and needs of the communities to be served is consistent with approval.

## **D. Effectiveness in Combating Money Laundering**

The OCC must also consider the effectiveness of any insured depository institution involved in a merger transaction in combating money laundering activities. KeyBank and First Niagara maintain satisfactory Bank Secrecy Act and anti-money laundering controls. Both banks have

established acceptable compliance and monitoring programs. The OCC finds that the records of KeyBank and First Niagara in combating money laundering activities are consistent with approval.

### **E. Risk to the United States Banking or Financial System**

12 USC 1828(c)(5) requires the OCC to consider, when reviewing transactions under the BMA, the risk to the stability of the United States banking or financial system (USFS). The OCC has looked to six criteria when applying this standard: (i) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining firms; (ii) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining firms; (iii) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (iv) whether the transaction would materially increase the extent to which the combining firms contribute to the complexity of the financial system; (v) whether the transaction would materially increase the extent of cross-border activities of the combining firms; and (vi) the relative degree of difficulty of resolving the combined firm.

Applying these standards, the OCC concludes that the proposed merger does not pose a risk to the stability of the USFS. Key considerations leading to this conclusion are: (i) the resulting bank will have approximately \$133 billion in total assets and be the 18<sup>th</sup> largest United States bank by asset size, and will hold less than one percent of nationwide deposits, far below the nationwide limit of 10 percent; (ii) neither KeyBank nor First Niagara engages in any activities that are critical to the functioning of the USFS, and there are many competitors in the markets served by KeyBank (retail and commercial banking, commercial leasing, investment management, consumer finance, commercial mortgage servicing and special servicing and investment banking products and services to individual, corporate and institutional clients) and First Niagara (residential and commercial real estate loans, commercial business loans, consumer loans, wealth management products, and retail and commercial deposit products); (iii) neither KeyBank nor First Niagara engages, nor will the resulting bank engage, in any business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the resulting bank, and the resulting bank will have limited interconnectedness; (iv) both banks offer lending and deposit products to consumers and businesses and the resulting bank will have a low level of complexity that will not hinder its timely and efficient resolution in the event it were to experience financial distress; (v) KeyBank currently engages in very limited cross-border activities, and First Niagara has no locations or material operations outside the United States, and does not engage in any significant cross-border activities; and (vi) although the merger will result in a larger bank, based on the above considerations, resolving the resulting institution would not be so difficult or costly that it would increase the risk.

As indicated earlier, two commenters expressed concerns relating to the resulting bank being “too big to fail” and posing undue risk to taxpayers in the event of a default. As noted above, the OCC has reviewed the transaction under the OCC’s financial stability review framework, and has determined that the merger will not pose an undue risk to the stability of the USFS.

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

The Community Reinvestment Act (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. 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). Accordingly, the OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. Based on this review, the OCC has concluded that the banks' records of performance under the CRA are consistent with approval of this application, subject to the conditions discussed in Section VII of this letter.

##### **A. KeyBank's CRA Performance**

KeyBank's most recent CRA PE is dated October 1, 2011. The bank's overall rating was "Outstanding."<sup>3</sup> The major factors that supported this rating included excellent lending performance, good investment performance, and excellent service performance.

With respect to lending performance in all three of the bank's primary rating areas (i.e., the states of Ohio, New York, and Washington), examiners found borrower distribution to be good overall. Home Mortgage Disclosure Act (HMDA) loan distribution by borrower was excellent in one primary rating area and good in the two remaining areas and borrower distribution of small loans to businesses was adequate in all three primary rating areas. Overall geographic distribution was good in two primary rating areas and adequate in one. HMDA geographic distribution was good in two of the primary rating areas and adequate in the third, and geographic distribution of small loans to businesses was excellent in two primary rating areas and good in the third primary rating area. Lending volumes were adequate for both HMDA and small business loans. Moreover, community development (CD) lending was significantly positive and enhanced the bank's lending performance to excellent in two primary rating areas. The elevated ratings were based on the significance of CD volume, innovativeness, complexity, and level of KeyBank's responsiveness to community needs. In addition, lending performance in two of thirteen non-primary rating areas was elevated to excellent based on significant CD lending.

KeyBank's investment rating was based on a number of factors, including its good volume of qualified community development investments and grants. Investment performance was excellent in one primary rating area and good in another. Performance in the third primary rating area was adequate. The excellent performance in limited-scope assessment areas (AAs) had a positive impact on overall performance in the third rating area. Further, KeyBank demonstrated good responsiveness to community needs for affordable housing primarily through the purchase of Low Income Housing Tax Credits (LIHTCs), which were found to be the foundation of

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<sup>3</sup> During the course of this evaluation, examiners reviewed reported HMDA loans and small business/small farm loan originations from January 1, 2008 through June 30, 2011. Investments, retail, and community development activities (loans and services) were evaluated from July 1, 2008 through September 30, 2011. A copy of the CRA PE is available at [http://www.occ.gov/static/cra/craeval/OTS/CRAE\\_17945\\_20070312\\_64.pdf](http://www.occ.gov/static/cra/craeval/OTS/CRAE_17945_20070312_64.pdf). KeyBank was evaluated under the large bank CRA examination criteria, and received an Outstanding rating on the lending and service tests, and a High Satisfactory rating on the investment test.

KeyBank's investment strategy. LIHTC-funded projects, which provide affordable housing to LMI individuals, were offered through Key Community Development Corporation, a KeyBank affiliate. To a lesser degree, KeyBank responded favorably to community needs for revitalization and stabilization of LMI neighborhoods. Moreover, KeyBank made significant investments in LIHTC-funded projects that routinely involved collaborative efforts among a number of funding sources, including government entities, private equity funds, financial institutions, and other private investors. These investments were responsive to affordable housing and revitalization and stabilization needs throughout KeyBank's AAs.

KeyBank's service performance rating was based on various factors, including that its delivery systems were found to be readily accessible to all portions of the bank's AAs. Branch distribution was found to be excellent in the three primary rating areas. Access to banking facilities and services was enhanced in primary rating areas by offices located in middle-income geographies that were in close proximity (i.e., generally located across the street) to moderate-income geographies. In addition, KeyBank's record of opening and closing branch offices improved the accessibility of delivery systems in LMI geographies. Within the primary rating areas, branch hours did not vary in a way that inconvenienced portions of the AAs, particularly in LMI geographies. KeyBank offered similar products and services throughout its branch network, and some retail services were tailored for LMI geographies and individuals. Lastly, KeyBank offered a relatively high level of CD services in its primary rating areas. The bank provided excellent CD services in Ohio, its largest primary rating area, and a good level of CD services in its remaining primary rating areas.

## **B. First Niagara's CRA Performance**

In its most recent CRA PE, dated March 12, 2007 and prepared by the Office of Thrift Supervision (OTS), First Niagara was assigned an overall "Satisfactory" CRA rating.<sup>4</sup> The major factors that contributed to this rating<sup>5</sup> included that the vast majority of the bank's lending was originated within its AAs, even though levels of lending varied among specific AAs. The bank's geographic distribution of its residential lending varied by AA, but was adequate overall. The bank's distribution of home loans based on borrower income was reasonable overall, but varied from excellent to poor depending on the AA in question. Loan volume in LMI geographies was adequate overall, but was noted as poor in several AAs. In several AAs, the bank had an excellent volume of multifamily lending, particularly in LMI census tracts. In addition, the bank displayed a consistently excellent level of small business lending throughout its AAs. This included loans to businesses with revenues of less than \$1 million, as well as small dollar loans.

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<sup>4</sup> The evaluation period consisted of the three year period between 2004 and 2006. A copy of the CRA PE is available at [http://www.occ.gov/static/cra/craeval/OTS/CRAE\\_17945\\_20070312\\_64.pdf](http://www.occ.gov/static/cra/craeval/OTS/CRAE_17945_20070312_64.pdf). Specifically, First Niagara was evaluated using OTS Large Institution Examination Procedures and received a High Satisfactory on the lending test, an Outstanding on the investment test, and a High Satisfactory on the service test.

<sup>5</sup> Since the conclusion of the OTS's CRA PE for First Niagara, the OCC cited First Niagara for a violation of Section 5 of the Federal Trade Commission (FTC) Act for having engaged in deceptive practices associated with its overdraft practices. The OCC issued a Consent Order to First Niagara on September 6, 2016 requiring corrective actions. See Section VII of this letter. The Consent Order will be available on the OCC's web site in the near future.

In addition, First Niagara had extensively used flexible, innovative, or alternative lending programs to help make credit available to LMI borrowers within its AAs. The bank had a very good record of community development lending in its AAs and had utilized Federal Home Loan Bank programs extensively.

Lastly, First Niagara's overall performance under the investment test was excellent, and the bank's delivery systems were accessible to all portions of its AAs. During the review period, First Niagara provided a satisfactory level of community development services to its communities.

## **V. Public Comments and Analysis**

Under the BMA, the OCC must consider the convenience and needs of the communities to be served by the resulting bank.<sup>6</sup> In evaluating the application, the OCC reviewed: (i) the banks' CRA records of performance; (ii) written public comments; (iii) information provided by KeyBank to the OCC in response to public comments and additional information requests (AIR) and information provided by KeyCorp in response to several requests for information by the Federal Reserve Bank of Cleveland relating to KeyBank's application to acquire FNFG (collectively, the AIR Responses); and (iv) information available to the OCC as a result of its supervisory responsibilities.

### **A. Public Comments Received**

More than 385 comments in support of the application, and more than 65 comments in opposition to the application, were received by the Federal Reserve Board and the OCC. Commenters in support of the transaction praised KeyBank for its community support, especially its community outreach efforts and economic support of various community development efforts. These commenters regard KeyBank as a community partner, and proffered that approval of the transaction will enable KeyBank to provide the communities it serves increased resources and support.

Commenters in opposition to the transaction expressed concerns or criticisms about issues pertaining to various aspects of the banks' activities, or perceived results of the merger transaction, including but not limited to: (i) KeyBank's branch network, especially post-merger in light of proposed branch closures and divestures in upstate New York; (ii) potential negative impact on customer access to financial products and services across the resulting bank's footprint, especially in underbanked communities; (iii) potential negative impact on customer access to affordable banking products, especially home mortgage and small business loans; and (iv) KeyBank's record of lending to LMI borrowers or communities in certain Metropolitan Statistical Areas (MSAs).

In addition, commenters expressed concerns regarding various aspects of each bank's CRA activities, including concerns regarding KeyBank's ability to serve First Niagara's markets.

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

Many commenters stated that the OCC should condition approval of this application on KeyBank's adoption of a strong community benefits plan.<sup>7</sup>

In response to many of the concerns raised by commenters, KeyBank stated that both banks are strongly committed to serving their communities,<sup>8</sup> particularly in LMI communities, as demonstrated by their respective records under the CRA, including by KeyBank's eight consecutive overall Outstanding CRA performance ratings. In addition, KeyBank stated that since its last CRA PE dated October 2011, it has provided more than \$2.6 billion in community development loans, supporting activities including affordable housing, economic development, and community services targeted to LMI persons or communities and activities supporting the revitalization and stabilization of LMI areas. Further, since 2011, KeyBank stated that it has invested more than \$826 million for community development purposes, including through LIHTC investments and New Market Tax Credit investments.

KeyBank represented that, upon consummation of the proposed transaction, KeyBank's CRA compliance program, policies, and initiatives will be implemented at the legacy First Niagara bank branches and operations subject to the CRA. KeyBank stated that its current CRA compliance program is designed to be scalable and will be expanded to include the areas currently served by First Niagara. KeyBank stated that because KeyBank's CRA AAs will be expanded to include the areas currently served by First Niagara, KeyBank expects that both banks' current CRA officers and other related personnel will be actively involved in ensuring that CRA compliance and community outreach efforts are appropriately reflected in integration planning.

KeyBank stated that it takes seriously commenters' concerns and therefore held community outreach meetings in a number of markets in order to develop its 2017 National Community Benefits Plan (Community Benefits Plan). Communications with members of the community may provide a valuable method for a bank to assess how best to address the credit needs of its community; however, the CRA does not require banks to enter into agreements with private parties, and the OCC does not monitor nor enforce such agreements. Nonetheless, because several aspects of the Community Benefits Plan relate to issues raised by commenters, details are discussed below. Specifically, the Community Benefits Plan sets forth how KeyBank plans to invest \$16.5 billion across its LMI communities over the next five years.<sup>9</sup> Of the \$16.5 billion,

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<sup>7</sup> Some commenters stated that the application should be approved only if KeyBank's community benefits plan, or the merger transaction generally, demonstrates a public benefit to the communities served by the resulting bank. This standard, however, is applied by the Federal Reserve Board when that agency evaluates applications by bank holding companies seeking to engage in nonbanking activities. *See* 12 CFR 225.24(a)(2)(iii). The OCC applies the convenience and needs standard as required under 12 USC 1828(c)(5).

<sup>8</sup> The footprint of the resultant bank will consist of a retail branch network across the following 16 states: Alaska, Colorado, Connecticut, Florida, Idaho, Indiana, Michigan, Maine, Massachusetts, New York, Ohio, Oregon, Pennsylvania, Washington, Utah, and Vermont.

<sup>9</sup> Of the \$16.5 billion, KeyBank represented that investments will include \$5 billion in mortgage lending in LMI communities and to LMI borrowers; \$2.5 billion in small business and small farm lending, targeted to LMI urban and rural communities; and \$8.8 billion in community development lending and investment. KeyBank represented that it also set a goal to create a product innovation fund of up to \$3 million to support the development of banking products and services for underserved communities to complement KeyBank's existing products and services in this area. In addition, the bank stated that its KeyBank Foundation has committed to a goal of making \$175 million in

KeyBank expects to invest approximately 35 percent of that amount in the areas impacted by the merger.

KeyBank represented that it will establish a national advisory council that will meet at least twice per year to track and monitor KeyBank's progress under its plan. KeyBank represented that local advisory councils may also be formed to track and monitor progress, including the Buffalo/Niagara Falls, Albany, and Great Lakes markets. KeyBank further represented that, in the interest of transparency, it expects to make annual progress reports available to the public (subject to withholding of certain proprietary and other confidential information).

## **B. Convenience and Needs**

The OCC has carefully considered the commenters' concerns as they relate to the probable effects of the business combination on the convenience and needs of the communities to be served. Though the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (March 2007), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the resultant bank will help to meet the needs of its communities on a prospective basis.

The commenters' concerns regarding convenience and needs are summarized and addressed below. Generally, related comments and relevant KeyBank responses addressing the banks' activities in its footprint are grouped together by subject matter; however, Section V(C) (Fair Lending) discusses comments and concerns regarding specific MSAs. Based on its review, the OCC has concluded that the probable effect of the business combination on the convenience and needs of the communities to be served is consistent with approval of this application, subject to the conditions discussed in Section VII of this letter.

### **i. Community Outreach and Marketing Efforts**

Commenters expressed concern regarding KeyBank's community outreach and marketing efforts. With regard to community outreach, commenters stated that KeyBank should make a greater effort to better understand the needs of the communities it serves and will serve post-merger. With regard to marketing, commenters expressed concern that KeyBank does not adequately advertise its products and services, particularly to LMI borrowers and to LMI communities. For example, some commenters stated that KeyBank has affordable banking products, such as small dollar loans, but does not adequately advertise such products.

KeyBank stated that since the announcement of the proposed transaction, KeyBank management has been involved in substantial outreach efforts to understand the needs of the communities served by First Niagara, especially LMI communities. In particular, KeyBank stated that

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philanthropic investments over a period of five years for its traditional priorities of education and workforce development. KeyBank stated that following consummation of the proposed transaction, it will dedicate the necessary resources to ensure consistent adherence to its Community Benefits Plan.

members of its community development team, including the Head of Corporate Social Responsibility, the Chair of its KeyBank Foundation,<sup>10</sup> and its Head of Sustainability held a number of outreach meetings with various community organizations in the Albany, Buffalo, Rochester, and Syracuse, New York markets and the Hartford and New Haven, Connecticut markets. The bank stated that these post-announcement outreach efforts with community organizations culminated in its Community Benefits Plan, introduced above. KeyBank stated that it developed this plan in partnership with the National Community Reinvestment Coalition (NCRC)<sup>11</sup> and its members, and in response to concerns raised by many community groups, including the Neighborhood Housing Services of Greater Cleveland.

Further, KeyBank stated that it is committed to increasing its marketing and communications resources to levels necessary to inform its communities about KeyBank mortgage, small business, and community lending products. To do so, KeyBank stated that it will conduct outreach efforts involving print materials (such as flyers), advertising, social media, messaging on in-branch monitors, product forums, conference/workshop/seminar support, sponsorships, media outreach around news items, public relations initiatives, and client events in its communities. KeyBank represented that it expects to invest approximately \$5 million annually in sponsorships.

KeyBank represented that First Niagara also conducts significant outreach efforts to ensure that LMI individuals and communities are aware of, and have access to, First Niagara's broad suite of products and services targeted to assist such individuals and communities. For example, First Niagara has 15 dedicated CRA Mortgage Consultants who primarily focus on promoting CRA products to agencies and real estate professionals in relevant communities. According to KeyBank, First Niagara's Residential Mortgage CRA Business Development Manager works directly with these CRA Mortgage Consultants to identify non-profit agencies and organizations with a focus on homeownership. KeyBank stated that First Niagara conducts community outreach through product information sessions with organizations to discuss the features of First Niagara mortgage products, including identifying areas of need for LMI clients, which tend to include support for down payment and closing costs.

In addition, KeyBank represented that First Niagara conducts a variety of financial education outreach efforts and develops partnerships with community organizations to better serve LMI individuals and communities. With regard to financial education outreach efforts, for example, bank personnel coordinate First Time Homebuyer education sessions in LMI areas, and participate in homebuyer education through the Department of Housing and Urban Development (HUD)-approved Homeownership Counseling Classes and other agency-coordinated seminars. With regard to developing partnerships, for example, First Niagara partnered with

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<sup>10</sup> KeyBank stated that the KeyBank Foundation is its 45-year old nonprofit charitable foundation focused on making philanthropic investments in communities served by KeyBank.

<sup>11</sup> According to its website, NCRC works with national, regional, and local organizations to develop and harness the collective energies of community reinvestment organizations from across the country to increase the flow of private capital into traditionally underserved communities.

NeighborWorks Rochester<sup>12</sup> to offer a mortgage product that can assist borrowers with closing costs and eliminate the need for private mortgage insurance.

KeyBank also described First Niagara's marketing efforts targeted to LMI individuals and communities as including digital marketing, direct mail, and the development of a CRA-specific page on First Niagara's website to complement consumer outreach and consumer-direct mail and e-mail related campaigns.

KeyBank stated that, post-merger, it intends to maintain the above-described First Niagara marketing and outreach programs, including First Niagara's team of CRA Mortgage Consultants, its financial education outreach efforts, and community partnerships. KeyBank stated that it intends to expand First Niagara's team of CRA Mortgage Consultants in legacy First Niagara markets. KeyBank further stated that it intends to explore opportunities similar to First Niagara's partnership with NeighborWorks Rochester to provide affordable mortgage products to more LMI individuals and geographies.

Lastly, KeyBank stated that it is interested in evaluating and expanding First Niagara's legacy marketing efforts targeting LMI clients.<sup>13</sup> KeyBank stated that it measures the effectiveness of its outreach and marketing activities to LMI individuals primarily through its ongoing assessment and monitoring of its lending volumes to LMI borrowers and in LMI geographies, as well as feedback from community organizations.

## **ii. Community Development Resources**

Some commenters expressed concern regarding the level of the resulting bank's CRA-dedicated staff. Generally, commenters stated that KeyBank should maintain or expand such staff to ensure the resulting bank's CRA-dedicated staff is able to meet the needs of its communities.

In response to these concerns, KeyBank stated that it has set a CD lending and investing goal of \$8.8 billion over the next five years. KeyBank's strategy will be to focus on financing community-based developers and commercial developers that support the development of affordable housing. In addition, KeyBank represented that its KeyBank Foundation will make philanthropic investments and grants totaling \$175 million over the next five years to support its communities.<sup>14</sup>

KeyBank represented that it has dedicated, and will continue to dedicate, considerable resources to community development. KeyBank stated that, in connection with this transaction, KeyBank will maintain much of its current community development infrastructure, while expanding the number of CRA analytical staff, Regional Corporate Responsibility Officers (CROs), and sales

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<sup>12</sup> According to its website, NeighborWorks Rochester is a homeownership agency that serves the needs of the City of Rochester and Monroe County, New York.

<sup>13</sup> See below in Section V(C)(i) (Bank Activities in Specific MSAs) for discussion of additional community outreach and marketing activities specific to certain MSAs and geographies.

<sup>14</sup> KeyBank represented that, in response to community concerns, the KeyBank Foundation will include specific programming to focus on neighborhood prosperity through the advancement of economic inclusion, homeownership, neighborhood stabilization, and small businesses, in urban and rural LMI communities.

force team members focused on the provision of loans and investments supporting LMI individuals and communities.

KeyBank stated that, through the First Niagara acquisition, KeyBank's CRO team will increase by four employees and continue to develop strategic community engagement plans in each of the major markets currently served by KeyBank and First Niagara. According to KeyBank, this expansion will help KeyBank's leaders remain engaged with key community organizations, while overseeing direct philanthropic investments and delivering a responsive and consistent level of community engagement. KeyBank stated that its CROs will continue to work in tandem with the bank's CRA analytics team to ensure that KeyBank is meeting and exceeding CRA goals in LMI urban and rural communities. In addition, KeyBank stated that it is expanding the roles of its CRA officers to empower those officers to be more responsive to a broad spectrum of corporate responsibility mandates.

Further, KeyBank stated that its Community Development Lending & Investments (CDLI) group plans to continue to expand the bank's ability to provide community development lending and investments. KeyBank represented that in 2015, the CDLI group announced the appointment of six senior-level leaders focused on affordable housing. These leaders are tasked with heading a team of more than 50 dedicated professionals, driving the expansion of KeyBank's affordable housing program in all 50 states, and working to double the size of the CDLI business in the next three years. KeyBank stated that the CDLI group's mission is to help clients and communities thrive through capital solutions for affordable housing and community development projects in urban and rural communities. KeyBank stated that its CDLI group is "one of the nation's premier affordable housing capital providers," and as such, the CDLI group will continue to offer a wide range of loan and investment products to provide customers with a "one stop shop" experience for their debt and equity needs. KeyBank represented that the CDLI group's fully integrated platform includes financing solutions for various customer needs, including construction and acquisition loans, bridge and preservation loans, lines of credit, Fannie Mae, Freddie Mac, and Federal Housing Administration (FHA) loans, and equity investments for low-income housing projects, especially LIHTC financing. In addition, the bank stated that its CDLI team assists clients with assembling innovative and complex financing in partnership with multiple for-profit, non-profit, and government entities. KeyBank stated that its CDLI business has extended approximately \$2 billion in the forms of debt and equity to numerous community development and affordable housing projects in KeyBank markets.

Lastly, KeyBank stated that, in order to further embed corporate responsibility concepts into the bank's daily decision making, it created a Corporate Responsibility Council in 2014, chaired by the President of the Corporate Bank and comprised of senior leaders across the enterprise. According to KeyBank, the Council provides leadership and ensures the entire bank adheres to the corporate responsibility priorities as it executes corporate strategy, and works closely with KeyBank's Corporate Responsibility Group.

### iii. Branch Network

Commenters expressed many concerns about the resulting bank's footprint, especially in the New York market where branches are to be closed and divested. Commenters also expressed concerns about the resulting bank maintaining branches in LMI communities across its footprint.

As explained in the "Branch Closings" booklet of the *Comptroller's Licensing Manual* (April 2003), the OCC's convenience and needs analysis includes consideration of anticipated changes in services that will result from consummation of the proposed transaction. Pursuant to 12 CFR 5.33(e)(1)(ii)(C), when the OCC evaluates an application under the BMA, the application must describe the probable effects of the business combination on the convenience and needs of the communities to be served, including any planned office closings or reduction in services following the business combination and the likely impact on the community. In accordance with this regulatory requirement, KeyBank provided the OCC detailed information regarding its branch closure and divestiture plans. In addition, KeyBank published notice that it proposes to close 107 branches, including the address of each legacy KeyBank and First Niagara branch to be closed, in both the Buffalo News and Cleveland Plain Dealer on July 11, 2016. The newspaper notice also invited the public to submit comments on the branch closures to the OCC during a 30-day comment period. The OCC received seven comments expressing concerns regarding the proposed branch closures.

In considering the proposed transaction, the OCC considered public comments received, and analyzed the current branch network of the two institutions and the resultant bank's proposed branch network. The OCC's analysis indicates that the proposed branch closures, consolidations, and divestitures do not appear to substantially change the proportion of branches across geographies with different racial, ethnic, and income characteristics, as compared to the distribution of branches currently operated by KeyBank and First Niagara.

In its Community Benefits Plan, KeyBank described its general model for branch consolidation, which is to identify branches that are located within a 2-3 mile radius of each other and then ascertain which branch will be best suited to serve the needs of the community. KeyBank stated that, during the transition following an approval of the proposed merger with First Niagara, the bank set as a goal to consolidate LMI branches that are within a one mile radius of each other. In doing so, KeyBank identified a total of 27 branches in LMI geographies that met this criterion. Of these 27, KeyBank stated that 13 will be consolidated into another branch. KeyBank stated that, given NCRC's membership feedback, KeyBank decided to keep open four LMI branches that were originally identified for closure. In addition, KeyBank stated it agreed in principle to open an additional branch in an LMI census tract in East Buffalo, New York. Further, KeyBank stated that as a result of the acquisition of First Niagara, KeyBank will establish a goal of maintaining between 25 percent and 27 percent of its branches in LMI communities across its corporate footprint and throughout New York State over the next two years.<sup>15</sup>

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<sup>15</sup> In its AIR Responses, KeyBank represented that it currently maintains 27 percent of its branches in LMI communities overall. Specifically, 25 percent of its branches in New York and 23 percent in Ohio are in LMI communities.

With respect to branch closures, KeyBank stated that all closures will be completed pursuant to its Branch Action Policy and Procedures, which sets forth KeyBank's obligations to comply with applicable federal statutes, regulations, and policy statements related to branch openings, closures, relocations, and consolidations. Further, KeyBank stated that in evaluating branches, it will operate under the guiding principles of creating a combined branch network that provides convenience to customers of both KeyBank and First Niagara, including customers in underserved and distressed areas. KeyBank stated that, through its branch evaluation process, it will maintain or improve its branch network coverage of LMI areas. KeyBank stated that, to the extent that any branch closures occur in LMI areas, KeyBank will seek to ensure that a branch of the combined organization will remain in close proximity to the closed branch, and that the bank is deeply committed to maintaining viable branches in LMI communities.

#### **iv. Products and Services Offered**

The OCC received comments from customers expressing concern about possible changes to the products or services currently offered by each bank. Some First Niagara customers expressed concern that their accounts would be converted to KeyBank accounts with less-desirable terms, including accounts with different fee structures or, for example, that their loan payments could be accelerated or their loan limits reduced.

In response to these concerns generally, KeyBank stated that it expects the combined organization will be better positioned to expand the availability of products and services and to offer new, innovative products and services based on its enhanced financial and managerial strength following the closing of the proposed transaction. In addition, KeyBank plans to create a product innovation fund of approximately \$3 million to launch new products or services not currently offered by KeyBank. Commenters' concerns are addressed in detail below.

#### Account Conversions

In its AIR Responses, KeyBank stated that it does not expect that the proposed transaction will result in any significant reductions in offerings or significant increases in fees charged to customers or communities served by KeyBank or First Niagara, and that KeyBank has no plans to reduce services or products or increase fees in a manner that would be detrimental to the convenience and needs of the communities to be served by the combined organization. For customers of any First Niagara products that will no longer be offered by the combined organization, KeyBank stated that it mapped such customers to similarly featured KeyBank products based on an analysis of First Niagara customer-level transactions and balance histories. KeyBank represented that it will waive several account fees<sup>16</sup> (including monthly maintenance fees) through September 30, 2017, so that transitioned customers can fully understand the

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<sup>16</sup> In its AIR Responses, KeyBank represented that it anticipates the following fee waivers: (i) monthly maintenance, paper statement, and inactivity fees for all consumer checking, savings, and money market deposit accounts (MMDA) from the date of conversion until September 30, 2017; (ii) late fees for all consumer credit and lines of credit from the date of conversion until December 12, 2016; (iii) monthly maintenance and paper statement fees for all small business checking (non-analyzed), savings, and MMDA accounts from the date of conversion until September 30, 2017; and (iv) cash currency deposit and transaction fees for small business checking (non-analyzed) accounts from the date of conversion until September 30, 2017.

features and benefits of their KeyBank accounts and choose which account will best fit their specific needs.

KeyBank stated that it will continue to provide affordable, consumer-friendly transaction accounts in order to meet customers' financial needs. KeyBank represented that it plans to offer its current suite of consumer transaction products, including its Hassle-Free Account which has no monthly maintenance fee, no minimum balance requirement, and no overdraft fees.

With respect to the conversion of First Niagara loan accounts, KeyBank stated that it has taken substantial steps to mitigate any adverse customer impact. KeyBank stated that its primary conversion strategy with respect to loan accounts involves converting all real estate loans and lines of credit in accordance with, and subject to, the terms of the existing First Niagara customer contract or agreement. KeyBank stated that non-real estate term loans will also convert under the terms of existing customer contracts. KeyBank represented that any changes to unsecured line-of-credit accounts will follow applicable "change in term" requirements, and will be implemented under consultation with KeyBank's legal and compliance teams.

KeyBank stated that it has dedicated employee work streams to customer experience, compliance, legal, operations, and technology for the conversion of consumer loans and lines of credit. Further, KeyBank has developed a Merger Integration Plan to ensure that the merger process does not result in service disruptions or otherwise negatively affect the customer experience.

#### Small Dollar Loans and Other Products

With respect to small dollar loans, KeyBank stated that it has a "well-recognized" track record in providing innovative products to consumers seeking alternative lines of credit. For example, the bank described its KeyBasic Credit Line, which is targeted to consumers who desire an unsecured revolving line of credit in amounts between \$250 and \$5,000, which, according to the bank, is one example of how KeyBank seeks to offer products for consumers with different needs. KeyBank further stated that it offers a number of special products to assist LMI homeowners, including small dollar loans.

Additionally, in its AIR Responses, KeyBank described its Community Home Improvement Rehabilitation Program (CHIRP) which, according to the bank, offers competitive fixed-rate unsecured loans of up to \$5,000 to LMI customers with less than \$40,000 of gross household income, for home improvement purposes. KeyBank stated that its CHIRP loans have no origination fees, terms of between one and five years, and same day approval. KeyBank stated that its CHIRP product is designed to finance home repairs (such as home remodeling, new roof or windows, new patio or driveway, etc.) without the need for customers to tap into their home equity, although, according to the bank, customers have the option to borrow increased amounts through home equity-secured loan products.

KeyBank also described its CRA Loan Program, which, according to the bank, modifies traditional loan products to offer lower minimum loan amounts to qualifying individuals with

less than \$40,000 in gross household income. The bank stated that its CRA Loan Program offers loan products with competitive fixed rates and loan amounts as low as \$500.

In addition, KeyBank plans to expand its KeyBank Plus (KBP) services, which include its Hassle-Free Account, a small dollar loan product, access to “reasonably priced” check cashing services, a first-time homebuyer mortgage product, a “second-chance” loan assistance product, an unsecured revolving credit line, first-time savings account products, and financial education and wellness resources. Specifically, KeyBank will expand its KBP check cashing service, currently available to its customers in the Buffalo-Niagara, NY MSA, to all LMI branches. Further, KeyBank represented that, post-consummation of the merger, it will explore expanding its KBP offerings to former First Niagara LMI markets.

### Home Mortgage Loan Products

With respect to home mortgage lending, KeyBank set a goal of \$5 billion over the next five years in residential mortgage loans in LMI communities and to LMI borrowers (including home purchase and refinance lending to LMI borrowers, urban LMI neighborhoods, and rural LMI communities).<sup>17</sup> In response to comments expressing various concerns regarding KeyBank’s home mortgage loan products, including the affordability and availability of such products, KeyBank provided a description of what it considers its most effective products, including fixed- and adjustable-rate products available through its retail origination department. For first time homebuyers, KeyBank stated that it offers mortgage products with benefits including low down payment requirements and flexible underwriting standards that consider non-traditional forms of credit history, such as rent or utility payments, and higher debt-to-income ratios. The bank further stated that it offers homeowner education courses to help first-time buyers better understand the process of buying a home. KeyBank stated that the majority of mortgage loan products it originates conform to agency requirements, such as those of the Fannie Mae, FHA, United States Department of Veterans Affairs, and the United States Department of Agriculture.

KeyBank also stated that it offers several mortgage loan products that are designed to meet the needs of clients who may not be adequately served by the products available through agency investors. The bank represented that its Key Community Mortgage product is its most popular non-agency mortgage product. According to KeyBank, the product is designed specifically to meet the needs of LMI clients by simultaneously offering a competitive interest rate and affordable down payment options. Additionally, the low down payment can be in the form of a gift, grant, or a secured or unsecured loan, and the bank offers options for no down payment. The bank stated that its Key Community Mortgage product also offers minimal required borrower contributions, acceptance of non-traditional credit references, flexible terms and underwriting guidelines, and a variety of options for down payment assistance available from government and nonprofit agencies. In addition, the bank stated that private mortgage insurance is not required for Key Community Mortgage customers. KeyBank also represented that it plans to implement the State of New York Mortgage Agency (SONYMA) mortgage programs to assist first-time homebuyers with the purchase of a home in New York.

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<sup>17</sup> In connection with this goal, KeyBank plans to work to achieve peer-lending performance in 50 percent of its markets within a three-year period.

Regarding affordable housing, KeyBank stated that it is a “recognized leader” in the FHA-insured mortgage industry, providing origination, underwriting, closing, and servicing on mortgage loans throughout the United States. According to KeyBank, it is a HUD-designated Multifamily Accelerated Processing (MAP)<sup>18</sup> Lender, which enables KeyBank to provide direct underwriting recommendations that result in considerable time saving when compared to traditional loan processing.

KeyBank stated that it had a private-label relationship with PHH Mortgage, which provided fulfillment support for loan origination activities.<sup>19</sup> Following completion of the acquisition of First Niagara, KeyBank stated that it will instead leverage internal mortgage fulfillment capabilities by developing its own in-house residential mortgage loan origination capabilities and incorporating First Niagara’s existing loan servicing unit in Buffalo, New York to serve as KeyBank’s underwriting, fulfillment, and portfolio management platforms. According to KeyBank, the combined mortgage fulfillment teams of KeyBank and First Niagara will provide all future new loan origination and servicing activities for the resulting bank’s mortgage clients.

KeyBank stated that all of the above-described products and services are available across all geographies served by KeyBank, and that the bank will continue to offer the majority of loan product options that are currently available to clients.

Lastly, KeyBank stated that it continues to evaluate the suite of home mortgage product offerings of the combined organization that will best address the needs of LMI communities and how legacy First Niagara home mortgage products may supplement KeyBank’s suite of affordable home mortgage products.

#### **v. Small Business Lending**

Some commenters expressed concerns over KeyBank’s small business lending activities, especially in comparison to First Niagara’s level of small business lending activity. Commenters expressed concerns regarding whether the resulting bank will serve the small business lending needs of its communities.

KeyBank has set a \$2.5 billion small business lending goal in LMI communities over a five year period, in addition to a goal of \$5 billion in CRA reportable small business lending in non-LMI areas over the next five years. In addition, in its AIR Responses, KeyBank stated that, since 2012, it has provided more than \$3.6 billion in loans to small businesses, and has been a Small Business Administration (SBA) Preferred Lender for over 16 consecutive years. KeyBank stated that it recognizes that small businesses in urban and rural LMI communities present a range of

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<sup>18</sup> MAP is a national “fast track” processing system for the FHA multifamily mortgage insurance programs. HUD invites FHA-approved multifamily mortgagees to apply to HUD for approval as lenders authorized to process and submit pre-application and FHA Firm Commitment application under MAP. For more information, see HUD’s website at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_14989.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14989.pdf).

<sup>19</sup> In its AIR Responses, KeyBank stated that since 2012, it has relied on its private-label relationship with PHH Mortgage for fulfillment support of KeyBank’s loan origination activities, and that the bank recently terminated its contract with PHH Mortgage to instead develop its own in-house mortgage loan origination capabilities.

borrower profiles, from early-stage startups with little financial performance history, to established yet struggling businesses that need technical support to access capital to maintain or grow their business. KeyBank stated that it has a “relationship-based” approach to small business lending, supported by internal partners with expertise in SBA products, cash management and merchant services, and leasing. The bank’s small businesses are served by relationship managers located in KeyBank’s branches and in KeyBank’s Business Resource Center (BRC). In the BRC, small business owners have the opportunity to develop a relationship with a relationship manager, discuss their needs, underwriting guidelines, and receive technical support to achieve their business objectives.

According to the AIR Responses, both KeyBank and First Niagara offer a wide variety of SBA loan products to suit the needs of their small business clientele. KeyBank represented that, through the SBA’s flagship 7(a) Loan Program, KeyBank and First Niagara each provide loans to eligible borrowers for starting, acquiring, and expanding a small business. KeyBank stated that the SBA 7(a) Business Loans offered by KeyBank and First Niagara provide up to \$5 million for a variety of financing needs, with longer terms, and lower collateral requirements than conventional lending. According to KeyBank, other SBA products that KeyBank and First Niagara offer include SBA Express loans of up to \$350,000 for the purchase of fixed assets, SBA Export Express loans financing up to \$500,000 for a simple export loan, and SBA International Trade Loans that provide small businesses with enhanced export financing options to help small businesses enter and expand into international markets. In addition, through the SBA 504 Certified Development Company Loan Program, KeyBank and First Niagara provide growing businesses with long-term, fixed-rate financing in amounts between \$100,000 and \$12,000,000 for major fixed assets, such as land and buildings.

KeyBank stated that both banks offer a range of small business products and investments outside of the SBA programs. For example, First Niagara is an active participant in Small Business Investment Company investing, which promotes economic development by supplying small businesses with financing in both the equity and debt arenas. In addition, First Niagara partners with various organizations that support economic development and revitalization and stabilization of LMI areas across its footprint, and provides financial support in the way of grants, as well as offering financial and technical expertise.

In addition, KeyBank stated that its Microloan Program offers very small loans to start-up, newly established, or growing small business concerns, with all credit decisions made on a local level. According to KeyBank, its Key@Work program is a strategic way for KeyBank to develop relationships with local businesses by providing a package of discounted banking services that companies can offer to employees as part of their overall benefits package. Additionally, its Key4Women is a nationwide community of entrepreneurial and executive business women brought together by the bank to help them thrive.

KeyBank represented that these small business products and programs do not differ by geographic location for either bank, and that this full suite of small business products will

continue to be offered throughout all markets serviced by the combined organization following the consummation of the proposed transaction.<sup>20</sup>

KeyBank represented that it plans to further improve its own small business lending capabilities. KeyBank stated that it will continue to offer a full range of SBA programs, and that it expects to establish a process to partner with, and financially support, community organizations focused on building small business capacity by providing small business products, technical support programs, and financing to small businesses in LMI areas. KeyBank stated that these select local nonprofits will be chosen based on their proven track record of successfully identifying, funding, and developing small diverse businesses, including minority-, women-, and veteran-owned businesses, as well as businesses located in LMI urban and rural communities. In addition, KeyBank stated that it will also look to work with both national and local providers of small business education for capacity building, financing strategies, and business operations.

In addition, KeyBank stated that it expects to expand its investments in local and regional Community Development Financial Institutions (CDFIs) that provide micro-lending to micro-enterprises, products and services in the LMI community, support for loan pools and “Equity Equivalent” investing, and grants for technical assistance. In addition, KeyBank stated it expects to develop a referral program with targeted CDFI partners that have the ability to execute small business lending. KeyBank stated that its CDFI investing will occur through its CDLI unit, and through the KeyBank Foundation, which will provide investments for small business training and capacity building.

Lastly, KeyBank stated that it continues to evaluate the suite of small business and economic development products of the combined organization that will best address the needs of small business and entrepreneurial customers.

Moreover, KeyBank stated that it will continue to offer products and services that provide the same small business and economic development benefits that First Niagara’s existing products provide. KeyBank represented that it intends to continue First Niagara’s practices of Small Business Investment Company (SBIC) investing and partnering with various organizations that support economic development, revitalization, and stabilization of LMI areas across its footprint.

In summary, KeyBank stated that it believes that by maintaining its suite of economic development products and programs, it will be well positioned to expand on First Niagara’s current capabilities with respect to small business and economic development offerings.

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<sup>20</sup> KeyBank stated that it will continue to offer the SBA-approved loan products currently offered by First Niagara that promote the availability and access to credit to support economic development, including SBA’s flagship 7(a) Loan Program, the SBA 504 Certified Development Company Loan Program, SBA Express loans, SBA Export Express loans and SBA International Trade loans. KeyBank stated that, like First Niagara’s SBA product offerings, KeyBank’s SBA programs offer flexible terms and eligibility criteria that benefit individuals that may not have the assets or creditworthiness to secure conventional loans.

### **C. Fair Lending**

The OCC received comments raising fair lending concerns related to KeyBank's practices, with the most detailed concerns being those regarding denial disparity rates in the Buffalo-Niagara, NY and Rochester, NY MSAs, and in the Toledo, OH MSA. Generally, commenters' concerns were based on KeyBank's 2014 HMDA data.

With regard to the lending concerns raised by commenters, the OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution 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 an institution's lending activities and efforts.

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. KeyBank's CRA PE dated October 1, 2011, noted that the OCC had not identified evidence of discriminatory or other illegal credit practices with respect to KeyBank during the evaluation period.<sup>21</sup>

In considering the proposed transaction, the OCC reviewed mortgage activity from 2012 to 2014 in the Buffalo-Niagara, NY, Rochester, NY, and Toledo, OH MSAs to determine whether KeyBank's mortgage activity differed by race or ethnicity of the applicants and across geographies based on the area's racial composition. In addition, the OCC analyzed KeyBank's branch locations in these MSAs to identify whether services differed by race or ethnicity across geographies. The OCC's review revealed lending data similar to most of the data presented by commenters. Additionally, the OCC's review took into account HMDA data reported by other lenders in the relevant MSAs, and other factors, such as KeyBank's conservative underwriting practices. Based on the OCC's analysis, including information gathered during the ongoing supervisory process, the OCC did not identify information inconsistent with approval of this application.

In response to concerns raised by commenters, KeyBank represented that it maintains processes to monitor for statistical discrepancies of the type discussed by commenters, and to take action when warranted, including by increasing lending volumes.

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<sup>21</sup> The CRA PE also states that the CFPB, which has exclusive supervisory authority and primary enforcement authority to ensure compliance with the Equal Credit Opportunity Act (ECOA) by banks such as KeyBank with more than \$10 billion in assets, did not provide the OCC with evidence of discriminatory or other illegal credit practices with respect to the federal consumer financial laws.

### KeyBank Monitoring of HMDA Data

KeyBank stated that it adheres to rigorous analytics to monitor HMDA-reportable lending to both LMI borrowers and geographies, and lending in minority census tracts, and that such analytics are regularly shared with both KeyBank senior management and the leadership teams of KeyBank's various lines of business.

In particular, KeyBank stated that it performs a lending penetration analysis each quarter using HMDA data from the prior quarter to review the number of applications and originations in LMI census tracts as well as minority census tracts within KeyBank's defined AAs throughout its entire footprint. According to KeyBank, these analyses reveal the proportion of loans, relative to overall lending levels, being provided in LMI geographies and to LMI borrowers. KeyBank stated that it performs statistical analyses of lending penetration compared with the most recent publicly available HMDA loan data for the market as well as its peers in each respective AA. KeyBank represented that statistical differences are highlighted for further review and action, including goals to increase lending volumes.

### KeyBank Fair Lending Policies and Procedures

KeyBank represented that it ensures compliance with fair lending laws as they relate to home mortgage lending through the following processes and programs: (i) employee policies and training programs; (ii) fair lending compliance procedures; (iii) line-of-business risk management functions; (iv) independent second "line of defense" compliance monitoring and governance; and (v) independent third "line of defense" review and testing by KeyBank's "Risk Review" function.

KeyBank stated that its expectations for compliance with fair lending laws, regulations, and supervisory expectations are outlined in its Fair and Responsible Banking Policy, which is maintained by the bank's Fair and Responsible Banking Group, a part of its Compliance organization. The bank stated that this policy is also reviewed by its Compliance Risk Committee, and that any substantive changes to the policy must undergo a rigorous internal review process and approval by each of its Compliance Risk and Executive Risk Management Committees, its Board of Directors, and the Risk Committee of KeyCorp's Board of Directors. The bank represented that when substantive changes are approved through this process, such changes are communicated to employees through KeyBank's intranet site along with a current version of the policy. The bank further stated that its expectations and requirements outlined in its Fair and Responsible Banking Policy are also referenced in applicable credit policies.

KeyBank represented that its fair lending compliance procedures include various mandates to ensure that its lending practices comply with fair lending laws. For example, all denied HMDA-reportable and real estate-secured loan applications must be submitted for second review to a dedicated real estate "second review" underwriting team. KeyBank stated that its various lines of business also employ risk analysts that perform a variety of quality-control, training and similar functions aimed at ensuring compliance with fair lending policies and procedures.

KeyBank further represented that its Fair and Responsible Banking Group in the second “line of defense” performs quarterly fair lending monitoring by conducting statistical regression analyses, comparative file reviews, and customer complaint reviews. KeyBank stated that complaints that have fair lending implications are reviewed with the KeyCorp Law Group, and results of all fair lending monitoring are shared within KeyBank’s Compliance organization as well as with relevant KeyBank business leaders. KeyBank stated that it has not yet identified any fair lending violations, but that such violations would be recorded in the Enterprise Governance, Risk and Compliance system and escalated to senior management and the Boards of Directors of KeyBank and KeyCorp, with corrective action plans implemented and monitored as necessary.

KeyBank represented that its Fair and Responsible Banking Group, in conjunction with its Business Training group, develops and maintains the enterprise-wide Fair and Responsible Banking training course, which is an intranet-based, self-guided training program with post-training assessment features. KeyBank stated that its employees and contractors are required to complete its annual enterprise-wide Fair and Responsible Banking training course, which includes instruction on fair lending policies and procedures. KeyBank stated that its various lines of business also offer enhanced, business-line specific training related to fair lending, in addition to the instruction provided through the enterprise-wide Fair and Responsible Banking training course. For example, specific training is provided to loan originators, processors and underwriters that includes fair lending instruction. In addition, KeyBank stated that its training content and assessment questions are reviewed annually and adjusted from time to time as deemed appropriate by its management. Lastly, the bank represented that it plans to provide the Fair and Responsible Banking training course to First Niagara employees within the first three months from the closing of the proposed transaction through a combination of self-guided intranet-based and webinar courses. See above for a discussion regarding how, upon consummation of the proposed transaction, KeyBank’s CRA compliance program, policies and initiatives will be implemented at the legacy First Niagara bank branches and operations subject to the CRA.

#### **i. Bank Activities in Specific MSAs**

This section addresses commenters’ concerns regarding KeyBank’s activities in specific MSAs or other geographies.

##### Cleveland-Elyria-Mentor, OH MSA

The OCC received comments expressing concern regarding KeyBank’s performance in meeting the credit needs of this MSA, especially in Cuyahoga County and the city of South Euclid. Comments included concerns regarding loan denials and mortgage underwriting standards. With regard to loan volume and KeyBank’s performance in meeting the credit needs of the South Euclid community, KeyBank stated that it has a strong record of community development lending and targeted CRA investments in Ohio.

Nonetheless, KeyBank stated that it recognizes the importance of continuing to improve its mortgage lending volume in the communities it serves. KeyBank stated that, since 2012, the

bank has relied on its private-label relationship with PHH Mortgage for fulfillment support of KeyBank's loan origination activities. KeyBank represented that, due to a decline in the KeyBank Mortgage sales force in connection with this PHH Mortgage relationship, KeyBank Mortgage experienced an overall 52 percent decline in mortgage originations over a two-year period. KeyBank stated that in recognition of and response to these declining mortgage production trends, KeyBank made the strategic decision to terminate its contract with PHH Mortgage, effective July 2016, and instead will begin to leverage internal mortgage fulfillment capabilities by developing its own in-house mortgage loan origination capabilities. KeyBank stated that this change will allow KeyBank to more easily control the mortgage loan fulfillment process, and thereby improve its fulfillment capabilities to communities such as South Euclid.

With regard to underwriting standards, and its appraisal process in particular, KeyBank stated that the standards and processes used in South Euclid are consistent with those used throughout the KeyBank organization, and are in line with industry standards. Additionally, the fair lending monitoring and controls that apply throughout KeyBank's footprint also apply to lending in South Euclid.

In response to comments regarding the level of KeyBank's CD activities in this MSA, KeyBank stated that its record in Ohio, and in particular, the Cleveland-Elyria-Mentor, OH MSA is evidenced by its strong record of community development lending and targeted CRA investments. According to its CRA PE, KeyBank extended \$141 million in CD loans and \$104 million in CRA-related investments in the Cleveland-Elyria-Mentor, OH MSA during the evaluation period. Since 2011, KeyBank represented that it has provided approximately \$310 million in CD loans in Ohio and approximately \$222 million in CRA-related investments (LIHTCs and similar investments) in Ohio.<sup>22</sup>

#### Toledo, OH MSA

In response to concerns regarding branching, home mortgage lending, and advertising practices in this MSA, KeyBank represented that as part of its outreach efforts, it has engaged in direct discussions with the Toledo Fair Housing Center (TFHC) to address housing needs in LMI and majority-minority communities in this MSA.<sup>23</sup> According to KeyBank, this plan includes equity equivalent investments in CDFIs, enhanced marketing in minority neighborhoods and partnerships with HUD-certified counseling agencies. In addition, KeyBank stated that it will meet quarterly with the TFHC in furtherance of these efforts.

Specifically, in response to TFHC's concerns, KeyBank stated that it launched the Toledo Marketing and Community Outreach Plan (Toledo Outreach Plan), through which KeyBank

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<sup>22</sup> According to its CRA PE, KeyBank extended \$225 million in CD loans and \$214 million in CRA-related investments in the State of Ohio during the evaluation period.

<sup>23</sup> As discussed previously, while communications with members of the community may provide a valuable method for a bank to assess how best to address the credit needs of its community, the CRA does not require banks to enter into agreements with private parties, and the OCC does not monitor or enforce such agreements. Nonetheless, because several aspects of KeyBank's Toledo Outreach Plan relate to issues raised by commenters, details regarding this plan are discussed herein.

intends to increase mortgage lending and booked loans in LMI and minority communities by 50 percent in 2016 through specialized lending products and programs.

KeyBank further represented that in addition to the Toledo Outreach Plan, the bank and TFHC entered into an initiative effective March 31, 2016<sup>24</sup> whereby KeyBank will provide \$3 million in equity investments to CDFIs that serve the Toledo area, with particular emphasis on home loan down payment assistance and support for local housing organizations. In addition, KeyBank stated that it agreed to provide Toledo residents with tailored mortgage underwriting consisting of in-house, manual underwriting services for its Key Community Mortgage loan product. KeyBank represented that this approach will be part of its new national mortgage platform.

Further, KeyBank represented that it will strive to make its full suite of products and services available to LMI and majority-minority neighborhoods by initiating a comprehensive marketing plan and regular meetings between the bank and TFHC to ensure products and services are reaching underserved communities and responding to their needs. Also, KeyBank represented that it will partner with HUD-certified housing counseling agencies to provide financial education to consumers. Lastly, KeyBank represented that it will retain all current branch locations in LMI areas in the Toledo, OH MSA for at least the next three years.

#### Buffalo-Niagara, NY MSA

In response to comments received specific to the Buffalo-Niagara, NY MSA, which included concerns about potential job losses, branch closures and divestitures, and access to affordable banking services, KeyBank stated that a central reason for this proposed transaction was KeyBank's desire to better serve the communities and customers of this market.<sup>25</sup>

With respect to mortgage lending, according to its CRA PE, KeyBank extended \$255 million in HMDA loans in the Buffalo-Niagara, NY MSA during the evaluation period. In its AIR Responses, KeyBank stated that it has provided more than \$692 million in HMDA loans in the MSA since 2012.

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<sup>24</sup> According to KeyBank, since the initiation of the Toledo Outreach Plan, KeyBank has: (i) increased efforts to educate and inform employees on the Key Community Mortgage lending products and consumer-related products for unbanked and underbanked communities; (ii) participated in meetings with Toledo city officials to announce the launch of "Key to the City," a mortgage lending program with features intended to benefit potential borrowers in the City of Toledo; and (iii) increased advertising efforts in Toledo community newspapers such as The Sojourner's Truth, The Toledo Journal, and La Presna.

<sup>25</sup> With respect to job losses, although the potential for job losses is not a factor the OCC statutorily considers in connection with this application, KeyBank stated that it is committed to mitigating job losses resulting from the proposed transaction and has taken or has instituted plans to take concrete actions toward reducing the number of expected job losses in affected markets. For example, KeyBank stated that in December 2015, it announced plans to develop its own in-house residential mortgage loan origination capabilities and to incorporate First Niagara's existing loan servicing unit in Buffalo to serve as KeyBank's underwriting, fulfillment and portfolio management platforms. KeyBank represented that it anticipates retaining First Niagara employees in roles connected with residential mortgage underwriting, fulfillment and portfolio management. In addition, the bank stated that KeyCorp has instituted an enterprise-wide hiring freeze for certain non-client facing positions in order to foster retention of First Niagara employees. Lastly, KeyBank stated that it recently announced that Buffalo will serve as its Northeast regional headquarters.

With respect to community development, KeyBank's CRA PE indicates that the bank made approximately 17 investments totaling \$27 million in the Buffalo-Niagara, NY MSA during the evaluation period. In its AIR Responses, KeyBank stated that its commitment to Buffalo is demonstrated by the more than \$30 million in LIHTC investments it has made in the MSA, including:

- \$10.1 million LIHTC investment supporting 46 units in connection with the Mass Ave Community Homes project;
- \$4.6 million LIHTC investment supporting 30 units in connection with the True Bethel Townhomes project;
- \$5.1 million LIHTC investment supporting 30 units in connection with the Bellamy Commons project; and
- \$10.7 million LIHTC investment supporting 48 units in connection with the St. John Townhomes project.

Finally, KeyBank represented that it has been an "important lender" to small businesses in the Buffalo market. According to its CRA PE, KeyBank made approximately 600 small business/small farm loans totaling \$86 million in the Buffalo-Niagara, NY MSA.<sup>26</sup> In its AIR Responses, KeyBank represented that since 2012, the bank has originated 4,615 small business/small farm loans amounting to a total of \$120 million in the MSA.

#### Rochester, NY MSA

Comments specific to the Rochester, NY MSA included concerns regarding First Niagara's Federal Home Loan Bank of New York (FHLB-NY) membership and potential loss of customer access to similar affordable housing programs.

In its AIR Responses, KeyBank stated that it recognizes the value of the FHLB-NY programs for helping first time homebuyers and for supporting affordable housing efforts throughout the state of New York. KeyBank stated that it is evaluating courses of action for securing membership with FHLB-NY. The bank represented that it has participated in several meetings with appropriate regulators, and that the FHLB-NY has presented KeyBank with a range of membership approaches for consideration. KeyBank stated that if it is unable to become a member of the FHLB-NY, it will explore options to provide financing to support homeownership.

In response to concerns regarding the bank's level of lending, investments, and grants, KeyBank reiterated that its Community Benefits Plan includes the Rochester market. Specifically, KeyBank represented that it has made a strategic goal to achieve peer-lending performance in

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<sup>26</sup> The CRA PE states that KeyBank made 588 small business loans totaling \$85.9 million and five small farm loans totaling \$170,000.

residential mortgage lending in the Rochester market, as well as the Buffalo, Niagara Falls, Syracuse, and Albany markets.

### Rural Markets

In response to comments expressing concern regarding KeyBank's activities in rural markets, KeyBank represented that it will focus on lending and investing in rural areas, especially in geographies such as Alaska, Maine, upstate New York, Ohio, Oregon, and the Rocky Mountains. KeyBank stated that it plans to partner with experienced organizations that have a significant understanding of rural markets (e.g., Local Initiatives Support Corporation (LISC)<sup>27</sup> and PathStone<sup>28</sup>). In these partnerships, KeyBank stated that it will align with the financing and service needs in rural markets to bring technological support and assistance. KeyBank stated that it will engage with rural market leaders to gain insight and understand where there are opportunities to meet rural market needs.

## **VI. Retention of Community Development Corporation and Other Public Welfare Investments**

In connection with this application, KeyBank has requested permission to retain First Niagara's Community Development Corporation (CDC). In addition, KeyBank has requested permission to retain certain community development investments that were made directly by First Niagara. KeyBank seeks to retain these assets as public welfare investments pursuant to 12 USC 24(Eleventh) and 12 CFR 24. For the reasons set forth below, KeyBank may retain this CDC and the public welfare investments discussed below.

First Niagara represents that it has invested \$20 million into its CDC since its acquisition in 2011.<sup>29</sup> The stated purpose of the CDC is to provide flexible capital for community development and neighborhood revitalization, and to engage in activities to promote the public welfare, including the welfare of low- and moderate-income (LMI) communities and families. The geographic area targeted by the CDC includes communities in upstate New York/Hudson Valley, Pittsburgh, Philadelphia/Eastern Pennsylvania, Connecticut, and western Massachusetts.

According to KeyBank, as of June 30, 2016, the balance sheet of the CDC reflected \$7.5 million in loans, \$2.7 million in investments, and \$23.3 million in cash. The \$2.7 million consists of eight investments, five of which, according to KeyBank, the CDC has since exited, plans to exit, or will dissolve. Of the three remaining CDC investments, one is an investment in a CDFI that

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<sup>27</sup> According to its website, LISC is a non-profit group that helps to equip struggling communities with capital and strategy support by working with local leaders to invest in housing, health, education, public safety, and employment initiatives.

<sup>28</sup> According to its website, PathStone is a non-profit community development and human service organization providing services to families and economically depressed communities throughout New York, Pennsylvania, New Jersey, Ohio, Virginia, Vermont, and Puerto Rico.

<sup>29</sup> First Niagara acquired its CDC as the result of a previous merger with New Alliance Bank, which was approved by the OCC on April 6, 2011. For a copy of the OCC approval order, which includes the OCC's approval of First Niagara's acquisition and retention of New Alliance Bank's CDC (renamed the First Niagara CDC upon merger consummation), see <http://www.occ.gov/topics/licensing/interpretations-and-actions/2011/crad148.pdf>.

provides small business loans and technical assistance in LMI areas, and one is an investment in a fund that finances community development activities in LMI area. With regard to the last investment, which involves loan funding for start-up businesses, KeyBank is currently analyzing whether it will retain this investment after the merger is consummated.<sup>30</sup>

In addition, KeyBank requested permission to retain the following community development investments made directly by First Niagara: (i) a \$2,486,001 investment made by First Niagara into the Larkin Investment Fund, Limited Liability Company;<sup>31</sup> and (ii) a \$1,992,701 investment made by First Niagara in the Oak Hills Investment Fund.<sup>32</sup> First Niagara made each of these investments pursuant to 12 USC 24(Eleventh) and 12 CFR 24 and submitted required documentation regarding each investment to the OCC's Community Affairs Department, including information to demonstrate compliance with the public welfare requirements set forth in 12 CFR 24.3.

KeyBank indicates that the total amount of its outstanding investments and commitments under 12 USC 24(Eleventh) and 12 CFR 24, including the investments that it will acquire and retain from First Niagara, will be approximately 10.34 percent of its capital and surplus upon consummation of the transaction.<sup>33</sup> In no event may KeyBank's aggregate public welfare investments and commitments exceed 15 percent of its capital and surplus. See 12 USC 24(Eleventh). If requested by the OCC, KeyBank will provide reports concerning its public welfare investments. Consequently, KeyBank's retention of First Niagara's CDC and the community development investments discussed above after consummation of the merger is consistent with 12 USC 24(Eleventh) and 12 CFR 24.

The response set forth in this letter is based on information and representations provided to us by KeyBank. Any change in the nature, amount, or purpose of these investments could result in a different response being rendered concerning the conformance of KeyBank's investments with 12 USC 24(Eleventh) and 12 CFR 24.

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

As discussed above, the CRA requires that the OCC take into account the banks' performance under the CRA in considering the application. In addition, the BMA requires the OCC to consider the convenience and needs of the communities to be served. Although the banks' CRA performance and the convenience and needs of the communities to be served are interrelated, consideration of a bank's CRA performance primarily looks to how the bank has performed in

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<sup>30</sup> The OCC has requested that KeyBank submit additional information to the OCC's Community Affairs Department about one investment held by the CDC -- a \$100,000 investment in Eastern NY Angels, LLC -- and describe its compliance with the requirements of 12 CFR 24.3. Should the OCC determine that the investment does not meet the requirements of 12 CFR 24, KeyBank will be required to divest the investment as required by OCC policy and regulations.

<sup>31</sup> OCC records indicate that First Niagara submitted an after-the-fact notification to the OCC's Community Affairs Department regarding this investment, to which the OCC responded on December 30, 2011.

<sup>32</sup> OCC records indicate that First Niagara submitted an after-the-fact notification to the OCC's Community Affairs Department regarding this investment, to which the OCC responded on December 31, 2012.

<sup>33</sup> KeyBank provided this figure as an approximation based on data as of March 31, 2016.

the past, while a convenience and needs assessment considers how the merged entity will serve the needs of its communities on a prospective basis. Based on the OCC's analysis, including information gathered during the ongoing supervisory process, the OCC did not identify information inconsistent with approval of this application.

The OCC has fully considered and assessed the issues and concerns raised by individuals and community organizations relating to various aspects of the banks' activities including, but not limited to: (i) the resulting bank's plans to meet the convenience and needs of the communities it will serve; (ii) KeyBank's community outreach efforts; (iii) the resulting bank's proposed branching activity; (iv) the resulting bank's product offerings, including the availability of products to serve the needs of LMI persons and communities, in particular home mortgage and small business products; and (v) KeyBank's record of lending to its communities in certain MSAs. After review of: (i) the banks' CRA PE records; (ii) public comments in support of and opposition to the application; (iii) KeyBank's AIR Responses; and (iv) information available to the OCC as a result of its supervisory responsibilities, the OCC has determined that KeyBank has appropriate systems in place and the record supports approving the application, subject to the following conditions:

- In connection with First Niagara's violation of Section 5 of the FTC Act through deceptive practices associated with certain overdraft services offered by the bank, the OCC issued a Consent Order on September 6, 2016 requiring First Niagara to take various remedial measures to address the violation, including to provide remediation to affected consumers. KeyBank shall complete those actions to the satisfaction of the OCC.
- KeyBank, as successor to First Niagara, shall complete, to the satisfaction of the OCC, the corrective action plan previously submitted to the OCC.

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.

### **VIII. Consummation Requirements**

OCC Central District Licensing Office staff must be advised in writing in advance of the desired effective date of the merger so that it may issue the necessary certification letter. The OCC will issue a letter certifying consummation of the transaction when the following are received:

- A Secretary's Certificate for each bank, certifying that a majority of the board of directors has agreed to the proposed merger.
- A Secretary's Certificate for each bank, certifying that any required shareholder approvals have been obtained.
- Documentation that all other conditions that the OCC imposed has been met.

If the merger with First Niagara has not been consummated within six months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time.

These approvals, 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 transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A separate letter is enclosed requesting KeyBank's feedback on how we handled the referenced application. If you have any questions, please contact Director for District Licensing Nancy M. Sundstrom by e-mail at [nancy.sundstrom@occ.treas.gov](mailto:nancy.sundstrom@occ.treas.gov) or by telephone at (312) 360-8866, or Senior Licensing Analyst Carolina M. Ledesma by e-mail at [carolina.ledesma@occ.treas.gov](mailto:carolina.ledesma@occ.treas.gov) or by telephone at (312) 360-8867. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

*signed*

Stephen A. Lybarger  
Deputy Comptroller for Licensing

Enclosure: Survey Letter

### AUTHORIZED SUBSIDIARIES AND INVESTMENTS

	<b>SUBSIDIARY NAME</b>	<b>ACTIVITY/AUTHORITY</b>
1	First Niagara Portfolio Management, Inc., Buffalo, NY	Investments in U.S. Government agency and treasury obligations – 12 CFR 5.34(e)(5)(v)(A)
2	First Niagara Realty, Inc., Lockport, NY	Holding and managing assets acquired by First Niagara including property acquired through foreclosure or otherwise in good faith to compromise a doubtful claim or in the course of collecting a debt previously contracted, and 100% interest in First Niagara Business Trust.- 12 CFR 5.34(e)(5)(v)(A)
3	First Niagara Business Trust, Buffalo, NY	Real Estate Investment Trust (REIT) that holds commercial and residential real estate loans, home equity loans and commercial business loans. 12 CFR 5.34(e)(5)(v)(A), (C) & (D)
4	First Niagara Funding, Inc., Lockport, NY	REIT trust that holds commercial and residential real estate loans, home equity loans and commercial business loans. 12 CFR 5.34(e)(5)(v)(A), (C) & (D)
5	First Niagara Securities, Inc. Lockport, NY	Enters into 3 <sup>rd</sup> party arrangements to provide insurance and wealth management services – 12 CFR 5.39(e)(1)(i) & (ii)
6	First Niagara Risk Management, Inc. , Buffalo, NY	Engages in the sale of insurance products as agent, and provides other risk management advisory services – 12 CFR 5.39(e)(1)(ii) and 12 CFR 5.34(e)(5)(v)(FF)
7	First Niagara Leasing, Inc., Lockport, NY	Engages in commercial equipment leases – 12 CFR 5.34(e)(5)(v)(M)
8	First Niagara Management Services, LLC, Pittsburgh, PA	Provides payroll and staffing services to bank and its subsidiaries in Pennsylvania – 12 CFR 5.34(e)(5)(v)(B)
9	First Niagara Commercial Finance, Inc., Dedham, MA	Conducts asset based lending activities – 12 CFR 5.34(e)(5)(v)(A), (C) & (D)
10	First Niagara Servicing Company, New Haven, CT	Owens and services certain real estate loans collateralized by real estate in Connecticut - 12 CFR 5.34(e)(5)(v)(A), (C) & (D)
11	First Niagara OREO, LLC , Buffalo, NY	Holding and managing assets acquired by First Niagara including property acquired through foreclosure or otherwise in good faith to compromise a doubtful claim or in the course of collecting a debt previously contracted - 12 CFR 5.34(e)(5)(v)(A)
12	New York Bankers Title Agency West, LLC, Rochester, NY	Non-controlling investment (23.86%) – title insurance and closing services - 12 CFR 5.34(e)(5)(v)(P) & (V) and various OCC precedents