



October 6, 2021

**CRA Decision #222
November 2021**

Ms. Jill Harrison
Bank of America, National Association
849 Fairmount Avenue
Towson, Maryland 21286

Re: Branch Application by Bank of America, National Association, Charlotte, North Carolina
Charter No. 13044
CATS Control Number: 2021-LB-BranchNew 322494

Dear Ms. Harrison:

The Office of the Comptroller of the Currency (OCC) hereby approves the application by Bank of America, National Association (Bank) to establish a branch at **205 Smith Street, Brooklyn, New York** to be known as **Smith and Baltic**. This approval is granted based on a thorough review of all information available, including representations and commitments made in the application and by the Bank's representatives. Based on our review, the OCC determined that approval to establish the branch is consistent with the relevant statutory factors set forth in 12 USC 36, applicable state law, and with the Community Reinvestment Act (CRA), as more fully discussed below. This letter also serves as authorization to establish Branch Number **213589A** at the above noted address.

I. Community Reinvestment Act

The CRA requires the OCC to take into account the bank's performance record in helping to meet the credit needs of its communities, including low-and moderate-income (LMI) neighborhoods, when evaluating applications for the establishment of a domestic branch. 12 USC 2903(a).

The OCC considered the Bank's most recent CRA performance evaluation (PE), information available to the OCC as a result of its supervisory responsibilities, and one comment letter regarding the application. Based on this review, the OCC has concluded that the Bank's record of performance under the CRA is consistent with approval of this application.

The Bank's most recent CRA PE is dated January 8, 2018, and assigned the Bank an overall rating of "outstanding."¹ The PE noted: (i) excellent lending performance in a majority of rating areas; (ii) excellent levels of community development investment; and (iii) good service test performance.

II. Summary and Analysis of the Public Comment

The OCC received and considered one comment letter regarding the application. The commenter requested that the OCC delay approval of the application until the OCC and the Board of Governors of the Federal Reserve System (FRB) enforce an allegedly outstanding commitment to make \$150 million in residential mortgage loans to native Hawaiians for housing on Hawaiian home lands (Department of Hawaiian Home Lands (DHHL) program).² The Bank's ultimate parent corporation (currently named Bank of America Corporation) made the commitment in connection with Bank of America, FSB's merger with Liberty Bank, Honolulu, Hawaii, in 1994.³

The OCC notes that the issues raised by the commenter are substantially similar to issues raised in connection with prior applications.⁴ The OCC's decisions on those applications noted that regardless of whether the DHHL program was subject to one of the conditions OTS imposed as part of the 1994 approval, the condition is no longer in effect. Bank of America, FSB, was merged into an affiliate in 1995, at which time its charter ceased to exist and the conditions to which it was subject ceased to be in effect. While Bank of America Corporation may have subsequently continued to refer to the DHHL program as a commitment, the CRA does not require banks to enter into these agreements, and the OCC does not enforce them.⁵

The commenter also expressed concerns regarding the demographics of the area in which the Bank seeks to establish a branch. Specifically, the commenter stated that the Bank is targeting gentrifying areas for the establishment of new branches. The commenter contrasted these neighborhoods with that of Bedford-Stuyvesant/Crown Heights, which the commenter states is

¹ The OCC issued the CRA PE, which was based on an evaluation period of January 1, 2012 through December 31, 2016. The OCC evaluated the Bank's CRA performance using the large bank performance tests. A copy of the CRA PE is available at: <https://www.occ.gov/static/cra/craeval/oct19/13044.pdf>.

² The commenter also raised concerns with the Bank's position in ongoing civil litigation involving an eviction, as well as concerns that the Bank is not complying with a 2011 Consent Order issued by the OCC that addresses mortgage foreclosures. The Consent Order was terminated in 2015. *See* <https://occ.gov/static/enforcement-actions/ea2015-059.pdf>. Bank customers experiencing issues with OCC-supervised banks may submit a complaint to the OCC's Customer Assistance Group. *See* <https://www.helpwithmybank.gov>.

³ The Office of Thrift Supervision (OTS) issued the decision approving Bank of America, FSB's merger with Liberty Bank. All functions of OTS with respect to Federal savings associations were transferred to the OCC as of July 21, 2011. *See* 12 USC 5411 and 5412(b)(2)(B)(i)(1).

⁴ *See* CRA Decisions No. 154 (Nov. 18, 2012), No. 191 (Aug. 20, 2018), and No. 195 (Oct. 18, 2018).

⁵ *See* Community Reinvestment Act Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. 48,524 (July 25, 2016) (§ __.29(b)—2).

11 percent White, has limited access to banking services, and was among the hardest hit areas in the nation during the financial crisis.

In response, the Bank represented that its branches serving low-to-moderate income areas remain strong. The Bank stated that as of August 2021, 22 percent of the Bank's banking centers are located in low- and moderate-income areas in the New York assessment area, and that approval of the application will not affect its ability to serve the financial needs of the Brooklyn, New York community. As provided for in the CRA and its implementing regulations, the OCC will continue to periodically evaluate the Bank's record of meeting the credit needs of its entire community, including low- and moderate-income areas, consistent with its safe and sound operation.

In sum, the commenter has not submitted any new information that would lead the OCC to adopt a different conclusion with respect to the current application.

III. Summary of Consideration of the Public Comment

The OCC has considered all the facts of record, including the Bank's record under the CRA, confidential supervisory material, information provided by the Bank, and the public comment on the proposed transaction. Based on this review, the OCC finds the facts to be consistent with approval.

IV. Consummation Requirements

If the branch is not opened the branch within 18 months of approval, the approval automatically terminates unless the OCC grants an extension.

Within 10 days of opening the branch, the Bank must advise this office of the branch's opening date, so the OCC may complete its records. Please reference the CATS Control Number in your correspondence.

If a branch is closed, a 90-day advance notice of proposed branch closing must be submitted to the OCC pursuant to 12 USC 1831r-1. Following the expiration of the 90-day notification period, a final closing notice should be submitted to this office.

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

If you have any questions, please contact Jason Almonte, Director for Large Bank Licensing at largebanks@occ.treas.gov.

Sincerely,

/s/

Karen Marcotte
Director for Licensing Activities