



Comptroller of the Currency
Administrator of National Banks

Central District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, Illinois 60605

October 10, 2002

**CRA Decision #112
November 2002**

Mr. Richard J. Hidy
Assistant General Corporate Counsel
U.S. Bancorp
U.S. Bank Tower
425 Walnut Street
Cincinnati, Ohio 45243

Re: Application by U.S. Bank National Association, Cincinnati, Ohio to purchase certain assets and assume certain liabilities of 57 California branches of Bay View Bank, National Association, San Mateo, California; OCC Application Number: 02-CE-02-020

Dear Mr. Hidy:

This is to inform you that on October 10, 2002, the Office of the Comptroller of the Currency (“OCC”) approved your proposed transaction whereby U. S. Bank National Association, Cincinnati, Ohio (“US Bank”) will purchase the assets and assume the liabilities of 57 California branch offices of Bay View Bank, National Association, San Mateo, California (“Bay View”). This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and by your representatives.

Among the various statutory and regulatory factors the OCC considered in rendering its decision on this transaction, the OCC considered the banks’ records of performance under the Community Reinvestment Act (“CRA”). US Bank received a rating of “Outstanding” in its March 2000 CRA Performance Evaluation. In Bay View’s most recent CRA Performance Evaluation, dated April 2000, the OCC assigned a “Satisfactory” rating. Following the transaction, the resulting bank will continue to serve the same communities that US Bank and Bay View currently serve. US Bank will implement its existing CRA programs, policies, and California Community Investment Plan in Bay View’s markets.¹ US Bank has also expressed its commitment to offering flexible and affordable mortgage products in California, such as programs that target low- and moderate-income borrowers and areas and programs with low down payment and flexible credit history requirements. Accordingly, the OCC found that approval of the proposed transaction was consistent with the Community Reinvestment Act.

¹ US Bank has made no determination as to which branches, if any, may be closed or consolidated as a result of this transaction. However, US Bank anticipates that any potential branch consolidations would involve only a few US Bank and Bay View branches that are in close proximity to each other. Therefore, US Bank does not anticipate any significant impact on the communities to be served.

The OCC received letters concerning this application from five commenters. Two of the commenters requested that the OCC conduct a public hearing. One of the commenters thought a hearing would provide an opportunity for African American business owners to testify about their experiences with US Bank. In light of the written comments received and the nature of the hearing request, the OCC concluded that a public hearing would not provide any additional facts orally that could not be provided in writing. Accordingly, the OCC decided not to hold a public hearing on this application.

Four of the commenters requested the OCC to extend the comment period. After careful consideration, the OCC determined to extend the comment period from September 13, 2002 until October 2, 2002 in order to provide additional time for public comment. In addition, the extension of time permitted one commenter to analyze Home Mortgage Disclosure Act (“HMDA”) data that were not publicly available when the initial comment period closed.² The OCC received one comment during the extended comment period.³ The OCC also removed the application from the expedited review process. Prior to the expiration of the extended comment period, the OCC received requests from two of the commenters for an additional extension of the comment period. The OCC considered but denied those requests.⁴

One of the commenters expressed concern with US Bank’s level of lending to minorities and denial disparities between minorities and whites for conventional home purchase and refinance loans in several Metropolitan Statistical Areas (“MSAs”) based on 2001 HMDA data.⁵ The OCC confirmed that the denial disparity ratios cited by the commenter were accurate but further analyzed the data by including data for US Bank North Dakota, an affiliate of US Bank operating in these markets. The OCC noted that when the HMDA data for US Bank North Dakota and all HMDA loan types were included, the denial disparities decreased. US Bank’s response noted

² The commenter advised the OCC that the California HMDA data for US Bank were not available on the Federal Financial Institutions Examination Council (“FFIEC”) website. The commenter asked the OCC to extend the comment period until the data were publicly available on the FFIEC website. Subsequently, the Federal Reserve Board (“FRB”) provided the commenter with the California HMDA data. The OCC asked the Federal Reserve Board to update the data on the FFIEC website as soon as possible.

³ After the close of the extended comment period, the OCC received several additional comments. With one exception, those comments did not raise any new concerns that had not been previously raised by other commenters. One commenter did raise a concern regarding a specific lease transaction that he allegedly entered into with a US Bank subsidiary. The OCC determined that the nature of this private legal dispute did not negatively reflect on US Bank’s CRA record of performance or other factors required to be considered by the OCC.

⁴ While one of the commenters indicated that the FRB still had not provided US Bank’s HMDA data for loans in San Francisco, the OCC advised the commenter of the specific location of that data.

⁵ The commenter cited the following denial disparity ratios for minorities to whites for conventional home purchase loans for US Bank in the following MSAs: Phoenix – 5.68 denial disparity ratio for Hispanics; Nashville – 4.72 denial disparity for African Americans; and Chicago – 6.32 denial disparity for African Americans, 2.46 denial disparity for Hispanics. For refinance loans in the Chicago MSA, the commenter cited denial disparity ratios of 4.30 for African Americans and 2.98 for Hispanics. The commenter also expressed concern about the level of lending to minorities in these MSAs as well as in the California MSAs of Oakland, San Diego, Sacramento, Vallejo, and Los Angeles. Additionally, the commenter questioned the proportion of loans made to California borrowers for which race data was not available. US Bank explained that in 2001, it had a small market share in California and a high proportion of loans originating from telephone applications (for which collection of race data is not required). US Bank also indicated that a significant percentage of loans were purchased and did not have accompanying race information.

that the MSAs in which concerns were raised by the commenter are markets in which US Bank has a very small mortgage lending presence. US Bank cited three MSAs (Milwaukee, Minneapolis, and Cincinnati) in which it ranks among the top three lenders for conventional home purchase loans and provided lending data and denial disparity ratios that supported its effectiveness in serving the needs of minority borrowers.

It is also important to note that HMDA data alone are inadequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations. The OCC will continue to do so after the branch acquisition at issue.

Two commenters also expressed concern that Bay View practiced redlining in the Bayview Hunters Point section of San Francisco, a traditionally underserved community, by not extending any small business loans under \$500,000.⁶ However, the last Performance Evaluation of Bay View indicated that the OCC performed a fair lending review and found no evidence of disparate treatment on a prohibited basis and no substantive violations of fair lending laws or regulations. In addition, that Performance Evaluation indicated that 81% of Bay View's small business loans were for amounts of less than \$100,000. The OCC also notes that US Bank plans to aggressively market loan products for California businesses with borrowing needs of less than \$35,000.

After reviewing US Bank's and Bay View's CRA records of performance, the OCC found no basis for conditionally approving or denying this application.

The district office must be advised in writing at least 10 days in advance of the desired effective date for the purchase and assumption, so that the OCC may issue the necessary certification letter. The effective date must be after the expiration of the period during which the Department of Justice may file an injunction to stop the transaction, *i.e.*, at least 15 days after the date of this letter.

We will not issue a letter authorizing consummation of the purchase and assumption transaction until we have received Secretary's Certificates indicating that the Board of Directors of both banks have approved the transaction and an executed copy of the purchase and assumption agreement.

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 U.S., any agency or entity of the U.S., or an officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities

⁶ One of these comments also requested that US Bank turn over the Bayview Hunters Point branch for use as a community-controlled financial institution. US Bank indicated that it desires to continue to operate the branch to serve the needs of this community.

under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

If you have questions, please contact the undersigned or National Bank Examiner Carolina M. Ledesma at (312) 360-8867.

Sincerely,

-signed-

David J. Rogers
Licensing Manager
National Bank Examiner